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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MAY 17, 1993
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JUNE 21, 1993

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **September 1, 1993.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

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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)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Soil and Water Conservation Project Cost-sharing

Proposed Amendments: N.J.A.C. 2:76-5.1, 5.2 and 5.3

Proposed New Rule: N.J.A.C. 2:76-5.4

Authorized By: State Agriculture Development Committee, Arthur R. Brown, Jr., Chairperson.

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

Proposal Number: PRN 1993-411.

Submit comments by September 1, 1993 to:

Donald D. Applegate, Executive Director
State Agriculture Development Committee
CN 330
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments at N.J.A.C. 2:76-5.1, 5.2 and 5.3 and new rule at N.J.A.C. 2:76-5.4 pertain to a landowner, or a farm operator as an agent for the landowner, whose land is in a municipally approved program, or other farmland preservation program or is subject to a development easement conveyed pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-24a, applying for a State cost-share grant for soil and water conservation projects. The amendments and new rule were initiated to address landowner eligibility for soil and water cost-share funds on lands enrolled in eight year programs which were expiring and subject to renewal for an additional eight year period and other statutory amendments.

Proposed amendments to N.J.A.C. 2:76-5.1 reflect the language contained in N.J.S.A. 4:1C-24, amended pursuant to P.L. 1989, c.310. The current rule which pertains to only lands enrolled in a farmland preservation program or a municipally approved farmland preservation program has been broadened to include lands from which a development easement was conveyed pursuant to the Agriculture Retention and Development Act. The amendments also identify the eligibility of soil and water conservation cost-share funds for landowners that have voluntarily agreed to renew their eight year programs for an additional eight year term.

Proposed amendments to N.J.A.C. 2:76-5.2 correct a technical error in the definition of the word "Board," and the definition of the word "Fund" was broadened to include any future funds authorized for the purpose of providing grants to landowners for soil and water conservation projects.

Proposed amendments to N.J.A.C. 2:76-5.3 identify approved soil and water conservation projects. The remaining section of N.J.A.C. 2:76-5.3 which identifies the soil and water conservation cost-share provisions has been amended and recodified as proposed new rule N.J.A.C. 2:76-5.4.

Proposed amendments to N.J.A.C. 2:76-5.4 identify the eligibility for State soil and water conservation cost-share funds. The current rule was expanded to differentiate between lands enrolled in a farmland preservation program or municipally approved program and lands from which a development easement was conveyed. The formula for determining the total eligibility of State soil and water cost-share funds has been amended but results in the same funding eligibility as currently provided. A provision was added to identify the eligibility of cost-share funds on lands enrolled in a farmland preservation program or municipally approved program which are renewed for subsequent eight year periods.

N.J.A.C. 2:76-5.5 through 5.9 have been recodified accordingly.

Social Impact

The proposed amendments and new rule will have a positive social impact. Pursuant to the Agriculture Retention and Development Act, P.L. 1983, c.32, N.J.S.A. 4:1C-11 et seq., as amended, a landowner, or a farm operator as an agent for the landowner, whose land is within a municipally approved program or other farmland preservation program, or is subject to a development easement is eligible to, and may apply, to the local soil conservation district and the county agriculture development board for a grant for a soil and water conservation project.

Pursuant to the Agriculture Retention and Development Act, a soil and water conservation project is any project designed for the control and prevention of soil erosion and sediment damages, the control of pollution on agricultural lands, the impoundment, storage and management of water for agricultural purposes, or the improved management of land and soils to achieve maximum agricultural productivity. The installation of these projects on farmland benefits the farmland owner, the general public, the environment and agricultural industry in the State.

Based on program participation, this benefit has been the primary reason for landowners voluntarily agreeing to participate in the eight year farmland preservation programs. The proposed new rule and amendments allow landowners that have completed their initial eight year program to be eligible for additional soil and water cost-share funds from the State when installing approved soil and water conservation projects.

Economic Impact

The proposed new rule and amendments will have a positive economic impact. To date, landowners have received approximately $2,290,000 in State cost-share grants for the installation of approved soil and water conservation cost-share projects on lands enrolled in farmland preservation programs, municipally approved programs or on lands subject to a development easement.

Monies authorized pursuant to the Farmland Preservation Bond Act of 1981, the Open Space Preservation Bond Act of 1989, and the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, allow the SADC to provide grants to landowners for up to 50 percent of the cost of soil and water conservation projects. Based on the above figure of State cost-share funds expended, the total amount of funds expended for soil and water conservation cost-share projects is in excess of $4,580,000. This investment in conservation practices has enhanced the agricultural industry throughout the State.

The proposed amendments and new rule will provide landowners which renew their farmland preservation program or municipally approved program with a new eligiblity of cost-share funds for subsequent eight year periods.

Regulatory Flexibility Analysis

The proposed new rule and amendments will impact landowners whose land is in a municipally approved program, farmland preservation program, or is subject to a development easement conveyed pursuant to N.J.S.A. 4:1C-24a. Currently, there are 370 farms in various farmland preservation programs throughout the State.

Landowner participation in the farmland preservation program is done on a voluntary basis. One of the benefits for participating in the program is the eligiblity to apply for a grant for a soil and water conservation project. The amendments and new rule provide landowners with the continued eligiblity for State cost-share funds when the initial farmland preservation program or municipally approved program has expired and they renew their program for subsequent eight year periods.

The proposed new rule and amendments do not directly impose recording, recordkeeping or compliance requirements. A landowner that enters his or her land in a farmland preservation program or municipally approved program must enter into an agreement recorded with the county clerk to retain the land in agricultural use and production for a period of eight years pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., as amended, and N.J.A.C. 2:76-3 and 4. Lands subject to a development easement may be restricted permanently or for a term of 20 years and require the recording of a Deed of Easement with the county clerk. The restrictions imposed on the land are set forth in the Agriculture Retention and Development Act and N.J.A.C. 2:76-6. Upon the recommendation of the State Soil Conservation Committee to the SADC to approve a grant for a soil and water conservation project, the SADC shall obligate funds for a project for up to three years. The landowner is required to complete the project within three years unless an extension is granted pursuant to existing N.J.A.C. 2:76-5.3(b)2ii. A landowner that receives a grant for the installation of a soil and water conservation project is required to maintain that project for a period of eight years pursuant to N.J.A.C. 2:90-3.11. These compliance requirements are uniform for all participants in the program.

No further analysis need be done at this time since the proposed new rule and amendments do not directly impose any reporting, recordkeeping or compliance requirements on the participants regardless of the business size.

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

2:76-5.1 Applicability

This subchapter identifies State Agriculture Development Committee rules which provide for [persons enrolled in a farmland preservation program or] **a landowner, or a farm operator as an agent for the landowner, whose land is within** a municipally approved farmland preservation program **or other farmland preservation program, or is subject to a development easement conveyed pursuant to N.J.S.A. 4:1C-24a** to apply for and receive grants for soil and water conservation projects. These rules shall be utilized in conjunction with N.J.A.C. 2:90-2 and 2:90-3, promulgated by the State Soil Conservation Committee, which prescribes procedures for development of conservation plans and approval of projects.

2:76-5.2 Definitions

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

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

. . .

"Fund" means the "Farmland Preservation Fund" created pursuant to the "Farmland Preservation Bond Act of 1981", P.L. 1981, c.276, **and any future funds authorized for the purpose of providing grants to landowners for soil and water conservation projects**.

. . .

2:76-5.3 Approved [practices and cost-share provisions] **soil and water conservation projects**

[(a)] The State Soil Conservation Committee, pursuant to procedures established in N.J.A.C. 2:90-2, shall approve projects that are eligible for cost-sharing.

[(b) The following cost-share provisions shall be applicable for soil and water conservation projects:

1. Upon certification of a farmland preservation program or a municipally approved program the committee shall determine the total eligible state soil and water cost-share funds based on common deed ownership in accordance with the following formula:

0 to 50 acres at $400/acre
51 to 100 acres at $100/acre
101 to 516.7 acres at $60/acre

i. For acreage exceeding 516.7 acres, no additional funding will be available to the landowner.

ii. The total eligible amount determined shall remain in effect for the duration of the farmland preservation program or municipally approved program.

2. Upon State Soil Conservation Committee approval and recommendation for funding of an application for soil and water project cost-sharing in compliance with N.J.A.C. 2:76-5.6 and upon State Agriculture Development Committee approval, the State Agriculture Development Committee shall obligate funds as approved in the application for up to three years from the date of approval.

i. Approval of funds shall not exceed the amount determined in (b)1 above.

ii. The term of obligation may be extended due to seasonal constraints or other unavoidable delays only upon the approval of the local soil conservation district, the State Soil Conservation Committee and the State Agriculture Development Committee.]

2:76-5.4 Eligibility for State soil and water conservation cost-share funds

(a) Upon certification of a farmland preservation program or a municipally approved program, the Committee shall determine the total eligible State soil and water cost-share funds based on common deed ownership in accordance with the following formula:

Acres	Eligibility for State cost-share funds
From 0 to 50 acres =	$400.00/acre
From greater than 50 to 100 acres =	$20,000 + $100.00/acre above 50 acres
From greater than 100 to 516.7 acres =	$25,000 + $60.00/acre above 100 acres
Greater than 516.7 acres =	$50,000

1. The total eligible amount of cost-share funds determined shall remain in effect for the duration of the initial farmland preservation program or municipally approved program.

2. Upon renewal of the farmland preservation program or municipally approved program, the eligiblity of cost-share funds shall be based upon the formula current at the time of program renewal set forth in this section.

(b) On land that has had a development easement conveyed from it pursuant to N.J.S.A. 4:1C-24a, the Committee shall determine the total eligible State soil and water cost-share funds based on common deed ownership in accordance with the following formula:

Acres	Eligibility for State cost-share funds
From 0 to 50 acres =	$400.00/acre
From greater than 50 to 100 acres =	$20,000 + $100.00/acre above 50 acres
From greater than 100 to 516.7 acres =	$25,000 + $60.00/acre above 100 acres
Greater than 516.7 acres =	$50,000

1. The total eligible amount of cost-share funds determined shall remain in effect for a period of eight years from the date the development easement was conveyed to the board.

2. At the end of the eight-year period, the eligibility of cost-share funds shall be based upon the formula current at that time and set forth in this section for subsequent eight-year periods.

(c) Notwithstanding (a) and (b) above, if a governmental body or a not-for-profit corporation is the record owner of land enrolled in a farmland preservation program, municipally approved program or is subject to a development easement conveyed pursuant to the provisions of the Agriculture Retention and Development Act, the owner is eligible for State soil and water project cost-share funds on the basis of the acreage contained in each farm in accordance with the following formula:

Acres	Eligibility for State cost-share funds
From 0 to 50 acres =	$400.00/acre
From greater than 50 to 100 acres =	$20,000 + $100.00/acre above 50 acres
From greater than 100 to 516.7 acres =	$25,000 + $60.00/acre above 100 acres
Greater than 516.7 acres =	$50,000

(d) Upon State Soil Conservation Committee approval and recommendation for funding of an application for soil and water project cost-sharing in compliance with N.J.A.C. 2:76-5.7 and upon State Agriculture Development Committee approval, the State Agriculture Development Committee shall obligate funds as approved in the application for up to three years from the date of approval.

1. Approval of funds shall not exceed the amount determined in (a), (b) and (c) above.

2. The term of obligation may be extended due to seasonal constraints or other unavoidable delays only upon the approval of the local soil conservation district, the State Soil Conservation Committee and the State Agriculture Development Committee.

Recodify existing 2:76-5.4 through 5.8 as **5.5 through 5.9** (No change in text.)

COMMUNITY AFFAIRS

(a)

DIVISION OF COMMUNITY RESOURCES

Intergovernmental Review of Federal Programs and Direct Development Activities State Review Process

Proposed Readoption with Amendments: N.J.A.C. 5:50

Authorized By: Stephanie R. Bush, Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-3.
Proposal Number: PRN 1993-409.

Submit written comments by September 1, 1993 to:
Andrew Jaskolka
Division of Community Resources
Intergovernmental Review and Assistance Unit
Department of Community Affairs
CN 814
Trenton, New Jersey 08625-0814

The agency proposal follows:

Summary

N.J.A.C. 5:50, Intergovernmental Review of Federal Programs and Direct Development Activities, is scheduled to expire on October 27, 1993, pursuant to Executive Order 66(1978). The Department of Community Affairs has reviewed these rules, has determined that they continue to be necessary and appropriate for the purpose for which they were adopted, and is therefore proposing their readoption with amendments.

The State Review Process is the procedure (1) for the intergovernmental review of applications for Federal financial assistance under qualifying programs by State agencies, local governments, nonprofit and for-profit organizations, and areawide agencies and (2) for the review of Federal Direct Development Activities, which was developed in response to Presidential Executive Order 12372 (1982) and implementing rules of Federal agencies as set forth in the Federal Register. It replaced the intergovernmental consultation process developed under Federal Office of Management and Budget (OMB) Circular A-95.

The review process places responsibility upon designated State, areawide and local government agencies. The Department of Community Affairs, through the Division of Community Resources, is responsible for coordinating and administering the State's intergovernmental review process. In accordance with Presidential Executive Order 12372 and implementing Federal rules, the Director of the Division of Community Resources is the designated "Single Point of Contact" for coordinating the review process. The Division is also responsible for reviewing, coordinating and transmitting comments of State, areawide and local government agencies to the Federal funding agency.

The review process provides a mechanism for assisting in the resolution of differences between applicants and reviewing agencies. In addition, the Single Point of Contact may prepare and submit to the Federal agency a recommendation representing the formal policy position of the State with respect to an application for Federal financial assistance or Federal direct development activity.

The rules outline various aspects of the State Review Process, including applicability, review period, review process, transmittal of review comments, nonaccommodation of review comments, interstate situations, direct Federal development, review of Federally-required State plans, environmental reviews, duration of approval, and procedural guidelines.

The current State Review Process rules do not set a dollar threshold that triggers intergovernmental review of qualified applications for Federal assistance. The impact of applications for $50,000 or less in Federal financial assistance on today's social problems and economy is of relatively minor significance in the context of the many costlier Federal applications filed.

Since August of 1991, the Single Point of Contact established a trial administrative exemption for applications for Federal assistance of $25,000 or less. The result of this has been lightening of the administrative burden of review and compliance for less significant applications. This, in turn, has allowed for a higher quality of review for those applications that are of more significance. It is for this reason that an exemption for applications of $50,000 or less is proposed.

Federal direct development activities often do not include a dollar value or, by their nature, are not readily quantifiable as to cost, even though their impact may be quite significant. Therefore, this exemption will not apply to Federal direct development activities.

The addition of the reference to for-profit organizations to N.J.A.C. 5:50-1.1 is necessary in order to correct a previous oversight. For-profit organizations are already referred to in the definition of "applicant" in N.J.A.C. 5:50-1.2.

The rules are being amended to remove references to the issuance of guidelines and substitute either a statement as to what the requirements are or a reference to instructions, as appropriate. The requirements set forth in the new text of N.J.A.C. 5:50-1.12 are those currently in effect as "guidelines."

Social Impact

The continued operation of these rules will have a positive social impact. The rules expedite the intergovernmental review process and facilitate the identification and resolution of conflicts that may arise as a result of review of an application for Federal financial assistance or Federal direct development activity. Lines of communication are clearly defined. The rules foster an increased level of coordination among all levels of government and provide an institutionalized mechanism for conflict resolution.

Economic Impact

The economic impact of these rules is not readily quantifiable. However, failure to readopt them would interfere with an established process and would be likely to result in costs attributable to needless duplication of effort, to delays in project implementation and to an absence of clear procedures.

For entities with Federal assistance applications of $50,000 or less, the proposed exemption from the review process might be of some economic benefit as simplifying the administrative review process. The lightening of the total review burden might also assist non-exempt applicants, as their applications can then be provided a higher quality review.

While the codification of the application review package at N.J.A.C. 5:50-1.12 adds no new requirements to the application review package as prescribed by the guidelines as used in the past, the package imposes on applicants the administrative burden of providing the information specified to the Division. Copies of the package must be provided to the agencies specified under N.J.A.C. 5:50-1.4(a)2.

Regulatory Flexibility Analysis

The rules proposed for readoption impose compliance requirements on State agencies, local governments, areawide agencies, nonprofit organizations and for profit organizations applying for certain Federal financial assistance. Some of the nonprofit and for profit organizations may be considered small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All applicants are required to submit an application review package (see proposed N.J.A.C. 5:50-1.12) to the Director, Division of Community Resources, and to those agencies specified under N.J.A.C. 5:50-1.4(a)2. The costs imposed on the applicants are those administrative in nature incurred in providing the necessary information and duplicating and distributing the package. Except possibly for the production of the site location maps required for projects involving construction, the Division does not anticipate that applicants will need to employ professional services to comply.

The proposed amendment that will exempt Federal assistance applications of $50,000 or less from the review process should be beneficial to "small businesses," including nonprofits, since assistance that they might apply for is more likely to be below the threshold. While existing requirements from the guidelines for an application review package are being spelled out in this chapter for the first time, no new requirements are being proposed.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:50.

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

5:50-1.1 Applicability

These rules provide the procedures to be followed by State agencies, local governments, nonprofit **and for-profit** organizations and areawide agencies when applying for Federal financial assistance **in**

amounts over $50,000 and **for** Federal direct development activities covered by Presidential Executive Order 12372 and implementing Federal rules.

5:50-1.4 Review process; applications for financial assistance

(a) Applicants for Federal financial assistance **in an amount over $50,000** under a qualifying program and reviewing agencies shall adhere to the following procedures:

1. Provide the Director and appropriate reviewing agency[(s)] **or agencies** with an application review package, as prescribed [by the Director] **in N.J.A.C. 5:50-1.12,** at least 30 days for noncompeting continuation awards, and at least 60 days for financial assistance other than noncompeting awards, prior to the end of the review period established by the Secretary or Agency Administrator of the Federal funding agency. [The application review package will be defined in guidelines to be prepared in accordance with N.J.A.C. 5:50-1.12.]

2. Applicants for Federal financial assistance shall submit the application review package to the appropriate reviewing agencies, as identified [in guidelines issued] by the Director:

i.-vii. (No change.)

3.-6. (No change.)

5:50-1.5 Transmittal of review comments

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

(e) The Single Point of Contact shall prepare and revise, as necessary, [guidelines] **instructions** describing the procedures **required** to be followed in the preparation of a State Process Recommendation.

5:50-1.12 [Guidelines] **Application review package**

[The Director shall prepare, revise, as necessary, and distribute guidelines for the discretion of applicants and reviewing agencies as deemed appropriate.]

(a) The application review package required to be submitted, pursuant to N.J.A.C. 5:50-1.4(a), to the Director and to the reviewing agencies identified by the Director, shall include the following documents:

1. An Application for Federal Assistance (Federal Form 424);

2. A one-page narrative description of the proposed activities, including a statement identifying the counties in New Jersey to be impacted or served by the project;

3. A Certification of Distribution of Application Review Package;

4. An 8½ inch × 11 inch site location map (for projects involving construction only); and

5. A completed Project Information Form (for projects involving construction only), incorporated herein by reference as Appendix A.

(b) The Certification of Distribution of Application Review Package and the Project Information Form shall be submitted on forms provided by the Director.

(c) Documents that do not contain all applicable required information, that do not indicate correct distribution of the application review package, or that are not signed and dated where required, shall not be accepted.

(d) Upon request by the applicant, the Director shall provide each applicant with a list of the names and addresses of the reviewing agencies to which the applicant must provide the application review package.

APPENDIX A

PROJECT INFORMATION FORM

This form must be completed for all projects involving construction.

PLEASE ELABORATE ON ANY "YES" ANSWER.
USE ADDITIONAL PAGES AS NEEDED.

			YES	NO
1.	Will the project encroach upon wetlands or a waterway?	1.	____	____
2.	Will the project require potable water? If NO, go to 3.	2.	____	____
	a. If YES, is municipal water available?	a.	____	____
	b. If YES, will a well be drilled?	b.	____	____
3.	Will the project require wastewater disposal? If NO, go to 4.	3.	____	____
	a. If YES, is sewerage available?	a.	____	____
	b. If YES, will a septic system(s) be included?	b.	____	____
4.	Will the project involve demolition?	4.	____	____

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY

(a)

WASTEWATER FACILITIES REGULATION PROGRAM

Treatment Works Approval, Sewer Ban and Sewer Ban Exemption Rules

Proposed Repeals: N.J.A.C. 7:9-1 and 7:14A-12
Proposed New Rules: N.J.A.C. 7:14A-22 and 23
Proposed Amendments: N.J.A.C. 7:14A-1.9 and 7:15-5.18

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

Authority: N.J.S.A. 58:10A-1 et seq. and 13:1D-9 et seq.

DEPE Docket Number: 40-93-07.

Proposal Number: PRN 1993-415.

Two **public hearings** on this proposal have been scheduled as follows:

Friday, September 10, 1993
1:00 P.M.
Department of Environmental Protection and Energy
First Floor Hearing Room
401 East State St.
Trenton, N.J. 08625

Thursday, September 23, 1993
10:00 A.M.
Rutgers University—Cook Campus
Labor Education Center
Ryder Lane and Clifton Ave.
New Brunswick, N.J.

Submit written comments, identified by the docket number above, by October 2, 1993 to:

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

The agency proposal follows:

Summary

This is a proposed major revision to the rules concerning the requirements for treatment works approval permits, imposition of sewer connection bans and the criteria for exemptions from sewer connection bans. The scope of these changes is of such magnitude that the Department proposes to repeal existing subchapters N.J.A.C. 7:14A-12, Requirements for Treatment Works Approval and N.J.A.C. 7:9-1, Water Pollution Control and to replace them with new subchapters N.J.A.C. 7:14A-22, Treatment Works Approvals, Sewer Bans and Sewer Ban Exemptions

and N.J.A.C. 7:14A-23 Technical Requirements for Treatment Works Approvals. It should be noted that a detailed and comprehensive review of the existing rules pertaining to the issuance of New Jersey Pollutant Discharge Elimination System (NJPDES) permits, N.J.A.C. 7:14A, is also currently being undertaken by the Department, and will soon result in a major rule change proposal. The Department is considering an extensive restructuring of the NJPDES permitting system and an interested party review document setting forth the potential new direction for the program was published in the New Jersey Register on February 1, 1993 at 25 N.J.R. 411(a).

The primary objective of the treatment works approval (TWA) and sewer ban programs is to prevent degradation of the waters of the State due to inadequately designed and/or poorly operated wastewater conveyance and treatment facilities. During implementation of the program rules as they have existed since 1987, the members of the public, both regulated and indirectly affected, have made the Department aware of a number of problems with many of the rule provisions and have also identified a number of possible improvements. As a result, the Department staff undertook a comprehensive review of the existing programs, aimed simultaneously at increasing the programs' environmental effectiveness, optimizing the use of available resources and eliminating undue and undesirable hardships to the regulated community.

Following this review and identification of the problems associated with the existing rules, the Department determined that the issues involved are so complex and of such importance and consequence that it would be appropriate to obtain comments and input from all interested parties prior to preparing a rule change proposal. For this purpose, a "Working Paper on Sewer Ban and Treatment Works Approval Programs" was published by the Department in January 1992. The paper contained a discussion of various issues and the options for addressing each one. The options included ranged from program modification, to program elimination, to leaving the program unchanged. The public was also invited to present additional alternative options that may be available, but not included in the Working Paper.

In addition to written comments from 42 individuals and organizations, interested party input was also obtained at two public meetings held on March 12 and 24, 1992 in Pomona and New Brunswick, respectively. The informal, round table discussion at these meetings was very effective in accomplishing a frank, focused and meaningful discussion of the issues involved. Based on the public comments and the Department's experience with the current rules, the Department has concluded that some of the existing regulatory requirements are excessively stringent, and in cases, unclear, unnecessary and impractical, and that they serve in some ways to hamper the Department's efforts to protect the environment.

The major issues and problems identified are as follows:

Treatment Works Approvals (TWA)

1. The TWA permit requirements, in many cases, are unjustifiably onerous and time consuming, and unnecessarily delay the implementation of projects aimed at correcting existing environmental problems. The existing rules at N.J.A.C. 7:14A-12 require TWA permits for a multitude of minor projects, which should more appropriately be handled at the local level.

2. There is duplication of review of treatment works designs by the municipalities, the sewerage authorities and the Department, some of which is redundant and unwarranted.

3. The administrative provisions for TWA submissions are inadequate and do not include current policies regarding time extensions, project modifications, Stage I approvals, appeals, TWA requirements for residual management facilities, "construction only" approvals in sewer ban areas and the use of holding tanks, equalization tanks and flow diversion facilities.

4. The technical design standards contained in N.J.A.C. 7:9-1 are outdated and do not reflect current technology. These rules have remained essentially unchanged since their promulgation in 1970. In addition, the design flow criteria are difficult to implement in many cases due to the highly variable nature of the measurement unit that forms the basis for design flow computation (for example, the number of patrons in a restaurant).

Sewer Bans

1. Sewer bans imposed in accordance with the current rules at N.J.A.C. 7:14A-12 create severe social and economic hardships, which, in many situations, are not justifiable when compared to the minimal environmental benefits achieved.

2. The existing rules for the imposition of sewer connection bans are extremely rigid and do not take into consideration several relevant and important factors such as the treatment facility's degree of non-compliance and impact on the receiving waters, the cause of non-compliance, the status of the corrective work that needs to be undertaken, and the relationship between additional flows, the violation and the associated environmental impacts. Subjecting so many areas served by non-complying facilities to sewer connection bans, without consideration of these relevant factors has led the Department to impose some bans that do not further the program objectives and have raised valid questions concerning the soundness of the sewer ban program and the environmental benefits derived.

3. The current regulatory provisions are outdated as they do not take into consideration the mandatory provisions of the Clean Water Enforcement Act amendment to the Water Pollution Control Act (CWEA) (P.L. 1990, c.28).

4. At times, sewer bans hamper the implementation of sewage treatment plant upgrades since additional revenues from new connections and service fees, which are vital for such upgrades, are not available.

5. The provisions of the existing rules concerning the effective date of the sewer connection ban imposition cannot be rationally enforced and contradict the requirements for public notification, thereby creating many undue hardships and administrative problems. Currently, the mandated sewer ban effective date is the submittal due date of the monthly discharge monitoring report (DMR) which first indicates non-compliance with their NJPDES permit (as determined by a three month average) or the date when identification of a lack of adequate conveyance capacity first occurs. This, in effect, imposes sewer bans retroactively without due notice since it may take several weeks to compile the necessary three month average of performance, adopt a resolution imposing a ban, and notify all interested parties in conformance with the existing regulatory requirements.

Ban Exemptions

1. Some of the ban exemption criteria are unclear and open to different interpretations.

2. In many cases, the exemption criteria are too narrow and fail to address a multitude of situations when compelling environmental, social and/or public need or equity considerations justify an exemption from the ban.

3. One ban exemption criterion is outdated and no longer applicable. This exemption category pertains to the granting of additional flow allocation for specific projects, when the exemption request is combined with a corrective activity that will result in substantial improvement in effluent quality. This exemption criterion is no longer applicable since the qualifying requirement was that the necessary improvements be completed by July 1, 1988. This deadline has passed.

All of the written and verbal comments received on the Working Paper have been considered in the formulation of this proposal, which contains major revisions to the current rules. The overwhelming majority of commenters emphasized that significant changes to all three programs must occur in order to achieve the environmental benefits of which the programs are capable. Most notably, the unnecessarily rigid, unjustifiably onerous and ambiguous provisions of the current rules, which often place an unwarranted burden on small developers and business owners, must be removed or modified. Very few commenters suggested elimination of any of the programs or the "no change" option.

The Department now invites further public comments on this rule proposal. To facilitate a review by all interested parties, a general discussion of the major changes contained in this proposal, with supporting rationale, is provided below. The general discussion is followed by a section-by-section summary of other significant changes.

GENERAL DISCUSSION OF MAJOR CHANGES

TREATMENT WORKS APPROVAL PROGRAM (TWA)

The TWA program regulates the construction and operation of domestic and industrial wastewater collection, conveyance and treatment systems. The main purpose of the program is to protect the integrity of the waters of the State by preventing the entry of pollutants due to inadequate treatment and conveyance facilities. The program has been under the jurisdiction of the Department of Environmental Protection and Energy (Department) since 1970. Prior to 1970 it was administered by the New Jersey Department of Health. The current administrative requirements for the TWA program are specified in N.J.A.C. 7:14A-12, which became effective on November 2, 1987. The technical standards

are specified in N.J.A.C. 7:9-1 and have remained essentially unchanged since their promulgation in 1970.

Major changes to the domestic and industrial components of the TWA program are discussed separately.

Domestic Treatment Works Approvals

The Working Paper presented four options for consideration concerning this program. These were: elimination of the program, delegation of whole or part of the program to the local or regional sewerage authorities, program modification through elimination of TWA requirements for minor projects along with some procedural changes, and no change to the existing program. Public comment was overwhelmingly in support of the third option—elimination of TWA requirements for minor projects and changes to some procedural requirements. The no change option was summarily dismissed as unacceptable since this option will not result in any improvement to the existing program and will leave the existing problems unresolved. The delegation option was also supported, however, some objections and reservations were expressed.

After a careful consideration of all relevant factors and the comments received in response to the Working Paper, the Department has determined that many unnecessary TWA requirements can be eliminated without compromising the program objectives. Accordingly, substantial changes are proposed to the program which will reduce or eliminate the TWA requirements for many projects. Also, the Department believes the potential for successful delegation of some of the regulatory responsibility to sewerage authorities does exist and should be further explored. However, no provision for delegation of domestic TWAs has been included in this proposal since the Division of Law has advised that the Department's enabling acts require the Department to perform TWA reviews and have not provided for delegation of that review.

The current rules at N.J.A.C. 7:14A-12.3 and 12.4 require that a TWA permit be obtained from the Department prior to construction of a project, the scope of which encompasses any of the following features:

1. Building, installing, modifying or operating any sewer connection which conveys 2,000 or more gallons per day (gpd) of sewage to a domestic treatment works, or links more than one building to a domestic treatment works.
2. Building, installing, modifying or operating any treatment works involving the storage, treatment or pumping of sewage.

In accordance with these rules, TWAs are presently required for a multitude of minor construction and rehabilitation projects. For example, a TWA permit is required not only for the new construction of any office/retail building larger than 16,000 square feet (2,000 gpd of projected flow), but a TWA is also required for an existing building of this size if its use is being changed, there is an addition to the building (regardless of the addition size) or if there is any change to internal plumbing or piping of the building. These permits are required irrespective of the length or size of the proposed sewer line, or even if a sewer line already exists. In addition, a TWA is also required for any structure that requires pumping to convey the sewage, including individual grinder pumps for single family homes. In fiscal year 1991, the Department received 1,592 domestic TWA applications pursuant to these rules, many of which were minor in nature and did not necessarily warrant State review.

Under the proposed new rules, the projects which will be exempt from Department review are generally routine designs with minimal environmental impacts. Historically, these projects have required a significant and disproportionate amount of the Department's time and resources, and have resulted in unwarranted delays and burdens on the regulated community without any significant environmental benefits. Many of the standard engineering designs, such as package pump stations or sewer laterals, are not so specific or complex as to warrant additional review and approval by the Department. Currently, the degree of effort spent in finalizing the design of such small sewerage facilities, initially undertaken by professional engineers, is unnecessarily compounded through the multiple reviews by municipal engineers and engineers for the sewerage authority as well as the Department. These multiple layers of review add significant costs to the project which is ultimately borne by the consumer in the form of higher fees and purchase price. It has been the Department's experience, which is also supported by the overwhelming majority of commenters, that the current rules result in too much effort being devoted to achieve too little environmental benefit, and that this effort needs to be redirected toward issues that are environmentally more consequential.

The rules are proposed to be modified as follows:

1. The current flow threshold of 2,000 gpd for a lateral connection requiring a TWA would be increased to 8,000 gpd.
2. The current rules require that a TWA be obtained for all sewage pumping facilities, regardless of the project's projected flow. This requirement would be modified so that pumping stations serving facilities which have a projected flow of less than 8,000 gpd and do not otherwise require a sewer extension, would no longer require a TWA permit.
3. For existing buildings which generate more than 2,000 gpd of flow (equivalent to a 16,000 square foot office or retail building), the current rules require that a TWA permit or permit modification be obtained for any increase in projected flow, however small, that results from a building addition and/or change in use. This requirement would be modified to require a TWA only if the additional aggregate flow resulting from the building modifications or additions over a five year period will exceed 8,000 gallons per day.
4. In accordance with the current rules, Stage I treatment works approvals, which are a preliminary or conceptual review of the proposed treatment works, are required for all treatment works other than sewer connections, interceptor sewers or pumping stations. The Department is proposing to make Stage I approvals optional for all projects. However, it is recommending that a Stage I approval be obtained for new or expanded sewage treatment plants and for projects that involve new or innovative design or technology.
5. Certain projects for repair, rehabilitation, replacement and improvements of sewerage facilities that do not involve any additional sewage flow are proposed to be exempt from the TWA requirement.

Specifically, for domestic treatment works, the proposed rules at N.J.A.C. 7:14A-22.3 and 22.4 state that a TWA would be required for the following activities:

1. Building, installing, modifying or operating any domestic treatment works including sewer extensions (new definition at N.J.A.C. 7:14A-1.9), sewage treatment systems, holding tanks, equalization tanks, and wastewater treatment and recycling systems;
2. Building, installing, modifying or operating any sewer lateral which will convey 8,000 gpd or more of domestic sewage, with the exception of building additions or modifications that do not increase the projected flow by more than 8,000 gpd over a five year period;
3. Building, installing, modifying or operating any wastewater pumping station, whether publicly or privately owned, to serve a facility whose projected flow is 8,000 gpd or more;
4. Building, installing, operating or modifying any residuals treatment units, including, but not limited to, facilities for composting, heat drying, thickening, digestion, air drying, thermal reduction, dewatering or storage of sludge;
5. As in the current rules, the Department will maintain its authority to regulate any sewer connection for "dry/construct only" permits when a sewer connection ban is in effect.

The effect of these proposed changes is that the following projects will no longer require a TWA from the Department, although they are still subject to appropriate approvals by the local authorities:

1. Projects involving the lateral connection of a single building which has a projected flow of less than 8,000 gpd;
2. Pumping facilities which do not involve a sewer extension and which are to serve projects with a projected flow of less than 8,000 gpd;
3. For existing buildings (regardless of size) a TWA permit would not be required for building renovations, additions or change of use provided that the resulting increase in projected flow is less than 8,000 gpd. If more than one building addition is constructed, a TWA permit will not be required if the aggregate of projected flows for all additions constructed over a five year period is less than 8,000 gpd;
4. Rehabilitation or the in-kind replacement of sewer lines or pumping stations;
5. Sewer lines conveying less than 8,000 gpd (by gravity or through pumping) serving a single building and passing through easements involving only one additional property before connecting to an existing publicly owned sewer;
6. Minor modifications of treatment works, including, but not limited to, the rehabilitation of conveyance systems (grouting, repairs etc.), chemical addition for the purpose of improving performance providing no new treatment unit construction is required, and minor changes to treatment units for repair or maintenance.

The Department estimates that the revised rules will reduce domestic TWA applications by about 30 percent, from approximately 1,250 to 875 for an average year.

At N.J.A.C. 7:14A-22.3(a)1, the new rules maintain the requirement that a TWA from the Department must be obtained irrespective of flow, if an extension of the sewage collection system is proposed in a roadway,

public right-of-way or easement that crosses more than two properties. This requirement will result in the need for some small projects (with flow less than 8,000 gpd) to obtain a TWA from the Department. The reason for keeping this requirement intact is that most sewer extensions are constructed in sections and at different times. If a sewer line is designed and built without considering the total need of the upstream contributory area, it may become a problem for the entire area by creating a bottleneck and may need to be replaced/upgraded at a later date, which is costly and should be avoided. Furthermore, the additional land areas brought under sewer service by sewer extensions must be checked against and coordinated with the provisions of the appropriate water quality management plan (WQMP) so that the environmental well being of the region can be maintained. Sewer extension permits are an effective regulatory and planning tool which will continue to exist under this proposal.

With respect to sewer lines through easements, the Department now requires TWAs for any sewer line that crosses an adjacent property, regardless of the pipe size or flow. The purpose of this requirement is to prevent the construction of sewer lines serving large subdivisions from circumventing the TWA or ban requirements by installing multiple laterals through easements instead of extending the sewer line within the roadway, which would be the more appropriate design for proper repair, operation and maintenance reasons. Although this requirement has served the intended purpose, it has required many individual property owners who wish to construct single family homes on lots that do not front a road, and need a sewer easement, to obtain a TWA and thus experience unnecessary costs and delays. This problem has been addressed by including a definition of a "sewer extension" which would have the effect of eliminating the TWA permit requirement for small projects that do not need an easement through more than one additional property.

With respect to the requirements for Stage I, II and III TWA approvals, several changes, located at N.J.A.C. 7:14A-22.5 (currently N.J.A.C. 7:14A-12.10 and 12.11), are proposed which reflect current policies of the program. Stage I is a conceptual approval for a project and is usually obtained prior to incurring expenditures on the detailed technical design. Stage II approvals allow construction of treatment works and Stage III approvals allow their operation. Stage I TWA approvals are proposed to be optional, but recommended for any sewage treatment plant expansion, new facility or treatment works which involves a new or innovative design or technology. The administrative provisions for Stage II TWA applications have been substantially modified at N.J.A.C. 7:14A-22.8 (currently N.J.A.C. 7:14A-12.13) to reflect the current policies and practices of the Department concerning the requirements for engineering reports, consent forms, application forms, and other items which comprise a complete permit application package. The Stage III TWA requirements have been revised at N.J.A.C. 7:14A-22.10 (currently N.J.A.C. 7:14A-12.17) to clearly state what is needed prior to operation of a treatment works for permits that are issued as Stage II and III combined (construct and operate) and for permits issued as Stage II only (construct only). Details of these changes are provided later in this proposal.

The provisions concerning TWA modification, revocation, expiration and extension of time have all been substantially expanded at N.J.A.C. 7:14A-22.11 and 22.12 (currently N.J.A.C. 7:14A-12.14 and 12.16) to clarify and reflect current policies and practices of the Department. The requirements governing revocation and expiration would remain similar and have been modified mainly for clarity. The requirements for TWA modifications have been revised to more clearly define what types of changes in the project scope will require a modification, which ones are exempt and which ones must apply for a new TWA permit. The provisions for TWA time extensions are located in N.J.A.C. 7:1C-1 (Rules and Regulations Governing 90 Day Construction Permits), but have also been incorporated in this subchapter with additional provisions that pertain specifically to treatment works approvals.

The rule proposal also contains new and expanded criteria at N.J.A.C. 7:14A-22.9 (currently N.J.A.C. 7:14A-12.25) addressing when a Stage II, construct only, TWA permit application can be approved. As in the current rules, "dry/construct only" permits may be issued in situations when the project is located in a future sewer service area, but no sewer lines are currently available and the project can be served by individual subsurface disposal systems in the interim period. Also, as in the current rules, "dry/construct only" permits may be issued in areas subject to a sewer connection ban providing that construction contracts for the necessary treatment plant upgrades or conveyance system improvements have been awarded. However, this rule proposal also contains an additional subsection, which reflects longstanding program policy, that "construct only" permits may also be issued in ban areas when the subject sewerage authority or municipality has entered into, and is in compliance with, an administrative consent order with the Department that contains a binding commitment for construction of the necessary improvements, completion of which would allow rescission of the sewer connection ban.

Two new sections have been added at N.J.A.C. 7:14A-22.13 and 22.14, containing requirements for the approval of temporary and permanent wastewater holding tanks and for wastewater hauling and diversion. These requirements are not new to the regulated community, as they have been longstanding program policy, but are included in the rules for the first time. In general, TWA permits for temporary holding tanks would be approved only in conjunction with or subsequent to a Stage II "construct only" TWA in areas subject to a sewer ban. In view of the requirements of when a Stage II permit may be issued, the linking of this requirement with temporary holding tanks ensures that the use of the tank will be for a specific defined period, and the Department can monitor its use and provide for it to be taken out of service when adequate treatment or conveyance facilities become available. In general, permanent holding tanks will only be approved for existing structures that have a malfunctioning subsurface disposal system which cannot be reasonably rehabilitated or replaced, and for which no viable alternatives exist. In such cases the holding tank would be to serve only the existing structure and any expansion of the existing facilities would not be allowed.

Requirements for wastewater hauling and diversion are also included in the rule proposal. Wastewater hauling is the removal and transportation of a specific quantity of wastewater from a treatment facility which is subject to a sewer connection ban, to a facility which is not subject to a sewer ban. Wastewater diversion is the re-direction of a specific quantity of wastewater flow from a collection or conveyance system to an alternate collection or conveyance system. Both of these operations are generally permissible in areas subject to a sewer connection ban when the sewerage authority or municipality has either awarded a binding contract for the construction of necessary improvements required to rescind the sewer connection ban, or is in compliance with an administrative consent order executed with the Department that contains specific commitments for the same end result.

Rules governing the use of flow equalization tanks, which are not addressed in the current rules, are proposed at N.J.A.C. 7:14A-22.15. The proposed rule would allow the use of flow equalization tanks at the head of sewage treatment plants and for industrial facilities when their use is for the purpose of improving treatment. However, certain restrictions would apply when the use of such tanks is proposed to address (or circumvent) the inadequacy of downstream conveyance facilities. The permanent use of a flow equalization tank, other than at a sewage treatment plant, would be considered approvable only if such facilities are proposed as an integral part of the municipal sewage collection and conveyance system, it has been demonstrated that the flow equalization tank is the most appropriate means of providing sewer service to the area under consideration, and there are no practical or feasible alternatives. The temporary use of flow equalization tanks would be considered only if binding commitments for construction of improvements to correct the inadequacy of the downstream system are in place.

Additional provisions have been added at N.J.A.C. 7:14A-22.3(a)3 and 22.4(a)8 through 12, containing requirements for the submission of TWA applications involving residuals. The Department is presently responsible for administering a program that ensures the safe use and management of sludge generated by all treatment works in order to protect public health and the environment. Pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the Department has adopted a comprehensive Statewide Sludge Management Plan which provides a framework for the maximum practical reuse, recycling and resource recovery of all sewage sludge and septage generated in the State. Furthermore, the Department has adopted a number of sludge management regulations pursuant to its authority under the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. In addition, the U.S. Environmental Protection Agency is in the process of developing rules concerning state sludge management programs (to be codified at 40 CFR 122, 123, 124 and 501) and technical standards for sludge management (to be codified at 40 CFR 503). In order to accomplish the Federal and State goals, this proposal includes provisions for sludge planning consistency required under the Statewide Sludge Management Plan as well as new and revised design criteria for sludge management and processing components.

Industrial Treatment Works Approvals

The industrial TWA permitting program has outgrown its intended purpose and a substantial part of it has become an unnecessary burden to the regulated community as well as to the Department, without providing any significant return in terms of environmental protection. Originally, when the NJPDES program was not delegated to the Department, the industrial TWA program served to ensure that industrial dischargers constructed and operated treatment works that would provide adequate levels of treatment. Currently the NJPDES permitting program establishes specific effluent limits (and hence the level of treatment) in all cases where they are necessary. Since the introduction of the Clean Water Enforcement Act (CWEA) amendments to the Water Pollution Control Act, P.L. 1990, c.28, the role and significance of the industrial TWA permit has greatly diminished since the Department can rely to a much greater extent on the NJPDES permit to ensure adequate treatment.

Major changes to the industrial treatment works permitting requirements are proposed. These changes modify what activities need an industrial TWA as well as applicable procedural, processing and submittal requirements. The existing rules, at N.J.A.C. 7:14A-12.3 and 12.4, require that a TWA be obtained in all cases unless the Department issues a waiver. The waiver decisions are made upon request and on a case-by-case basis. This has resulted in unnecessary delays and the potential for inconsistent decisions. The proposed rules at N.J.A.C. 7:14A-22.3 and 22.4 contains specific provisions concerning industrial treatment works that are exempted from the Department's permitting requirements as well as the ones that would continue to require a TWA.

The proposed changes concerning what projects would no longer be required to obtain an industrial treatment works approval from the Department are as follows:

1. Industrial treatment activities that employ certain standard and approved treatment technology and equipment, or do not have any associated significant adverse environmental impacts, will not require a TWA. Such processes specifically included are American Petroleum Institute approved oil/water separators, grease traps for restaurants, discharge of non-contact cooling water, heat exchangers, certain industrial waste holding tanks, recycle systems that are not direct dischargers, and retention or detention basins (to be used alone or in conjunction with a stormwater discharge) that are either authorized by a general NJPDES permit or are not required to obtain a NJPDEs permit.

2. Indirect discharges located in areas where the authority for an approved pretreatment program (delegated area) has been delegated by the Department pursuant to 40 CFR 403 and N.J.A.C. 7:14A-22.8 will not be required to obtain a TWA providing that no construction of a sewer extension is involved. In cases where the construction of a sewer extension is proposed, a TWA permit will be required only for the extension itself, and not for the pretreatment system which will appropriately be the concern of the delegated local authority.

3. Indirect discharges of less than 8,000 gallons per day to an existing sewer extension, in areas where the authority for an approved pretreatment program has not been delegated by the Department, will not require a TWA permit, unless the Department determines the discharger be designated as a significant indirect user (SIU).

The category of projects that would need to obtain an industrial treatment works are as follows:

1. Industrial treatment works that discharge directly to surface or ground water unless the activity is specifically exempted.

2. Indirect dischargers of more than 8,000 gallons per day in non-delegated areas.

3. Indirect dischargers in non-delegated areas that are designated as significant indirect users, regardless of the flow amount.

4. All projects that involve the construction of a sewer extension. For such projects in delegated areas, a TWA would be required for conveyance aspects only.

General Industrial TWA

At N.J.A.C. 7:14A-22.6, the Department is proposing a substantially simplified permitting procedure for those industrial treatment systems that would still require a TWA permit from the Department, with the exception of projects involving the construction of a sewer extension. The Department's review will be mostly administrative in nature, be conducted within 30 days of receipt of a complete application and will result in the issuance of a "General Industrial Treatment Works Approval." The General Industrial TWA will consist of a letter identifying the permitted facility, the NJPDES number, the licensed operator classification and other general conditions as may be deemed appropriate. The Department shall retain the right to conduct a full technical review and issue an individual industrial TWA in cases where it determines that the potential for increased risk to the public health and/or environment necessitates such a detailed review.

The proposed General Industrial TWA process will reduce the application processing time to 30 days and will also reduce the Department's review effort. The provision for issuance of general industrial TWAs based only on an administrative review is proposed for the following reasons:

1. Industrial treatment systems generally vary with each industrial process and the Department does not have adequate resources or expertise to be able to conduct a detailed technical review for all types of industrial treatment systems. Acquiring technical proficiency for all the individual and specific processes would require an inordinate amount of the Department's time and resources. To continue the existing process carries the implication that the designs have been thoroughly reviewed by the Department and found to be adequate to achieve the required effluent limits. This is not always the case and may potentially do more harm than good as the design engineer may, in reliance upon the Department's review, slacken his diligence believing that the ultimate responsibility and liability has somehow been reduced or shared through the Department's permitting process. This proposed change will unequivocally place the full responsibility for adequacy of design with the engineer who designed the system. In proposing this change, the Department is placing more emphasis on the design engineer's specialized knowledge of the industrial facility and its ability to comply with the NJPDES permit.

2. With the enactment of the Clean Water Enforcement Act amendment, the Department feels that it can rely more heavily on the actual NJPDES permits that are issued for protecting water quality throughout the State. The staff resources now used for the industrial treatment works program can be redirected to the NJPDES program and contribute to eliminating the existing permit backlog and the resolution of other issues that will result in increased and more significant environmental improvements.

The changes proposed above will eliminate the duplication of review at the various levels of government (as discussed under the domestic TWA section) and will reduce delays in implementing projects that are aimed at ground water remediation and environmental improvement. The Department also believes that the new rules will better define the appropriate roles and responsibility for the applicant, their engineers, the local sewerage authorities and the Department, and will enhance cooperation among all parties.

The provision requiring a general approval rather than altogether eliminating the TWA requirement is essential for a number of reasons. Without knowing the scope of the work proposed, the Department cannot determine which, if any, of the projects should be required to obtain an individual TWA. Also, there is a need to establish and maintain a record of treatment works that are constructed within the State, as well as the need to ensure that such works are designed and operated by duly licensed engineers and operators, respectively. The proposed procedures would accomplish this without placing an undue burden on the regulated community. As stated earlier, in making this rule change proposal, the Department has placed a substantially increased reliance on enforcement aspects particularly as provided by the CWEA. For fair, appropriate and successful enforcement actions, if the need arises, it is essential that the Department be able to determine whether the non-compliance resulted due to negligence in design, construction or operation. The proposed procedures would facilitate such determinations as design drawings and operational requirements would be readily available from the Department's permit records.

As stated earlier, treatment works approval permits will no longer be required for indirect dischargers in delegated areas. This should not be construed as an indication that such treatment works are less important. The Department's position is that all industrial dischargers to publicly owned treatment facilities must operate in compliance with the applicable discharge limits and those not in compliance must be brought into compliance as quickly as possible. For delegated areas the sole authority to accomplish this should appropriately rest with the local delegated agency. These delegated agencies issue SIU permits, enter into administrative consent agreements to accomplish compliance with the permits and, under provisions of the CWEA, have the necessary authority to impose penalties against dischargers that do not meet the effluent stan-

dards. The administrative consent orders negotiated by delegated agencies have specific compliance dates for treatment system improvements. However, due to delays in preparing the required application documents and issuing industrial treatment works approvals by the Department under the existing rules, these upgrades and improvements are unnecessarily delayed, sometimes well beyond the agreed upon compliance dates. Since delegated agencies already have the resources to be the sole authority for implementing pre-treatment programs, the review and approval of necessary treatment works should also rest with these agencies. This will eliminate unnecessary delays, multiple agency jurisdiction and conflicts over the same facility, and will also facilitate better use of the Department's resources for other areas where regulatory oversight is more critically needed such as the NJPDES permits and the capacity assurance program.

The Department believes that the goal of industrial pre-treatment should be a rapid "end of pipe" compliance. The elimination of the industrial TWA requirements for delegated areas and provision for an expedited 30-day processing through the issuance of General Industrial Treatment Works Approvals will result in a much quicker compliance with pretreatment requirements and eventually, better overall environmental compliance.

TWA Technical Design Standards

The existing technical design standards for domestic treatment works are contained in N.J.A.C. 7:9-1. These standards have not been revised since 1970, and consequently do not address a number of technological advancements concerning the design, construction and operation of domestic treatment works. The Department is proposing to repeal N.J.A.C. 7:9-1.1, and to replace it with N.J.A.C. 7:14A-23. Changes proposed to the technical requirements reflect current policies and practices of the Department and the wastewater treatment industry in general. In addition, substantial revisions to the projected flow standards have been proposed.

Due to the highly variable nature of the measurement unit currently specified as the basis for projected flow computations, the Department and the regulated community have experienced a great deal of difficulty in applying the current standards to TWA applications and sewer ban exemption requests on an equitable basis. For example, categories such as restaurants and gas stations have flow values based upon the number of anticipated patrons, which depends upon and varies with a number of factors. The proposed rules specify the number of seats in the restaurant and the number of pumps at a gas station to be the criteria for determining projected flows. The rules also propose changes to the flow values per measurement unit in order to resolve existing inconsistencies in flow standards with the "Statewide Water Quality Management Planning Rules" at N.J.A.C. 7:15 and "Financial Assistance Programs for Wastewater Treatment Facilities" at N.J.A.C. 7:22. To achieve this consistency in flow standards, modifications to all three rules were considered necessary. Accordingly, amendments to N.J.A.C. 7:15 are included in this proposal and corresponding amendments to N.J.A.C. 7:22 will soon be proposed by the New Jersey Wastewater Treatment Trust. These amendments will provide the desired consistency between the three programs and serve as a common basis for design of wastewater treatment systems.

The proposed new rules at N.J.A.C. 7:14A-23 do not include additional or specific technical standards for industrial treatment works which must be designed to meet all applicable Federal, State, and local requirements. To the extent practical, the general technical standards for domestic waste treatment or conveyance systems may be used. The nature of activity and the characteristics of the waste stream vary greatly at different industrial facilities. Therefore, treatment process alternatives also vary greatly from one industry to another. Specific, unique and specialized treatment units are often required for such facilities. The Department is of the opinion that the engineer designing the treatment system must search for and propose treatment works designs that best suit the specific industry and which are capable of achieving the required effluent limits. A statement to this effect is included at N.J.A.C. 7:14A-23.2(c).

Sewer Ban Program

The current rules at N.J.A.C. 7:14A-12.21 require the imposition of sewer connection bans for treatment systems which fail to meet any of their NJPDES discharge effluent limitations, or conveyance systems that do not have adequate conveyance capacity. A sewer ban must also be imposed on treatment plants for which the sum of existing wastewater flow, and the flows allocated to approved projects that are not yet operational, has reached 100 percent of the plant's permitted capacity. The affect of a sewer connection ban is that no additional sewer hookups or modifications of existing buildings (including change of use) which will result in additional flow can occur unless the proposed construction meets specific exemption criteria adopted by the Department. In areas subject to sewer bans, virtually all new construction comes to a halt. In addition, existing structures cannot be expanded or modified if they will results in any increase in the facility's flow.

In fiscal year 1991, 172 of the approximately 380 domestic wastewater treatment facilities within the State were subject to a sewer ban, affecting 249 municipalities. The current sewer ban program has resulted in substantial economic and social impacts, and in some cases has resulted in little improvement to the environment. When the far reaching impacts of a sewer connection ban are considered, it becomes apparent that sewer bans should only be imposed when the environment will clearly benefit from such an action. The rigidity of the current rules, which do not allow any discretion, and do not differentiate between types of violations and their impacts on the environment has created a regulatory problem. When a sewer connection ban is imposed for permit violations that are environmentally insignificant, the credibility of the program suffers and results in increased number of appeals, wasted time and effort, and, at times, waivers from the rules.

Currently, the rules require the imposition of a sewer connection ban when:

1. There is lack of adequate conveyance capacity in a collection system;
2. The sewage treatment plant for a three month average period, violates any of the effluent limits in its NJPDES permit, NPDES permit, standards promulgated by the Delaware River Basin Commission, Interstate Sanitation Commission or Hackensack Meadowlands Development Commission or its approval to operate; or
3. The treatment works is operating in violation of any non-effluent condition of its NJPDES permit, a court imposed order, an administrative order, or an administrative or judicial consent order.

As a matter of policy, the Department does not issue ban imposition directives for violations of non-effluent conditions of a NJPDES permit, violations of consent orders or other agreements or for limits other than those established by the facility's NJPDES permit. This policy is based on the rationale that such violations do not directly result in degradation of the receiving waters and can best be handled through enforcement action. Even then, the rules have created substantial hardships to the regulated community, forced the imposition of bans not clearly related to the goal of pollution prevention and in some cases has caused a great deal of hardship and frustration to communities trying to attract development in the hope that their increased revenue base will enable them to afford the required treatment plant upgrade.

Under the existing rules, when sewer connection bans are imposed without considering the nature or extent of violation, serious inequities can result. For example, a town serviced by a sewage treatment plant which is in compliance with all of its discharge limitations except for percent removal rate for biochemical oxygen demand (BOD) is subject to the same severity of a total sewer connection ban as a town that has ignored its treatment facility for years and is in non-compliance with all or most of its discharge limits including such basic limits as concentrations and mass loadings for BOD or total suspended solids (TSS). As another example, a plant can be in full compliance with every quality discharge parameter, yet be subject to a sewer ban because of seasonal flows which cause the plant to exceed the quantity of treated water permitted to be discharged. Even though the effluent quality meets all applicable limits (including mass loadings), a ban is imposed simply because the flow limit included in the facility's NJPDES permit has been exceeded.

Several commenters have also pointed out that non-compliance with effluent limits does not necessarily mean that an environmental impact has occurred. Water quality based effluent limitations are generally based on stream studies done for high temperature, low flow critical conditions. During average flow conditions, streams generally have a greater assimilation capacity than that used to develop these NJPDES permit limits. Therefore, some violations of the NJPDES permit may not compromise water quality standards to such an extent that the imposition of a sewer connection ban is warranted, especially when the Department can, and often must, take enforcement action.

The Working Paper presented three general options for consideration. These were: modify the program, eliminate the program, and leave the program unchanged. The overwhelming majority of commenters suggested modification of the sewer ban program in such a manner that

ban imposition decisions take into consideration relevant and important factors such as the treatment facility's degree of non-compliance and impact on the receiving waters, the cause of non-compliance, the status of the corrective work that needs to be undertaken, and the relationship between additional flows, the violation, and the associated environmental impacts. A few commenters also suggested total elimination of the sewer ban program based upon the provisions of the CWEA. It was suggested that the fines and penalties mandated by this amendment are so severe that this, in and of itself, would reasonably ensure treatment plant compliance and negate the need for a sewer connection ban. However, other commenters stated that although the CWEA is a powerful tool to force compliance with discharge limits, it has only recently been adopted, has a short track record, and the full impacts of this law have not yet been tested. Additionally, commenters noted that penalties, by themselves, do not protect water quality and a sewer connection ban is the only means available at this time to stop additional connections that would result in increased pollutant loadings entering the environment.

In view of the Department's experience in implementing the sewer ban program, together with consideration of the comments received, the Department has proposed changes to the sewer ban program intended to represent a resolution of the various conflicting needs without compromising the environmental objectives. If the sewer ban rules are left unchanged, then a strict interpretation of these rules, combined with new monitoring and discharge restrictions for toxic pollutants pursuant to the Federal Clean Water Act, could result in a majority of sewage treatment plants in the State becoming subject to a sewer ban sometime in the foreseeable future.

At N.J.A.C. 7:14A-22.17, the proposed rules will require the imposition of sewer connection bans for plants that fail to meet the NJPDES effluent limits established for the following conventional pollutants: oxygen demanding pollutants (BOD, CBOD, NBOD, TBOD), total suspended solids, pH and bacterial quality indicators (fecal coliform, total coliform, enterococci). Compliance with these conventional pollutants will assure at least secondary treatment and a better than secondary level of treatment in instances where more stringent water quality based effluent limits have been imposed. If, however, a plant is meeting the effluent requirements for conventional pollutants, but fails to meet the requirements for non-conventional or toxic pollutants, a sewer ban would not be imposed provided that the sewerage authority has made a binding commitment to undertake the plant upgrade necessary to meet all effluent requirements of its NJPDES permit within a specific time frame.

With respect to toxic parameters and to some extent water quality based limits for non-conventional pollutants, the Department and the regulated community are continuing to work to resolve several issues that will have major impacts on the discharge permits of wastewater treatment plants. Until these matters are resolved, the Department is proposing that no ban be imposed providing that the plant is meeting all of its conventional pollutants and is committed to the necessary upgrade to meet toxic and non-conventional pollutant discharge limitations. The Department believes that to impose sewer connection bans on legally pre-existing treatment plants, without allowing an adequate opportunity to undertake the required upgrade to meet the new stricter limits for these controversial parameters, is not a reasonable approach.

Specifically, the proposed rules state that a sewer connection ban must be imposed when any one of the following occur:

1. The collection system does not have adequate conveyance capacity;

2. Based upon a three month average of values reported in the facility's discharge monitoring report (DMR), the facility has discharged effluent to a surface water which violates concentration or loading limits for any of the above noted conventional pollutants specified in its NJPDES permit;

3. Based upon a three month average of values reported in the facility's DMR, a facility has discharged effluent to a surface water which violates any of the non-conventional pollutant limits in its NJPDES permit, and the authority has not demonstrated its binding commitment to undertake the necessary plant improvements. For the purpose of this provision, the rule specifically requires that a binding commitment be in the form of an administrative consent order executed between the Department and the sewerage authority, or the award of a construction contract for plant improvements that contains a scheduled completion date acceptable to the Department; or

4. For a three month average, a facility has discharged effluent to ground water that violates any of the effluent limitations contained in its NJPDES permit.

With respect to sewer bans imposed for inadequate conveyance capacity, the Department is proposing to maintain, essentially unchanged, the existing provisions. However, the definition of inadequate conveyance capacity has been expanded to address wet weather discharges from any unpermitted discharge location, not just from any manhole as the definition currently states. This change in the definition reflects current Department policy. For the purposes of the sewer ban rules, a ban would continue to be required if there exists any wet weather unpermitted discharges or if during dry weather the committed flow in the pipe is more than 80 percent of the pipe's depth, or if in downstream pumping stations a redundancy in sewage pumps is not provided (as defined at N.J.A.C. 7:14A-1.9). The health hazards associated with raw sewage discharges are so severe that a sewer connection ban on the areas contributing to the inadequate conveyance facilities must be required. Further, there is no valid excuse as to why such conveyance system problems should not be immediately addressed.

The above proposed changes to the sewer ban rules take into consideration all relevant factors such as the effect on the receiving waters, the degree of non-compliance and the status of the corrective work that needs to be undertaken. Compliance with conventional pollutants as a pre-requisite for not having a sewer ban will assure that all the plants must achieve at least secondary (or better) treatment. It should be noted that prior to July 1, 1988, most sewage treatment plants were required to achieve only secondary treatment, and compliance with water quality based effluent limitations was not mandatory for many treatment plants. As of July 1, 1988, the effluent requirements were made more stringent without any adjustment to the sewer ban rules. This has resulted in an unbalanced and uncoordinated combination of regulatory provisions. Water quality based limits, the conservative safety factors and analysis used in establishing these limits, in combination with the severely rigid sewer ban rules and provisions of the CWEA amendment, have resulted in a regulatory overkill. Furthermore, sewer bans serve only to stop additional flow from entering a treatment plant. They do not, and cannot, stop the existing discharges to the waters of the State. Oftentimes, the new connections to a treatment plant during a ban period contribute only a fraction of the existing flow if the necessary improvements to the plant are undertaken within a reasonable time frame. Therefore, the real solution to the problem lies in facilitating a plant upgrade, which can be adequately achieved through a combination of timely enforcement actions including effective implementation of administrative consent orders.

In view of the above, treatment plants discharging to surface waters which are in compliance for conventional pollutants, and have committed to the necessary upgrade to meet mandated levels of treatment for other parameters would not be required to impose a sewer connection ban. In proposing this revised ban imposition criterion, the Department does not imply that compliance with other than conventional pollutant parameters is not important. On the contrary, the Department believes that such non-compliance must be corrected and the proposed rules provide the necessary incentive for this purpose. In cases where such non-compliance occurs and the sewerage authority fails to provide a binding commitment for an upgrade, a sewer connection ban would be imposed.

The revised rules will not require a ban for violating non-effluent conditions of a NJPDES permit (such as failure to undertake additional monitoring or stream studies), violations of administrative aspects of consent orders or court imposed orders, since these do not directly result in degradation of the receiving waters and can be best addressed through enforcement actions. Further, no ban would need to be imposed for non-compliance with requirements of other agencies such as the Delaware River Basin Commission, Interstate Sanitation Commission or Hackensack Meadowlands Development Commission. The Department is of the opinion that effluent limits desired by other agencies should be incorporated into NJPDES limits to the extent appropriate.

As stated in the Working Paper, one of the reasons for requiring a sewer connection ban is to provide leverage in forcing the sewerage authorities and municipalities to correct the non-compliance problem. Execution of an administrative consent order as a pre-condition for relief from the sewer ban imposition negates the need for any additional leverage since the objective of the leverage would be accomplished beforehand. In addition, the CWEA provides any additional leverage that the Department may need to force the sewerage authorities to undertake the necessary corrective action.

A significant change proposed for surface water dischargers is that no sewer ban would be required if the surface water sewage treatment

plant exceeds its permitted flow, as long as it continues to meet appropriate effluent limits, including total mass loadings. For plants with excessive inflow and infiltration, high flow conditions generally occur during wet weather when the flow in the receiving stream is also high, and do not correspond to the critical low flow conditions that are used in determining the NJPDES permit limits. However, flow exceedance beyond the plant's physical capability to treat can lead to effluent quality violations. Therefore, the Department is proposing to maintain the existing requirement that a sewerage authority must implement a capacity assurance program when committed flow exceeds 80 percent of the plant's permitted capacity. Additionally, in view of the proposed changes to the sewer ban imposition requirements, a new provision has been included stating that if the sewerage authority fails to implement the required capacity assurance program, the Department, at its discretion and based upon a review of available information (including plant design, plant performance and provisions of the water quality management plans), may decide not to allow approval of treatment works applications that would contribute additional flow to the plant. The provisions of the CWEA will also discourage the sewerage authorities from allowing such conditions to occur. The revised rules would allow the optimal use of the treatment capacity, but not beyond the limit that is dictated by the plant design which usually incorporate conservative values and other safety factors which affect ultimate treatment capacity.

In opposition to not mandating bans for flow exceedance, it could be argued that allowing a plant to exceed the capacity identified in the relevant water quality management plan (WQMP) would lessen the effectiveness of water quality management planning efforts. However, this is not necessarily so as some commenters have pointed out during discussion of the Working Paper. Most of the existing WQMPs' first identify the areas to be served by the plant and then estimate how much flow would be generated within the established sewer service area. The controlling factor in the existing WQMPs, therefore, is the sewer service area. It then becomes obligatory on the part of the sewerage authority to serve the area identified as the sewer service area.

To tie the imposition of a sewer connection ban to preliminary flow estimates arrived at through the WQM planning process would cause unjustifiably severe hardships to the regulated community. In those cases where the actual flow from the sewer service area exceeds the quantity of flow estimated during preparation of water quality management plans, the appropriate remedy is to modify the plan and the flow limit in the appropriate NJPDES permit, rather than to impose a sewer connection ban. This should be addressed through timely implementation of the Capacity Assurance Program which is required and discussed later in this proposal.

Another reason for not imposing bans for flow limitations is the manner in which committed flow to the plant is determined. Committed flow is the sum of the actual flow to the plant plus the additional projected flows that have been committed through the issuance of TWA permits for projects that have not yet become operational. Due to the conservative nature of the Department's projected flow criteria, committed flow values are oftentimes far in excess of the flows that would actually be generated if the projects were constructed and operational. The Department, at times, is therefore faced with enforcing a sewer ban for a hypothetical problem which is not a true representation of the real situation. Often, the full committed flow is never realized as many projects with TWA permits do not proceed to construction and operation stage for various reasons.

The new rules would maintain the existing requirement for the imposition of a sewer ban if the facility discharges to ground water and is in non-compliance with any of its NJPDES effluent limits, including flow. This distinction is due to the inherent differences in how surface and ground water discharge limits are established, the treatment requirements and associated environmental impacts. For example, pollutants discharged to surface waters are affected by the turbidity of the water body and the continued assimilation and dilution that often occurs when smaller streams contribute to larger water bodies. In the case of ground water, wastewater generally moves in a plume and any dispersion or dilution from the discharge point forward is slow and severely limited. Polluted ground water does not flush itself out and can severely contaminate nearby potable wells. Further, NJPDES permit limits for ground water discharges specify only the flow volume and pollutant concentration, the mass loadings are limited only by flow. Therefore, if a facility were to increase its discharge above the NJPDES permitted flow limit, the quantity of pollutants discharged to the ground water would increase even if concentrations are maintained in compliance with the permit limitations. Further, the flow limitations contained in NJPDES/DGW permits are based, in part, upon the disposal area capacity. Therefore, violations of flow limitations may result in the hydraulic failure of the disposal area. In addition, ground water is commonly utilized for drinking purposes by homeowners through individual wells, without prior treatment and with only infrequent testing. By contrast, the use of surface water for drinking purposes is generally through water supply purveyors with adequate treatment and monitoring.

Several other changes in the sewer ban rules are proposed such as the effective date of the sewer ban imposition, its impact on pending TWA applications and on projects that do not require a TWA but have already obtained local building permits. These changes are discussed later in the proposal.

The Department estimates that pursuant to the provisions of the proposed rules, approximately 150 of the 249 municipalities that were affected by sewer connection bans in fiscal year 1991 would not have been subject to a sewer connection ban. It is relevant to note that approximately 80 of the 249 municipalities were subject to a ban for reasons of flow exceedance.

Capacity Assurance Program

The current N.J.A.C. 7:14A-12.20 requires the implementation of a capacity assurance program when the committed flow to a treatment plant reaches or exceeds 80 percent of its permitted capacity. The purpose of this requirement is to prevent the overloading of the plant and possible future violations of its NJPDES permit.

In proposed new rule N.J.A.C. 7:14A-22.16, the basic capacity assurance program requirements such as implementation of water conservation measures, reduction of inflow and infiltration, construction of necessary improvements, etc., would remain substantially unchanged. However, one significant provision, in relationship to changes in the sewer ban program, is being proposed. As stated earlier, the proposed rules would not require the imposition of a sewer connection ban for flow, provided that the treatment plant is able to meet all other applicable NJPDES permit effluent limits. A valid concern remains that excessive flow, if not monitored and addressed, could at some point, result in a treatment facility failing to meet the loading or concentration limits specified in its discharge permit. Therefore, the Department is proposing that when committed flow to the treatment plant reach 80 percent of its permitted capacity, in addition to all other requirements, the authority would be required to address the consequences of what will occur when the plant reaches 100 percent capacity. In those cases when the authority anticipates the plant will be receiving flows in excess of its permitted amount and believes that these flows can be adequately treated, the authority must prepare and submit a detailed report demonstrating that the plant is capable of treating flows up to some percentage above its permitted capacity and still meet all applicable effluent limits. Providing that the Department finds the report, treatment plan and the other components of the Capacity Assurance Program acceptable, additional TWAs may continue to be issued up to an increased flow value. If, however, the sewerage authority fails to comply with the capacity assurance program requirements, or does not adequately address the issue of treating flows in excess of its permitted capacity, the Department may deny the issuance of treatment works approvals beyond the facility's permitted flow.

Sewer Ban Exemptions

The sewer ban exemption program, administered in conjunction with the sewer ban program, allows specific projects that meet certain pre-established criteria to be exempt from a sewer ban.

As stated earlier, when a sewer connection ban is imposed it essentially halts all new construction in the plant's service area. All construction projects, large and small, are equally impacted. Examples include: housing developments, shopping malls, warehouses, industries, an addition to an existing store (any size), the construction of a single family home which does not already have a sewer line fronting the property, an addition to a church or private school, or even the addition of a bedroom in a duplex. The current program allows specific projects to be exempt from the sewer ban if any one of the criteria specified in the rules can be met.

It is proposed to maintain and expand the exemption criteria currently at N.J.A.C. 7:14A-12.22, which include provisions to allow exemptions for individual single family homes on pre-existing tax lots for which a sewer extension is not required, publicly owned or operated facilities for which there is a pressing public need and for which no other

alternatives exist, structures creating a health hazard due to a malfunctioning subsurface disposal systems that cannot be rehabilitated, and the replacement of existing buildings that were already contributing to the treatment plant provided there is no increase in flow. The first two criteria mentioned, single family homes and publicly owned or operated facilities, are proposed to be expanded to include additional allowances. The last two criteria mentioned, malfunctioning septic and replacement flow have been modified to increase clarity and reflect current program policy. In addition, it is proposed to maintain the existing provisions for some low income housing projects and for projects which have incurred substantial expenditures on the basis of local approvals granted prior to November 1, 1986.

With respect to the last category, "substantial expenditure," the Department has received several inquiries concerning the establishment of November 1, 1986 as the cut-off date for consideration of expenses incurred based upon local approvals. Inasmuch as this criterion is proposed to be maintained, the Department considers it appropriate to include the explanation that was first published in the response to comments in the November 2, 1987 New Jersey Register pertaining to the adoption of N.J.A.C. 7:14A-12.20 through 26: "Publication of the proposed rules in the November 3, 1986 New Jersey Register served as notice to local construction code officials and therefore makes the use of this date realistic. This rule reflects existing rule of the Department of Community Affairs; it is not new. November 3, 1986 is the date upon which notice was served that existing law would be enforced from that date forward." The criteria is proposed to be maintained since many residential and commercial developments are constructed in phases which can span many years. Also, due to the recent enactment of the "Permit Extension Act" by the legislature, some local approvals issued prior to November 3, 1986, may still be valid and may qualify for exemption under this category.

As stated in the Working Paper, the existing ban exemption criteria are ambiguous in many respects and this has caused some confusion at the local level. In addition, one criterion is outdated and no longer applicable. The Working Paper presented four options for consideration. These were: amend the existing sewer ban exemption criteria to address inconsistencies and inequities and to provide for justifiable exemptions for projects and situations that are not currently addressed, eliminate the program, delegate certain aspects of the program to the local sewerage authorities, and no change to the program.

The public response was generally in favor of changes to the existing program with some support for the delegation provisions. Examination of past ban exemption applications, along with a review of the public comments received, has served as a basis for establishing the proposed ban exemption criteria. The Department has determined that the existing criteria are inadequate to address the multitude of projects and situations that arise. Based upon these factors, the Department is proposing to amend the existing criteria and to incorporate provisions for delegating the authority to implement certain aspects of the ban exemption program. A description of the major changes located at N.J.A.C. 7:14A-22.22, is provided below:

400 gpd Criteria

Presently the sewer ban regulations at N.J.A.C. 7:14A-12.22(b)6 allow for the exemption of new or modified structures with a total projected flow of up to 400 gpd which are located on tax lots that were in existence prior to the effective date of the ban, and provided that a sewer line exists in front of the property. The majority of projects granted exemption under this criteria have been single family homes, duplexes and small retail/business establishments. Although most single family homes on pre-existing lots do receive approvals, a significant number of duplexes and small businesses are denied approval due to the 400 gpd limit. At times, these denials cause extreme hardship to the applicants, whose livelihood, home or business may depend upon the construction or sale of such a structure. Also, defending and enforcing these decisions takes considerable staff resources and the rationale used to defend these decisions is arguable considering the relatively small increases in flow and the insignificant environmental impact associated with such projects. Therefore, the rules propose to increase the 400 gpd threshold to 600 gpd. Approximately 80 percent of the projects which are denied approval under this criterion have projected flows between 400 and 600 gpd. In addition, the proposed rules would allow an exemption for a property resulting from a one time subdivision of a single lot into two lots, after the ban imposition date. In such instances, a total of 600 gpd may be approved for the combination of both lots. If, however, the subdivision will result in more than two lots, only one new lot will qualify for an exemption. Any future subdivision of these lots would not qualify for an exemption. Provided all other exemption requirements are met, increasing the 400 gpd threshold to 600 gpd will allow single family homes as well as duplexes to receive an exemption under this criteria. This additional increase in flow allowance would allow small increases in the size of retail and office establishments as well. Previously, the maximum approvable office/retail space was 3,200 square feet, which is not necessarily a realistic size for many small establishments. This change will result in an allowable office/retail area of 4,800 square feet.

The addition of 300 to 500 gpd (all that is actually generated from a project with a projected flow of 600 gpd) generally will not have any significant impact upon the receiving waters of most large treatment plants. It is true that the combination of many small projects can potentially have a significant cumulative impact. However, this impact would be negligible for large plants and may, in fact, be less than the additional flow resulting from one single "larger" development in the plant's service area which gained an approval through one of the other exemption criteria. In this context, the proposed rules take into consideration and balance the extreme hardship which the denial of these exemptions for small projects cause to homeowners and businesses, against the impact of the additional discharge on the surface and ground water.

Public Need Projects

The existing rules include provisions allowing exemptions for four separate categories of projects that are intended to fulfill a public need. Currently an exemption can be obtained for certain low income senior citizen housing projects which have received federal funds, certain low income rental housing developments which have received State and/or Federal funds, low/moderate income housing that has received State and/or Federal funds, and projects which are 100 percent publicly owned or operated and serve an essential public need. The Department is proposing to leave the first three categories unchanged; however, a modification of the criteria applicable to publicly owned and/or operated facilities is explained below:

When the Department first promulgated the existing ban exemption criteria in 1987, the intent clearly was to limit such exemptions to publicly owned or operated projects, since privately owned facilities were thought to have the flexibility to be located in areas not under a sewer ban. However, the Department failed to consider the myriad of methods currently used to provide funds for projects for a public need. Since the rules were first promulgated, many creative methods of funding projects serving a public need have emerged. This has been necessitated by fiscal limitations on local and State support for such projects. These new funding methods often involve public/private partnerships or joint or subsidized funding arrangements. The proposed rules address the new, often blurred line between public and private projects undertaken to meet a public need. The proposed rules provide that an exemption may be granted to a facility owned by a not-for-profit organization for which there exists a fundamental public need, no reasonable alternatives including alternative sites are available, and at least 10 percent of the project's operating costs are provided by a public entity. The existing rules exempt such projects only if they are 100 percent publicly owned or operated.

Examples of facilities that may be able to obtain an exemption under this expanded criterion are volunteer ambulance squads or fire stations that may be run by not-for-profit organizations, yet receive only a portion of their operating costs from the municipalities they serve. The remaining costs may be covered by charitable donations (fund drives) or other private sources. Such facilities currently do not qualify since they are not 100 percent publicly owned or operated. In addition, there are other facilities such as health care or social service centers which represent similar situations. This criterion is not intended for low or moderate income housing, as these are covered under other exemption criteria.

One additional exemption criterion, which was discussed in the Department's Working Paper, is being proposed. This criterion would exempt residential housing projects that are limited to occupancy by households with low or moderate incomes, and which have received approval by the Council on Affordable Housing (COAH) as part of a "Regional Contribution Agreement" (RCA). Under the RCA program, communities can transfer a portion of their mandated low income housing to other communities who are willing to accept additional housing. Such agreements result in the construction of additional affordable housing units, with occupancy solely by households of low or moderate incomes, in urban areas. Fair market units would not be eligible for exemption under this criteria.

One ban exemption category is outdated and no longer applicable. This exemption category pertained to the granting of additional capacity for a specific project, when it was demonstrated that substantial improvement in effluent quality has occurred and the affected sewerage authority or municipality is committed to making improvements sufficient to enable the treatment works to meet the July 1, 1988 deadline for compliance with water quality based effluent limits mandated by the Federal Clean Water Act. Therefore, this exemption could only be applied to those projects that contributed to treatment plants that were scheduled to be brought into compliance with all their effluent limits as of July 1, 1988.

No matter how thoroughly the rules are written, there will always be situations in which all concerned parties agree that a specific project should be exempted, yet the exemption rules do not address, or are not specific enough to provide, for an approval. Therefore, an additional criteria has been added to provide for the approval, at the Department's discretion, of specific publicly or socially needed projects by not-for-profit organizations which do not meet any other exemption criteria. Examples of these facilities include, but are not limited to, those that provide food/shelter or other essential services for the needy or handicapped, regardless of an individual's race, creed or religion.

By including this provision for relief, applicants (and the Department) will not be required to go through the lengthy exercise of administrative appeals when the Department is convinced that an exemption is justifiable and should be granted. Specifically, this criterion requires that the projects be for a not-for-profit organization that serves a fundamental public need such as food, shelter, health and safety, meets the criteria for a tax exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code and the applicant must demonsrate that no alternative for the proposed project is feasible.

Ground Water Remediation Projects

Finally, a significant change is proposed to the existing exemption criteria for ground water remediation projects that are proposed under the Department's Site Remediation Program. The current rules allow exemptions for such projects only if they were approved by the Department prior to the effective date of the ban. The proposed new rules would expand the criteria to include exemptions for remediation projects irrespective of whether the Department's approval was issued prior to or after the ban imposition date. Linking such exemptions to the Department's approval pursuant to the Site Remediation Program would achieve the Department's objective that other reasonable discharge alternatives, such as on-site treatment and the return of treated water back to the ground, or discharge to an alternate surface water discharge location (if discharge to ground water is not feasible) be explored before an exemption is granted. The analysis concerning alternate disposal options that may be available is part of the feasibility study required to be submitted to the Department's Site Remediation Program for its review.

Exemptions under this category will not be allowed if the facilities for conveyance of flow to the treatment plant are inadequate and in situations where the additional discharge will create bypasses or other health hazards at treatment plants that have reached their design capacity.

The above discussion represents the major changes to the TWA program, the sewer ban program and the ban exemption criteria. Additional, less significant, changes proposed are described in the summary that follows:

Specific Administrative Rule Changes in Proposed N.J.A.C. 7:14A-22

N.J.A.C. 7:14A-22.5(f) is a new provision stating that the Department is not required to be notified of a change in ownership of approved treatment works. However, the new owner is required to comply with all the provisions of the TWA permit issued for the facility. The remainder of N.J.A.C. 7:14A-22.5 is derived from the existing rules at N.J.A.C. 7:14A-12.10, 12.5, 12.6, 12.7, 12.8, 12.18 and 12.19.

N.J.A.C. 7:14A-22.5(l) is a new provision which authorizes the Department to issue emergency approvals for construction, operation or modification of treatment works in emergency situations for public health, safety or welfare reasons.

N.J.A.C. 7:14A-22.7 Requirements for Stage I Treatment Works Approval applications: This section was formerly N.J.A.C. 7:14A-12.11 which has been modified to make Stage I approvals optional. However, the provision contains the Department's recommendation that Stage I approvals be obtained for new treatment plants or projects involving innovative technologies and designs. Currently, Stage I TWAs are required for all treatment works except sewer connections, interceptors and pumping stations. The existing requirement causes unnecessary permitting delays and wasted effort for upgrades and expansions of facilities which propose treatment methods routinely accepted by the Department. This change allows the applicant to determine whether or not a Stage I review is beneficial to the particular project and to proceed accordingly.

N.J.A.C. 7:14A-22.8 Requirements for Stage II Treatment Works Approval applications: This section was formerly N.J.A.C. 7:14A-12.12 and 12.13 and is proposed to remain essentially unchanged except that a complete list containing specifics of what constitutes an administratively complete TWA application has been included. Currently some of the items are not clearly specified.

N.J.A.C. 7:14A-22.9 This section was formerly N.J.A.C. 7:14A-12.25 and most of the existing provisions have been retained with some additions to include current program policy concerning "Dry/Construct Only" TWA permit requirements.

N.J.A.C. 7:14A-22.10 Requirements for applications for Stage III Treatment Works Approval: This section was formerly N.J.A.C. 7:14A-12.17 and remains unchanged with the exception of additional provisions at N.J.A.C. 7:14A-22.10(c) stating that a Stage III approval is not required for the temporary operation of the approved treatment works for the purpose of performance testing. This will enable new treatment units to be properly tested prior to the engineer's certification and the issuance of a formal operating permit. Also, N.J.A.C. 7:14A-22.10(c) has been added to specifically incorporate the administrative requirements for a Stage III approval in accordance with the Department's policy.

N.J.A.C. 7:14A-22.11 Modifications and revocations of treatment works approvals. This section was formerly N.J.A.C. 7:14A-12.6 and has been expanded to incorporate current program policy. N.J.A.C. 7:14A-22.11(b) specifies which projects qualify for a TWA permit modification and which ones would require a new TWA. This section also clarifies changes to the project scope for which the Department may, at its discretion, waive the need to obtain a permit modification. N.J.A.C. 7:14A-22.11(c) lists the specific submittal requirements for filing a TWA permit modification application.

N.J.A.C. 7:14A-22.12 Extensions of time for treatment works approvals. This section is proposed to establish the procedures for processing of extension of time requests for TWA permits.

N.J.A.C. 7:14A-22.17 and 22.18 Sewer ban imposition regulations. This section was formerly N.J.A.C. 7:14A-12.20 and contains expanded and modified provisions concerning the sewer ban imposition procedures and the ban effective date.

As in the current rules, the implementation/rescission of a sewer connection ban will remain the responsibility of the appropriate authority/municipality along with the requirement that notice of such ban actions be provided to all affected parties. The Department will only direct such actions if the responsible party fails to comply with the sewer connection ban rules. This does not exempt the facility from any fines or other penalties that may be imposed pursuant to the Water Pollution Control Act.

In the existing rules, the effective date of a sewer connection ban is the date when the discharge monitoring report which indicates noncompliance and the need for a ban imposition becomes due, or the date when a lack of adequate conveyance capacity in a collection system is identified. This does not allow any time for adoption of a ban imposition resolution and its public notification as required in the existing and proposed rules. As a result, municipal officials within the affected sewer service area continue to issue building permits after the effective date of the ban, until notification procedures have been completed. This, along with property transactions occurring in the interim period, leads to many undue hardships and administrative problems since the affected parties have no prior notification of ban imposition. In many situations, facilities are constructed with valid building permits, only to be denied a certificate of occupancy since the effective date of the sewer ban was before the date of building permit issuance. In many instances, the existing provisions are impractical, unfair and unenforceable. The proposed rules allow 20 days for adoption of a ban imposition resolution and for completing the ban notification procedures.

Additionally, the existing rules do not address the processing of TWA applications which are filed with the Department prior to the effective date of the sewer connection ban. For this purpose, a provision has been added incorporating the Department's current policy, that if a TWA application has been filed with the Department prior to the effective date of the ban, the Department will consider it for approval if it can

be demonstrated that at the time of signature of consent on the Department's form WQM003 (revised), the treatment plant was not required to be under a sewer connection ban.

N.J.A.C. 7:14A-22.19 through 22.21 contain the general policy and procedures for sewer connection ban exemptions. Portions of these sections come from the former N.J.A.C. 7:14A-12.22. The following provisions were added:

N.J.A.C. 7:14A-22.19(c) states that projects located in a sewer ban area must obtain a sewer ban exemption approval prior to filing a TWA application, if required. The reason for this change is because, pursuant to N.J.S.A. 13:1D-29 et seq., all TWA applications must be processed within 90 days of receipt of a complete application. The Department cannot begin processing a TWA application until the decision on the ban exemption request has been made, which can potentially consume the entire 90 day period allowed for the TWA permit processing.

N.J.A.C. 7:14A-22.19(e) clarifies the Department's existing policy that water conservation plumbing is a condition of the exemption approval and does not constitute the basis for a sewer ban exemption in itself. Water conservation devices reduce the flow, but not the pollutant loading to the sewage treatment plant.

N.J.A.C 7:14A-22.19(f) modifies the existing rule by stating that transfers of exemption approvals when the property ownership changes to the new owner are automatic and do not require any additional approval from the Department.

N.J.A.C. 7:14A-22.20 is a new section that specifies the activities in a sewer ban area which do not require a sewer ban exemption from the Department. Such activities do not have any additional impact on the wastewater conveyance or treatment facilities and include, but are not limited to, certain modifications to existing buildings, additions and deletions to internal plumbing of existing structures, and the replacement, rehabilitation or modification of existing treatment works that are not associated with an increase in contributory flow. In addition, it states that those projects which received all necessary approvals and/or permits from local, State and Federal authorities, prior to the imposition of the ban will also be exempt.

N.J.A.C. 7:14A-22.21 states that in addition to providing a copy of the ban exemption rules and standard ban exemption application form, the authority shall notify persons seeking ban exemptions of the effective date of the sewer connection ban and provide a copy of the authority's sewer ban exemption criteria, if such criteria is more stringent than the criteria promulgated by the Department. These two items are being proposed in order to improve the procedures for processing ban exemption requests.

N.J.A.C. 7:14A-22.22 Sewer ban exemption criteria. This section was formerly N.J.A.C. 7:14A-12.22. Several modifications and additions to the existing sewer ban exemption criteria are being proposed in order to clarify the existing provisions and to encompass projects and situations that are not adequately addressed in the existing rules. The following is a list of the proposed changes not previously discussed, along with their supporting rationale:

1. The existing criteria at N.J.A.C. 7:14A-12.22(b)4 pertaining to "replacement flow" states that the existing building must be in use at the time the sewer connection ban was imposed. This requirement is proposed to be eliminated since an unwarranted hardship would occur to some owners if their building was not in use due to an ongoing renovation or change in tenants. The new rule, at N.J.A.C. 7:14A-22.22(b), also provides that projects may qualify for a ban exemption on the basis of comparing the existing projected flow versus proposed projected flow, and in cases where actual flow from the existing use is greater than the proposed flow, the application may be considered on the basis of 12 months of actual water usage.

2. The ban exemption criteria for low and moderate income housing projects at N.J.A.C. 7:14A-12.22(b)9vi and (b)10vi require that in order to qualify for an exemption, the wastewater treatment facility serving the proposed project must be in compliance with all other rules of the Department. The Department is proposing to delete this requirement since it is too vague, all encompassing and impractical.

3. The Department is proposing to modify the "health hazard" criteria formerly at N.J.A.C. 7:14A-12.22(b)2, and now at N.J.A.C. 7:14A-22.22(a)5 to specifically require a certification from a New Jersey licensed professional engineer, geologist or soil scientist to the effect that the subsurface disposal system cannot be reasonably rehabilitated. This is being incorporated to insure that exemptions are not sought for convenience sake alone, and that only justifiable exemptions are granted under this criteria.

N.J.A.C. 7:14A-22.23 Is a new section addressing delegation of specific sewer ban exemption decisions to local authorities which are willing and have the necessary resources.

N.J.A.C. 7:14A-22.24 Adjudicatory hearings have been modified to be consistent with Rules and Regulations Governing 90 Day Construction Permits (N.J.A.C. 7:1C) and also to address the procedures to be used concerning hearings for sewer ban exemption applications.

Specific Technical Rule Changes in Proposed N.J.A.C. 7:14A-23

The requirements concerning the engineering plans submitted to the Department with TWA applications, the basis for determining design flows and the design standards for treatment works are currently contained in N.J.A.C. 7:9-1. These provisions have now been recodified at N.J.A.C. 7:14A-23 with substantial changes. Most notably, substantial revisions to the technical design standards have been made. These design standards were promulgated in 1970 and have remained essentially unchanged since then, even though the level of treatment required, the effluent limits and the technology available to achieve the desired level of treatment has greatly changed. The new rules also contain many additional provisions reflecting various Department policies that have evolved since the rules were first promulgated. Some of the revisions to the technical standards have been based on standards promulgated by other regulatory agencies such as the U.S. Environmental Protection Agency, the Great Lakes—Upper Mississippi River Board of State Public Health and Environmental Managers, and the New York State Department of Environmental Conservation.

N.J.A.C. 7:14A-23.2 is a new provision stating that whereas the standards proposed by the Department address the most commonly encountered situations, they are neither universally applicable nor do they address every circumstance. Requests for deviations from these technical standards would be considered by the Department on a case by case basis if conformance with the standards is not possible due to existing conditions such as physical site constraints and the alternate design is accompanied by adequate supporting data.

The projected flow criteria used for treatment works approval and sewer ban exemption applications are located in N.J.A.C. 7:14A-23.3 and have been substantially revised. Most significantly, the standard units of measurement which form the basis for projected flow computations have been modified to remove the ambiguity and excessive variability associated with a number of use categories. Specific examples are:

The projected flow for single family homes and apartments is currently based upon 100 gpd/per person and 75 gpd/person respectively. This has been revised to reflect the current program policy of 300 gpd/single family home and 150 gpd/one bedroom apartment, 225 gpd/two bedroom apartment and 300 gpd/three bedroom apartment. Projected flows for townhouses and condominiums would be based on the same flow values as for apartments.

The current rules base projected flow values for restaurants upon a per patron basis, which is difficult to uniformly apply inasmuch as the number of patrons will vary greatly from restaurant to restaurant. Therefore, the Department proposes to adopt the flow standards contained in "Design Standards for Wastewater Treatment Works" 1988 Edition, New York Department of Environmental Conservation. These standards apply flow values on a "per seat" basis for various restaurant types (average, bar, fast food, 24 hour and drive-up).

The flow values for campgrounds and mobile home parks have been revised from a per person basis to a per "site" basis. The projected flow numbers proposed have been taken from the Department's rules for subsurface disposal systems at N.J.A.C. 7:9A.

To make the projected flow values consistent between the Department's various programs pertaining to wastewater treatment and conveyance facilities, the flow criteria specified in the "Financial Assistance Programs for Wastewater Treatment Facilities" (N.J.A.C. 7:22) and "Water Quality Management Planning Rules" (N.J.A.C. 7:15) also need to be revised. For this purpose, amendments to N.J.A.C. 7:15-5.18 are included in this proposal and corresponding amendments to N.J.A.C. 7:22 will soon be proposed by the New Jersey Wastewater Treatment Trust. Specifically, N.J.A.C. 7:22-3.36, 4.36, 5.10, 6.36 and 7.10 will be modified to be consistent with N.J.A.C. 7:14A-23.3.

The requirements for plans and specifications submitted to the Department for TWA applications have been consolidated in N.J.A.C. 7:14A-23.4 with the following proposed additions and modifications:

The Department requires the submission of final plans for the design of sewerage facilities. A provision has been added requiring that in the

event preliminary plans are submitted to the Department, a notation must be included on the plans stating that the plans are final with respect to the sewerage facilities.

A requirement has been added that "as-built" plans must be submitted with applications for treatment works that have already been constructed. The submitted drawings must include a notation that the plans are "as-built."

The specifications requirements are proposed to be modified to require that specifications must be adequately detailed regarding construction methods, materials, operating characteristics, testing procedures, etc., to ensure proper construction and to provide the contractor with the specific information necessary to construct the treatment works as designed.

N.J.A.C. 7:14A-23.5, concerning requirements for engineering design reports to be submitted to the Department, has been added. In conformance with Department policy, it requires that the report must include the basis of selection of treatment type, sizing, ultimate disposal of effluent and residuals, and provide appropriate information demonstrating that the proposed design meets the minimum standards specified for proposed treatment units, holding tanks, equalization tanks and flow diversion.

At N.J.A.C. 7:14A-23.6(a), a provision has been added requiring that the downstream sewer systems to which the proposed treatment works will connect have adequate conveyance capacity as defined in N.J.A.C. 7:14A-1.9.

The requirements for gravity sewer design are now included in N.J.A.C. 7:14A-23.6 (previously N.J.A.C. 7:9-1.20). The following additions and modifications to the existing standards are proposed:

The minimum slope requirement is proposed to be revised for Polyvinylchloride (PVC) pipe of various diameters, to reflect the fact that the accepted roughness coefficient (n) for PVC pipe is 0.010, which allows PVC pipe to achieve adequate cleansing velocities at lesser slopes than were previously required.

For situations where the separation distance of sewer pipes and water lines is to be less than 10 feet horizontally or 18 inches vertically, a requirement has been added concerning the location of the sewer pipe joints and structural supports.

At N.J.A.C. 7:14A-23.6(b)6, a new provision has been added incorporating the Department's longstanding policy prohibiting the construction of sewer pipes through storm sewer pipes or manholes.

At N.J.A.C. 7:14A-23.6(b)7, a new provision has been added which requires that sewer lines, force mains and laterals must be placed at least three feet below the proposed grade. This requirement corresponds to the average frost depth in New Jersey and is necessary to prevent sewer pipes, force mains and laterals from freezing up.

N.J.A.C. 7:14A-23.6(b)8 has been added stating that the construction of sewers larger than hydraulically necessary to carry the projected flow is not permitted if the reason for sizing such sewers is solely to achieve the minimum slope requirements mandated by N.J.A.C. 7:14A-23.6(b)3.

A new provision has been added at N.J.A.C. 7:14A-23.6(b)9 prohibiting the use of sewer lines for storage or detention of sewage unless they are designed as an integral part of an existing combined sewerage system where in-line storage is being proposed as a corrective measure to prevent the discharge of untreated wastewater.

A new provision has been added at N.J.A.C. 7:14A-23.6(b)10 providing that the Department may, on a case-by-case basis, permit the discharge of contaminated stormwater from containment structures to the sanitary sewers.

A new provision has been added at N.J.A.C. 7:14A-23.6(b)11 stating that the Department may require special operational or maintenance procedures for treatment works to prevent or minimize septic conditions from occurring if the initial contributory flows will be substantially below the design flow. This provision has been included to address situations where the full build out of a residential or commercial development is anticipated to take a prolonged period of time and the difference in contributory flows for initial and final stages of development is such that the performance of the treatment works can potentially be impacted.

A new provision has been added at N.J.A.C. 7:14A-23.6(e) specifying the maximum permissible infiltration and exfiltration rates for testing of sewer systems.

The requirements concerning the construction of manholes are specified in N.J.A.C. 7:14A-23.8 and the following additions and modifications have been made to reflect current Department policy:

To reduce the amount of extraneous flows entering a collection system, a provision has been added at N.J.A.C. 7:14A-23.8(f) requiring that watertight manhole covers be used in areas where the street elevation is less than 10 feet above the National Geodetic Vertical Datum of 1988, and where the manhole may be subject to flooding.

N.J.A.C. 7:14A-23.8(g) requires that manholes must be at least 48 inches in diameter. This requirement is consistent with current engineering practice and has been taken from the "Recommended Standards for Wastewater Facilities, 1990 Edition, Great Lakes—Upper Mississippi River Board of State Public Health and Environment Managers."

The provisions for wastewater pumping stations (previously N.J.A.C. 7:9-1.25) have been consolidated into N.J.A.C. 7:14A-23.10, with three additional requirements that reflect current Department policy. These are:

1. Screens must be provided at the discharge point on the influent pipe to pumping stations except for smaller sized, individually owned grinder pumps. In these smaller pumping facilities, screening of raw influent is not always necessary to insure proper operation. Not requiring screens for raw influent will reduce some operation and maintenance burdens;
2. For the purpose of pumping station design, peak flows have been specified to be 2.5 times the average daily flow; and
3. Cleanouts must be provided on the low points of force mains to accommodate routine maintenance of the sewer system.

N.J.A.C. 7:14A-23.11 has been added to specifically address additional requirements for submersible wastewater pumps. These requirements have been taken from the "Recommended Standards for Wastewater Facilities, 1990 Edition, Great Lakes—Upper Mississippi River Board of Public Health and Environmental Managers." In addition to meeting the requirements specified at N.J.A.C. 7:14A-23.10, submersible pumps and motors must also be designed specifically for raw sewage, including total submersion during a portion of each pumping cycle, and must have adequate safety features and easy acces for maintenance, repair or replacement.

The requirements for the construction of dry wells and wet wells have been modified at N.J.A.C. 7:14A-23.12 to specify the method for calculating detention time in the wet well and to require appropriate maintenance or operational procedures, when this detention time requirement cannot be met.

The design standards for wastewater treatment plants have been consolidated at N.J.A.C. 7:14A-23.13. The following additional requirements have been added:

1. Plant designs which propose the use of bypass lines that would allow untreated or inadequately treated wastewater to be discharged will not be approved by the Department. The need for bypassing wastewater should be eliminated by making provisions for the use of auxiliary treatment facilities or for the retention of untreated wastewater during periods of equipment down time.
2. A provision is proposed to address the design of treatment facilities where an increased BOD content in the influent is anticipated. Domestic sewage, on average, has a BOD content of 250 mg/l, and this number is generally used as the basis of the design of treatment facilities. However, due to an increased emphasis on the use of water saving plumbing fixtures used in all new construction, consideration should be given to increased BOD content in the influent when designing the treatment facilities.

The proposed measuring, recording and sampling requirements for treatment plants at N.J.A.C. 7:14A-23.14 include additional requirements for equipment to collect residual samples at a frequency and location required under the Sludge Quality Assurance Regulations, N.J.A.C. 7:14-4.

N.J.A.C. 7:14A-23.15, specifying requirements for screening and comminution, and N.J.A.C. 7:14A-23.16, specifying requirements for grit removal equipment, include a clarification that the drainage from grit and/or screenings shall be collected and treated. This is consistent with the provisions of N.J.A.C. 7:14A-1.2.

N.J.A.C. 7:14A-23.19 includes the design requirements for trickling filters (currently N.J.A.C. 7:9-1.75 through 1.79) and has been expanded to include the requirements for manufactured media and to address advancements in treatment technology. These specifications have been taken from the "Recommended Standards for Wastewater Facilities, 1990 Edition, Great Lakes—Upper Mississippi River Board of State Public Health and Environmental Managers."

A new section, N.J.A.C. 7:14A-23.20, specifying the design requirements for rotating biological contactors (RBC) has been added. The design requirements have been taken from the "Design Standards for

Wastewater Treatment Works, 1988, New York State Department of Environmental Conservation" and include the following:

1. RBC units must be preceded by properly designed settling facilities;
2. Provisions for flow equalization, scum and grease removal must be provided;
3. A minimum of four stages are required for secondary treatment;
4. Permanent enclosures must be provided for the RBC units to provide adequate protection from the environment; and
5. Requirements for drive systems, final settling and operation and maintenance procedures have been included.

N.J.A.C. 7:14A-23.21 includes the design requirements for activated sludge systems which is a consolidation of several sections of the existing rules except for a modification that increases the maximum detention time in preliminary settling tanks from one hour to between 90 and 150 minutes. This proposed revision is based upon standard industry practice and U.S. Environmental Protection Agency guidelines.

N.J.A.C. 7:14A-23.23 includes the chlorination provisions (formerly N.J.A.C. 7:9-1.96 and 1.97) which maintain the existing requirements with the following proposed modifications:

1. A requirement concerning increased detention times and/or higher dosage rates for plants that are required to meet limits for enterococci has been added.
2. Previously, chlorinators were required to produce a free chlorine residual of two parts per million, however this is not consistent with NJPDES discharge permits currently being issued by the Department. Therefore, the provision has been revised to limit the residual chlorine to that which conforms with the NJPDES discharge permit requirement.
3. A provision has been added that appropriate adjustments to dosages may need to be made to achieve enterococci requirements of the discharge permit.

A new section, N.J.A.C. 7:14A-23.24, containing dechlorination requirements has been added based upon provisions made in the "Design Standards for Wastewater Treatment Plants, 1988, New York State Department of Environmental Conservation." Requirements for application, location and contact period for dechlorination chemicals as well as safety precautions when sulfur dioxide is utilized for dechlorination, have been added.

A new section, N.J.A.C. 7:14A-23.25, containing requirements for ultraviolet disinfection (UV) systems has been added. These proposed standards are based upon the "Design Standards for Wastewater Treatment Plants, 1988, New York State Department of Environmental Conservation." The general provisions include:

1. Requirements for prior filtration and screens, as well as requirements for water depth, contact time, and UV intensity sensors;
2. Provisions for adequate protection of the UV units from the environment;
3. Design requirements for open channel versus closed channel units; and
4. Requirements for electrical wiring and UV lamps/sleeves.

Requirements for sludge digestion and management are specified in N.J.A.C. 7:14A-23.26, and include the following additional requirements:

Expanded requirements to determine the treatability of digester supernatant by wastewater treatment facilities, which is in conformance with the "USEPA Process Design Manual: Sludge Treatment and Disposal," September 1979.

Expanded requirements for the design of sludge digesters in order to conform with appropriate pathogen reduction criteria when applicable. Under existing Federal regulations (40 CFR 257), no residual may be considered for land application, unless, at a minimum, it satisfies criteria as a "Process to Significantly Reduce Pathogens." Thus digesters which are planned to satisfy pathogen and vector reduction requirements must be designed to meet the operational specifications as stated in 40 CFR 257 as well as reiterated under Part 4-I of the Statewide Sludge Management Plan, (SSMP) adopted November 4, 1987. In addition, the USEPA is in the process of developing technical standards for sludge management to be codified at 40 CFR 503. These requirements will be incorporated into the SSMP upon adoption.

The design requirements for drying beds for residuals are specified in N.J.A.C. 7:14A-23.28 and include changes to residual drying bed design requirements making them consistent with the "USEPA Process Design Manual: Sludge Treatment and Disposal," September 1979. These changes include:

Additional requirements for minimum slope of underdrains as well as changes in the gradation of gravel. Stabilization requirements are based on 40 CFR 257 as well as Part 4-I of the Statewide Sludge Management Plan and provides for odor controls consistent with N.J.A.C. 7:27.

Loading intervals for Phragmites reed beds based on winter operational requirements due to reduced plant activity.

Requirements for residual dewatering lagoons are incorporated in N.J.A.C. 7:14A-23.29, and include the following proposed additional requirements:

New provisions for residual dewatering lagoons to require that they be lined for waste classification I.D. types 12, 73 and 74. The Department has determined that operating unlined residual dewatering lagoons for sewage sludge or septage processing will require more land area than fully mechanical methods and pose a potential for pollution of ground water and should be discouraged as sewage sludge or septage processing technique.

Stabilization requirements are based on 40 CFR 257 as well as Part 4-I of the Statewide Sludge Management Plan and provide odor controls consistent with N.J.A.C. 7:27.

N.J.A.C. 7:14A-23.31, stabilization of residuals, includes new design requirements for composting operations consistent with Part 4-III of the Statewide Sludge Management Plan.

N.J.A.C. 7:14A-23.32 includes new requirements for storage installations consistent with Part 4-IX and Appendix H-2 of the Statewide Sludge Management Plan. New septage handling requirements are based on the "USEPA Handbook: Septage Treatment and Disposal," October 1984.

A new section, N.J.A.C. 7:14A-23.34, containing requirements for closure of wastewater treatment units has been added. In conformance with the Department policy, it reflects the proper procedures for closing a facility which may no longer be used, but may or may not be removed from the site.

Deletions

The following requirements in the current rules are not carried forward to the new rules:

N.J.A.C. 7:9-1.13(a)4 and 8 through 10, and N.J.A.C. 7:9-1.13(d)2, preparation of sewer maps and plans, were deleted since these requirements are either outdated or unnecessary.

N.J.A.C. 7:9-1.22, Joints, was deleted since this section is not in conformance with currently accepted industry practices and is outdated.

N.J.A.C. 7:9-1.26(a)1, Pumps, was deleted since a design time frame for regional pumping stations was not practical or necessary.

N.J.A.C. 7:9-1.28, Electrical equipment, was deleted since the Department does not review the designs of electrical equipment.

N.J.A.C. 7:9-1.29(c) and (d), General provisions for treatment, were deleted since sedimentation and fine screens are not capable of meeting current discharge limitations and the provisions are outdated.

N.J.A.C. 7:9-1.30, requiring specific contractual arrangements between the design engineer, the operator of treatment works and the owner of the treatment works, was deleted since these requirements are inappropriate in these rules.

N.J.A.C. 7:9-1.102, General provisions for package treatment plants, was deleted since it serves no useful purpose and package treatment plants are a proven and acceptable technology that must otherwise meet all applicable design requirements of this subchapter.

N.J.A.C. 7:9-1.52(c), general provisions for screening, was deleted since the requirement is obsolete. Fine screens are not capable of treatment to the required levels currently specified in discharge permits.

N.J.A.C. 7:9-1.58(g), Settling tanks, was deleted since this provision is outdated and does not represent current technology.

N.J.A.C. 7:9-1.59 and 1.63, Imhoff tanks, was deleted since the provision is outdated and the use of Imhoff tanks as a treatment method is no longer considered acceptable by the Department.

N.J.A.C. 7:9-1.61, requiring operating data for combined units, such as employing settling and digestion or other processes, was deleted since the use of combined units is a common practice which is acceptable to the Department, and does not need to be additionally justified.

N.J.A.C. 7:9-1.103(d) and (e), Extended aeration, were deleted since this provision is outdated and not appropriate for current technology.

N.J.A.C. 7:9-1.100(c) and (d), additional technical documentation to justify the use of micro-strainers, were deleted since micro-strainers are acceptable to the Department and do not need to be additionally justified.

Social Impact

The Department believes that the overall social impact of the proposed rule changes will be significantly positive and should be well received by sewerage authorities, municipal officials, developers and other persons who are either engaged in or depend upon the construction and operation of domestic and industrial treatment works.

With respect to TWA permits, the proposed rules will reduce or eliminate TWA permit requirements, depending upon the scope and location of the project as discussed in the summary of major changes. For those projects that will no longer require a TWA from the Department, it is anticipated that the overall approval process time will be reduced by at least four to six months. Industrial treatment works located in non-delegated areas, which must still receive a TWA from the Department, will be subject to only a 30 day administrative review. These changes will have a positive social impact since applicants would know their project's outcome much earlier and will be better able to plan future actions. This can be especially critical for projects aimed at providing essential services to the public or are related to resolving existing problems such as contaminated ground water remediation.

The majority of other changes to the TWA rules, such as requirements for holding tanks, equalization tanks, construction only TWA's, permit extensions, modifications, etc., do not incorporate any new requirements for the regulated community. Most of these provisions are clarifications of existing rules and program policies, and will prevent unnecessary confusion, delay and frustration to the regulated community. These revisions and additions will be socially beneficial since the Department's decisions will be more predictable.

The provisions which allow an opportunity for partial delegation of sewer ban exemption decisions will benefit small businesses, developers and indiviual citizens who, due to the small size and nature of their business, may only have a single experience with the sewer ban rules. Removing the requirement to seek the Department's approval will eliminate the unnecessary and frustrating experience of individual applicants having to deal with a State agency on matters that may be unfamiliar to them. By keeping the decision making process at the local level, quicker, and hopefully better, decisions will be made as local officials are oftentimes at an advantage to know the particular details of projects seeking exemption. The applicants will not have the burden of informing the Department of these conditions and other items of merit such as the project's history and hardships that may be involved.

In proposing changes to the rules for the sewer ban imposition and sewer ban exemption criteria, the Department has relied heavily on its experience with the current programs and input from the regulated community, in particular those who have experienced the hardships of a sewer ban. The social impacts of a sewer ban are severe and widespread. Sewer bans impact any person or entity wishing to construct or expand a sewage generating structure, including, but not limited to, businesses, industries, schools, single family homes, churches, and projects aimed at providing essential services including eleemosynary projects undertaken by not-for-profit organizations.

These proposed amendments, repeals and new rules, which will result in a substantial reduction in the number of municipalites subject to a sewer ban, balance the social and economic impacts that a ban causes against the adverse environmental impacts that may result by allowing additional connections to non-conforming treatment works. By limiting the imposition of sewer bans to those municipalities which own or operate treatment works which cause significant environmental impacts, or which do not commit to undertake the corrective action necessary to improve the non-conforming treatment works, the Department will be limiting the extreme adverse social impacts that widespread sewer bans imposed pursuant to the existing rules have caused.

Many of the changes proposed, particularly those related to the ban exemption criteria, the ban imposition effective date and the procedures for obtaining a sewer ban exemption, will remove and/or modify ambiguous provisions of the existing rules. This will result in fair and predictable decisions by the Department, which will be socially beneficial.

The addition of a new exemption criterion for projects that serve a fundamental public need, such as health, safety, food or shelter, will also result in a significant positive social impact. Currently, the Department can approve such projects only if they are publicly owned or operated. Very few publicly needed projects sponsored by charitable organizations can meet this requirement. Under the proposed rule, projects with a pressing social need such as facilities for people with disabilities, volunteer ambulance squads and fire stations and emergency shelters for persons in need may be able to qualify for exemptions providing that at least 10 percent of the project's operating costs are provided by a public entity or the project is run by a not-for-profit organization. People who need the services of these organizations will not have to travel great distances outside of their community, nor will they have to be turned away because the facility was denied the opportunity to expand the services provided.

Changes to the TWA technical standards will have no social impact since they remove outdated and inapplicable requirements and reflect current program policies and industry-wide practice. Proposed changes to the Department's design flow criteria at N.J.A.C. 7:14A-23, amendments to the Statewide Water Quality Management Planning Rules at N.J.A.C. 7:15, and forthcoming amendments to the Financial Assistance Programs for Wastewater Treatment Facilities Rules at N.J.A.C. 7:22, will also have a positive social impact. These changes will resolve the conflicts that currently exist between these three sets of the Department's rules and will provide uniform criteria for planners, engineers and municipal officials involved in the design, construction and management of wastewater facilities. By ensuring consistency and coordination between these programs, projects which seek financial assistance from the state for the construction and upgrade of treatment facilities will proceed more smoothly toward funding and implementation. The construction of these projects maintain and improve water quality and water-quality related activities (fishing, swimming, boating etc.) throughout the State and results in a positive social impact.

Economic Impact

The proposed reduction and elimination of permitting requirements will have a significant positive economic impact on the regulated community since there will be a decrease in the associated regulatory costs and additional savings will be realized due to a shorter time period between the design and construction stages. The duplication of engineering review of smaller projects by the municipalities, sewerage authorities, and the Department is redundant and unnecessarily increases the overall project cost. These costs are ultimately borne by the consumer in the form of higher fees and purchase prices. The proposed rules require a treatment works approval permit in only those cases where environmental concerns indicate the necessity of the Department's involvement in the review process. For industrial treatment facilities located in a non-delegated area, the TWA review process will be limited to a 30-day administrative review. This change will reduce delays in the implementation of projects that are aimed at upgrading existing treatment facilities and remediating groundwater contamination sites. A positive economic impact will result through earlier compliance with mandated deadlines, thereby avoiding possible enforcement penalties and through the earlier use of sites and facilities at their full potential.

The elimination of permitting requirements for certain treatment works projects will have a minimal economic impact on the Department. The Department estimates a 30 percent reduction in the TWA applications for domestic treatment works. This 30 percent reduction represents only about five percent of the total TWA fees received by the Department. However, for the industrial component of the TWA program, the new rules would result in an estimated loss of 20 percent of aggregate fee revenues. For pre-treatment facilities, no TWA will be required in delegated areas, which constitutes a majority of the current industrial treatment works applications. For the remaining industrial projects, the Department will issue General Industrial TWAs, requiring only a minimum fee. The net effect on the Department's TWA program will be a 25 percent loss in fee revenues. Inasmuch as the TWA program is fee supported, the burden of support will now be more equitably distributed througout the regulated community since a lesser number of minor projects will be subsidized by the applicants for larger projects.

The proposed rules also include various clarifications and remove ambiguities which, at times, result in wasted expenditures incurred in the planning and design of treatment works which cannot be approved. Therefore, these clarifications will have a positive economic impact on the regulated community since the viability of projects will be known at a much earlier stage in the planning and design process.

Other changes to the TWA rules, such as requirements for holding tanks, equalization tanks, construction only TWA's, permit extensions, and emergency approvals will have a positive economic impact. Since these changes clarify the existing rules and codify current Department policies, applicants and engineers would know sooner and with greater certainty whether or not these types of projects would be approved by the Department. This, in turn, will reduce the applicant's cost of obtaining permits and costs due to time delays.

The current sewer ban rules have created severe economic hardships within the State. Substantial adverse impacts on jobs and businesses result since new construction is severely limited in sewer ban areas. Also, the costs of upgrading or expanding treatment facilities to achieve compliance with the applicable discharge permit are capital intensive. To meet these costs, the sewerage authorities and municipalities depend heavily on revenue from new connections and service fees. A sewer ban restricts new developments except for limited cases which qualify for an exemption, thereby virtually eliminating the additional revenue needed to fund the required improvements. This results in an undue hardship to the existing residents who must finance a greater portion of the needed capital expenditures. At times, the owners of non-complying facilities are placed in a position where the funds needed to improve the inadequate treatment works are not available and the potential for additional enforcement penalties increases each additional day the facility remains out of compliance. The proposed modification of the ban imposition criteria will enable many municipalities and sewerage authorities to avoid the severe economic impacts of a sewer ban.

A positive economic benefit will be realized through the savings in time and effort resulting from clarifications to the exemption criteria. The regulated community is entitled to a clear and concise understanding of the type of projects which qualify for exemption from sewer bans. A reduction in the costs associated with unnecessary administrative appeals and other legal proceedings will also result.

No adverse economic impacts will result from the deletion of the existing, but no longer applicable, ban exemption criteria for projects associated with substantial improvements in effluent quality to meet the July 1, 1988 deadline for compliance with the Federal Clean Water Act provisions. This is due to the fact that all improvements were required to have been completed by July 1, 1988 and since that deadline has passed, no exemptions under this category have been granted since 1988.

A proposed modification to the ban exemption criteria pertaining to groundwater remediation projects will allow an exemption for projects which have been approved by the Department's Site Remediation Program. This change will result in a positive economic impact since a greater number of contaminated sites will be able to meet Department mandated clean up directives and proceed toward completing real estate transactions and use of the facility that may be otherwise held up due to contamination.

Changes to the TWA technical standards will have a positive economic impact. Since these changes remove outdated, inapplicable or inappropriate requirements, and reflect current program policies and industry-wide practices, engineers designing the projects will be better able to ascertain acceptable treatment works designs, thus saving costs associated with submitting designs, which are inadequate and do not meet the Department's approval. Changes to the design flow criteria included in proposed subchapter 23 and amendments to the rules at N.J.A.C. 7:15, Statewide Water Quality Management Planning Rules, along with the forthcoming amendments to N.J.A.C. 7:22, Financial Assistance Programs for Wastewater Treatment Facilities, will have a positive economic impact. These changes will resolve the conflicts that currently exist among these three sets of rules and will provide uniform criteria for planners, engineers and municipal officials involved in the design, construction and management of wastewater facilities. By ensuring consistency and coordination in these three sets of rules, projects which request financial assistance for the construction of wastewater treatment and conveyance facilities would be able to proceed more quickly toward funding and construction, which will help reduce the financial burden on the users of these facilities.

Environmental Impact

Proposed changes to the domestic and industrial treatment works approval rules will reduce the TWA permitting requirements for projects with little or no environmental significance. This will enable the Department to redirect resources toward issues which are critical to the protection of the environnment, thereby increasing the Department's overall effectiveness. The current rules require the Department to invest a disproportionate amount of time and resources on issues which are of negligible environmental consequence, and prevent the application of these resources to areas such as discharge permits and the Capacity Assurance Program, which constitute proactive approaches toward the regulation of municipal sewerage facilities.

Increasing the threshold requirement for a domestic TWA from 2,000 gpd to 8,000 gpd will not have an adverse environmental impact since the exemption is only applicable to lateral connections (no sewer extensions) and the treatment works will still be reviewed and/or approved by the design engineer, municipal officials and sewerage authority, as appropriate. In sewer ban areas, where increases in flow become more critical, all projects proposing any increase in design flow will continue to be subject to the sewer ban rules.

For industrial treatment works in delegated areas (indirect dischargers only) and for certain industrial activities that employ a standard and approved treatment technology and equipment, it is proposed that no TWA from the Department be required. In delegated areas, the proposed amendments, repeals and new rules should have no negative environmental impact since sewerage authorities who have qualified for the delegation of authority for the industrial pre-treatment program have already demonstrated their ability to undertake this task and can more appropriately monitor the pre-treatment needs of their systems. In addition, facilities (indirect dischargers) which are not in compliance with their pre-treatment limits would be able to undertake the necessary improvements more quickly, without an additional delay caused by having to obtain a TWA permit from the Department. For standard treatment equipment, such as an American Petroleum Institute oil/water separator, grease trap, etc., the Department is of the opinion that these systems are standard in nature, will have no negative environmental impact and do not merit individual, repetitious reviews.

For industrial treatment works which will continue to require a TWA from the Department, the Department's review will be mostly administrative in nature and will be accomplished within 30 days following receipt of a complete application. This change should result in an overall positive environmental impact since projects which involve the upgrade of deficient facilities, groundwater and site remediation projects will be able to proceed more quickly to the construction and operation stage without the usual six month delay currently involved in obtaining approvals from the Department. No adverse environmental impact should result by the Department discontinuing its technical review of these facilities since the Department does not have the necessary resources to devote to acquiring the specific knowledge for each and every specialized industrial treatment process. The engineer responsible for the design, and the owner or operator of such facilities will be held strictly accountable for inadequate performance. The proposed rules do allow the Department to require an individual TWA when it determines that the potential or increased risk to the public health and/or environment necessitates such a detailed review and allocation of resources.

Other changes to the TWA regulations, such as requirements for holding tanks, equalization tanks, construction only TWAs, permit extensions, and emergency approvals will not have any adverse environmental impact since these changes clarify the existing rules and incorporate current policies. A positive environmental benefit will be realized by providing clear and up front guidance of the regulatory requirements.

The current rules have required the Department to impose questionable sewer connection bans which have raised issues concerning the soundness of the sewer ban program and the environmental benefits derived. The Department is of the opinion that a sewer connection ban is warranted for severe and continual violations of a facility's discharge permit or inadequate conveyance capacity in a collection system. The negative environmental impacts of such occurrences far outweigh social and economic considerations. However, when a sewerage authority is fully committed to the appropriate upgrade to meet discharge limits, and the violation is not severe, it is not appropriate to cause such social and economic impacts on the community that result from a sewer connection ban.

The strict rigidity of the current rules, by not allowing any discretion, and by not differentiating between specific violations and their impacts on the environment, have created a regulatory problem. When a sewer connection ban is imposed for permit violations that are environmentally insignificant, strict compliance with the sewer connection ban criteria is difficult to implement and defend. Additionally, by imposing bans not clearly related to the goal of pollution prevention, the credibility of the program suffers and results in an increased number of appeals, wasted time and effort, and, at times, waivers from the rules. By amending the rules to provide for a sewer ban appropriate to the extent of noncompliance and environmental impact, the Department's effectiveness in protecting the waters of the State will increase as the limited potential for additional discharge as the plant is being upgraded will be offset by an increased focus of the Department's efforts on major polluters.

Many of the proposed changes to the sewer ban exemption program are for purposes of administrative clarity and will have no environmental impact. However, the modification of the exemption criteria pertaining to groundwater clean-up projects will allow more of these environmental-

ly beneficial projects to proceed and thereby will have a positive aggregate impact on the environment. Additionally, if such projects are not implemented in a timely manner, additional and more severe environmental degradation can occur, requiring much more extensive clean-up activities than would have otherwise been necessary.

Other proposed modifications to the sewer ban exemption criteria reflect longstanding program policies and should not result in any adverse environmental impacts. The outdated category pertaining to projects which are committed to substantial improvements in effluent quality to meet the July 1, 1988 deadline for compliance with the Federal Clean Water Act is proposed to be deleted. This will not result in any environmental impacts since for exemptions to be granted in this category, the necessary improvements were required to be completed by July 1, 1988 and that date has passed.

An additional exemption criterion was added to address projects by not-for-profit organizations which provide essential public services. The Department believes that these projects would have minimal adverse environmental impacts since the flows from these facilities would be negligible in comparison with the overall, existing flows to the treatment plant. Further, any minimal environmental impact would be more than balanced by the overwhelming positive social benefits that these types of projects provide.

Changes to the TWA technical standards will result in a positive environmental impact since they remove and/or improve outdated and inapplicable requirements and reflect current program policies and industry-wide practice.

Regulatory Flexibility Analysis

The proposed amendments, repeals and new rules do not impose any additional reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The existing treatment works approval, sewer ban, and sewer ban exemption rules have been modified in a manner that reduces unnecessary regulatory burdens on the regulated community. The only changes to small businesses would be the removal or relaxation of existing reporting, recordkeeping, or other compliance requirements. Nonetheless, a regulatory flexibility analysis has been prepared as follows:

Of the three programs covered in this rule proposal, the sewer ban regulations do not impose any reporting, recordkeeping or other compliance requirements on small businesses. Therefore, the regulatory flexibility analysis shall apply only to the treatment works approval and sewer ban exemption programs.

The proposed new rules would still impact small businesses that generate in excess of 8,000 gallons per day of wastewater flow, or require the construction or modification of a sewer extension. It is estimated that of the total number of permit applications required to be submitted to the Department, approximately 20 percent are "small businesses" as defined in the New Jersey Regulatory Flexibility Act and will still be impacted. In order to comply with the proposed rules, the small businesses will continue to be required to obtain a treatment works approval permit and comply with the requirement set forth in N.J.A.C. 7:14A-22 and 23. In doing so the small businesses will need to hire a consulting professional engineer to prepare the necessary forms, sewerage facility design plans and specifications. The initial permitting costs for each small business would not be excessive and would vary with the project scope. There are no annual fees associated with the issuance of a TWA. In developing these rules, the Department has endeavored to balance the need to protect the environment against the economic impact on the regulated community, with due consideration of the resource limitations of small businesses.

These rules will impact small businesses that are located in sewer ban areas and are:

1. Proposing an expansion to their businesses which would result in an increase in projected sewage flow.
2. Proposing a change in use of an existing business.
3. Proposing to connect a facility to the affected treatment works that is not currently connected.

It is estimated that of the total number of facilities impacted by this proposal, approximately 40 percent are "small businesses" as defined in the New Jersey Regulatory Flexibility Act. However, the number of businesses to be impacted will be drastically reduced from current levels in proportion to the reduction in the number of sewer connection bans. In order to comply with these new rules, small businesses will continue to be required to submit a sewer ban exemption application in accordance with proposed N.J.A.C. 7:14A-22. Only a fraction of the sewer ban exemption applications require the services of a consultant, although some applicants choose to hire an attorney or engineer to prepare the paperwork. The initial capital cost of preparing the application is minimal, and would only consist of the time spent in preparing and submitting the sewer ban exemption application. The effort required to complete these applications will be reduced as a result of additional clarifications proposed in the sewer ban exemption criteria. There are no annual fees associated with this program. In developing these rules, the Department has balanced the need to protect the environment against its economic impact with appropriate consideration to the limitations of small businesses.

Full text of the proposed repeals appears in the New Jersey Administrative Code at N.J.A.C. 7:9-1 and 7:14A-12.

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

7:14A-1.9 Definitions

As used in this chapter, the following words and terms shall have the following meanings[.]**:**

...

"Adequate conveyance capacity" means:

1. That in the downstream sewers, the peak dry weather flow does not exceed 80 percent of the depth of the pipe and the peak wet weather flow does not result in overflows or discharges from any [manhole] **unpermitted location**.

2. (No change.)

...

"Committed flow" [or "projected flow"] means the sum of the actual flow plus the sum of all flows which are anticipated from connections which have been approved but are not yet in operation. The flow to be anticipated from any such connections shall be that flow referred to in the [departmental] **Departmental** approval.

...

"Connection" means any physical or operational change**, associated with an increase in projected flow,** to a collection system [or to the plumbing or piping] of any building, [project] facility, or other structure either proposed or existing for which a building permit or other municipal approval including site plan or subdivision approval is required, and which connects directly or indirectly to any portion of a treatment works.

...

"Industrial waste" means non-domestic waste, including, but not limited to, those pollutants regulated under Section 307(a), (b) or (c) of the Federal Water Pollution Control Act.

...

"Projected flow" means that flow which is estimated or anticipated to be generated from a facility, based upon the criteria contained in N.J.A.C. 7:14A-23.3.

...

"Sewer extension" means any sewer, pipe, line, structure or appurtenance used for the conveyance of domestic or industrial waste of a liquid nature, whether forced or by gravity, which:

1. Will extend along an easement through more than two properties, a roadway or public right-of-way;

2. Conveys flows from more than two buildings; or

3. Conveys, or will convey, 8,000 gallons per day or more of sewerage flow determined in accordance with the criteria specified in N.J.A.C. 7:14A-23.3. This includes all sewer lines from a single building if the building utilizes more than one sewer line to convey waste to the sewer system and the aggregate waste flow is 8,000 gallons per day or more.

...

SUBCHAPTER 22. TREATMENT WORKS APPROVALS, SEWER BANS, SEWER BAN EXEMPTIONS

7:14A-22.1 General policy and purpose

(a) It is the purpose of this subchapter to:

1. Establish when a treatment works approval permit is required from the Department;

2. Establish the administrative requirements for treatment works approval applications;

3. Establish the criteria for the imposition of sewer connection bans;

4. Restrict the approval of additional sewer connections, by means of a sewer connection ban, in circumstances when untreated or partially treated wastewater is being discharged in substantial noncompliance with a NPDES or NJPDES permit, or circumstances when inadequate conveyance capacity exists in a collection/conveyance system;

5. Establish criteria for exemptions from sewer connection bans; and

6. Establish a mechanism for actions by local and regional sewage authorities to provide for adequate sewage conveyance and treatment facilities within their sewer service areas, and to ensure that sewage generating facilities are located within the appropriate sewer service area as determined by the applicable water quality management plans.

(b) The performance of sewerage facilities, which are generally owned and operated by local and regional sewerage authorities, is dependent, in part, on how they are managed as well as upon controls exercised over the issuance of local approvals and additional sewage connection permits. Adequate monitoring and prudent management of such facilities is essential in order to prevent violations of their NJPDES permits or overflows of conveyance systems. It is the responsibility of the sewerage authority and/or treatment plant owner to implement timely corrective actions and to ensure that additional connections to the treatment works do not result in such occurrences. Whenever the participating municipalities and sewerage authorities fail in this responsibility, the Department may take whatever action that it deems necessary to assure compliance, including, but not limited to, ceasing the issuance of treatment works approval permits and/or the imposition of a sewer connection ban.

7:14A-22.2 Scope

(a) Pursuant to N.J.S.A. 58:10A-6, no person shall build, install, modify or operate any facility (including any sewer extension as defined in this chapter) for the collection, conveyance, treatment or discharge of any industrial or domestic wastewater except in conformance with this subchapter.

(b) In a sewer connection ban area, any project involving the construction, operation or modification of a connection, including the modification of a building's projected flow, may not be undertaken except in conformance with this subchapter.

(c) In addition to any action expressly authorized by this chapter, the Department shall have the authority to pursue other remedial actions and may take enforcement actions under the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and impose fines or penalties in accordance with the Civil Administrative Penalty Rules, N.J.A.C. 7:14-8, or other applicable statute for failure to comply with the terms, conditions, and requirements of this subchapter.

(d) These rules shall be liberally construed to permit the Department and its various agencies to administer their statutory functions.

(e) The Department may, upon notice to all parties and in the public interest, delegate, in accordance with N.J.A.C. 7:14A-22.23, the application of these rules.

(f) The technical standards for the design and construction of treatment works are contained in N.J.A.C. 7:14A-23.

(g) When a treatment works is not required to obtain an approval from the Department pursuant to this subchapter, the treatment works is nonetheless required to conform with any applicable requirements of this subchapter and N.J.A.C. 7:14A-23, Technical Requirements for Treatment Works Approvals.

(h) The Department shall determine within 20 working days of the issuance of a final NJPDES permit or NJPDES permit modification, whether the discharger shall be required to obtain approval in accordance with the subchapter.

(i) No person shall permit, approve or otherwise allow the construction, installation, modification or operation of any facility or activity that violates the terms, conditions and requirements of this subchapter.

(j) Applications for treatment works approval permits which are administratively complete prior to the adoption of these rules, shall be processed by the Department in accordance with the requirements of N.J.A.C. 7:14A-12, and the Department shall issue an approval, denial or conditional approval.

7:14A-22.3 Activities for which a treatment works approval is required

(a) Except as provided in N.J.A.C. 7:14A-22.4, no person shall engage in any of the following activities except in conformance with a valid treatment works approval from the Department:

1. Building, installing, modifying, or operating any treatment works including, but not limited to, sewer extensions, sewer interceptors, domestic and industrial wastewater treatment systems, holding tanks, equalization tanks and wastewater treatment and recycling systems.

2. Building, installing, modifying or operating any sewer line, pumping station or force main which serves more than two buildings or will convey 8,000 gallons per day or more of flow to a treatment works.

i. Increasing the projected flow in an existing sewer line by 8,000 gallons per day or more shall require a treatment works approval permit, irrespective or whether or not additional sewer line construction is involved;

3. Building, installing, operating or modifying any residuals treatment units, including, but not limited to, facilities for composting, heat drying, thickening, digestion, air drying, thermal reduction, dewatering and storage of sludge;

4. Building, installing, operating or modifying any domestic or industrial treatment works that discharges directly to the surface water or ground water of the State, with the exception of individual subsurface disposal systems exempted pursuant to N.J.A.C. 7:14A-22.4(a)3; or

5. Building, installing, operating or modifying any industrial treatment works by a facility classified as a "Significant Indirect User" and located in an area of the State where the Department is the control authority (non-delegated areas) for an industrial pretreatment program pursuant to 40 CFR 403 and N.J.A.C. 7:14A-13.1(a).

(b) For projects for which flow is the determining factor for the requirement of a treatment works approval pursuant to this section, the projected flow criteria specified in N.J.A.C. 7:14A-23.3 shall be used.

7:14A-22.4 Activities for which a treatment works approval is not required

(a) A treatment works approval from the Department is not required for the following activities:

1. Building, installing, modifying or operating any sewer lateral (whether forced or by gravity), which will convey less than 8,000 gallons per day of projected flow;

2. Building, installing, modifying or operating any wastewater pumping equipment which utilizes a lateral force main connection, whether publicly or privately owned, to serve a facility whose projected flow is less than 8,000 gallons per day;

3. Building, installing, operating or modifying a septic system or other subsurface disposal system where the aggregate projected flow of the facility, using the criteria established in N.J.A.C. 7:9A, is less than or equal to 2,000 gallons per day of sanitary sewage. Treatment works for such facilities are regulated pursuant to N.J.A.C. 7:9A Standards for Individual Subsurface Sewage Disposal Systems;

4. For existing facilities, and regardless of current flow, aggregate increases in the projected flow of less than 8,000 gallons per day over a five year period resulting from internal plumbing modifications, building additions, renovations or changes in use of a facility, providing that the project does not involve construction of a sewer extension or other treatment works which requires a permit pursuant to N.J.A.C. 7:14A-12.3.

i. In sewer ban areas, this exception shall not be construed to exempt the need for a sewer ban exemption prior to construction, if required pursuant to this subchapter;

ii. This exception does not apply to projects served by individual subsurface disposal systems or small treatment plants (less than 150,000 gpd) that discharge to groundwater;

5. Rehabilitation or the replacement of existing sewer lines providing that the diameter, slope and location of the sewer line will remain unchanged;

6. The replacement of worn, damaged, defective or inoperable wastewater pumps, sewage treatment units or components of residuals treatment and storage units providing that the capacity and location of the pumps or treatment units to be replaced will not change and the replacement treatment unit or wastewater pump station will be utilized to perform the same function as the former unit;

7. Minor modifications of treatment works including, but not limited to, chemical addition for the purpose of improving performance (provided no treatment unit construction is to be undertaken), modifications to treatment units for repair, maintenance or monitoring providing that the treatment process is not altered;

8. Residuals spreading and injection equipment to be utilized to disperse residuals at NJPDES permitted and exempted operations for land application of residuals;

9. The following mobile (not stationary) residuals storage installations:

i. Frac tanks except when fixed into position;

ii. Tanker trailers; and

iii. Roll-off containers;

10. Mobile street sweepers and payloaders utilized to collect and move residuals at NJPDES permitted and exempted residual operations;

11. Provisions for emergency storage of residuals provided said storage is less than 180 days in duration and in accordance with Part 4-VIII of the Statewide Sludge Management Plan; or

12. Building, installing, operating or modifying treatment or storage units for sludge derived products.

(b) In addition to (a) above, a treatment works approval or general industrial treatment works approval will not be required for the following facilities:

1. Building, installing, operating or modifying any industrial treatment works discharging into a publicly owned treatment works (indirect dischargers), and located in an area of the State for which the Department is not the control authority (delegated area) for the industrial pretreatment program pursuant to 40 CFR 403 and N.J.A.C. 7:14A-13.1(a);

i. Projects involving the construction of a sewer extension require a treatment works approval for the conveyance aspects only and are subject to the conditions of N.J.A.C. 7:14A-22.8;

ii. Projects involving additional flow through an existing sewer line of 8,000 gpd or more require a treatment works approval for the conveyance aspects only and may be considered under the provisions of N.J.A.C. 7:14A-22.6;

2. Building, installing, operating or modifying an American Petroleum Institute approved gravity oil/water separator, a retention basin or detention basin, when these systems are authorized under a general NJPDES permit, have been determined not to require a NJPDES permit, or are exempted from obtaining a NJPDES permit pursuant to this chapter; or

3. Building, installing, operating or modifying any of the following activities or facilities:

i. Grease traps for use in restaurants;

ii. Cooling towers for non-contact water/heat exchange units;

iii. Holding tanks for wastewater which is solely industrial in nature and the amount to be discharged (through a collection system or hauled) to a treatment works will be less than 8,000 gallons per day;

iv. Recycling systems for industrial waste only, which do not discharge directly to the surface water or ground water;

v. Stormwater management facilities, including but not limited to retention basins, detention basins, and oil/water separators that prevent, abate, reduce, collect, convey, store, treat, dispose of, or otherwise manage stormwater runoff;

vi. Any part of a separate storm sewer system; or

vii. Treatment units used for pretreatment of water for use in an on-going manufacturing process at the industrial facility.

(c) Notwithstanding the terms of (a) and (b) above, the Department shall have the authority to regulate, at its discretion, any sewer connection or other domestic or industrial treatment works when a sewer connection ban exists or a health emergency so requires.

(d) The lack of a need to obtain a treatment works approval in accordance with this section does not relieve the project owner and/or sewerage authority from the responsibility to comply with all requirements of a NJPDES discharge permit. The responsibility of determining that additional flows to the treatment works will not result in any unpermitted discharge or NJPDES permit violation rests with the owner of the collection system and treatment facility.

(e) For projects in which flow is the determining factor for the requirement of a treatment works approval permit pursuant to this section, the projected flow criteria specified in N.J.A.C. 7:14A-23.3 shall be used.

7:14A-22.5 Treatment works approval

(a) A treatment works approval consists of the following three stages:

1. Stage I is an optional preliminary or conceptual review of treatment works as prescribed in N.J.A.C. 7:14A-22.7. The Department recommends that a stage I review and approval be obtained for any new sewage treatment plant or plant expansion, or if the proposed treatment works involves a new or innovative design or technology.

2. Stage II is an approval to construct, install or modify a treatment works as outlined in this subchapter.

3. Stage III is an approval to operate a treatment works that has been constructed or received a stage II approval. In general, separate stage II "construct only" approvals are issued for projects located in sewer ban areas, in future sewer service areas for which no downstream sewers exist, and for construction of some treatment plans. Stage II and stage III approvals are generally issued concurrently as a single document, when operation of the treatment works can occur immediately upon completion of the project.

(b) The construction, installation, modification or operation of a treatment works in a manner inconsistent with the terms and conditions of the Department's approval constitutes a violation of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and may be subject to penalties and fines pursuant to the above Act, the Civil Administrative Penalty Rules, N.J.A.C. 7:14-8, or other applicable statute.

(c) The Department may modify, suspend or revoke a treatment works approval in accordance with N.J.A.C. 7:14A-22.11.

(d) The Department shall approve, condition, or deny an application for a treatment works approval pursuant to this subchapter and N.J.A.C. 7:1C-1, within 90 days of receipt of a complete application by the Department. This time period may be extended for one 30 day period upon the mutual consent of the applicant and the Department.

(e) The issuance of a treatment works approval by the Department does not relieve the applicant of the continuing responsibility for the successful collection, conveyance, treatment or discharge of pollutants, nor does it relieve the applicant from the responsibility of insuring that all discharges are consistent at all times with the terms and conditions of the applicable NJPDES permit and that no pollutant will be discharged more frequently than authorized or at a level in excess of that which is authorized by the applicable NJPDES permit. The applicant is also responsible for complying with all applicable permits, regulations, statutes, or other laws.

(f) The applicant and any owner or operator of a treatment works shall provide notice of the terms and conditions of any existing treatment works approval to a prospective purchaser of the treatment works. Upon change of ownership of the treatment works, the new owner shall assume responsibility for its proper operation and

maintenance or closure. Notification to the Department of a change in ownership for the treatment works approval permit is not required.

(g) The Department's review of applications and submissions is limited to engineering (including hydraulic) features of significance to applicable discharge limits and protection of the environment. The Department will not review structural, mechanical or electrical design, except when it may be significant to achievement of discharge limitations or to the protection of the environment.

(h) A permit to construct or operate a treatment works, previously issued to the owner or operator pursuant to N.J.S.A. 58:11-10 or 58:12-3 will constitute a treatment works approval for the purpose of this subchapter. The permit and any conditions thereto will continue to be in effect until such time as the permit is revoked, amended or expired.

(i) The full responsibility for adequate design, construction and operation of the treatment works, and the full responsibility for successful collection, treatment and discharge of pollutants shall be on the applicant.

(j) Treatment works shall be constructed in a manner which is consistent with the provisions of the appropriate wastewater management plan.

(k) The Department may grant an emergency approval authorizing the construction and/or operation of a treatment works prior to issuance of a formal treatment works approval in situations such as the modification/rehabilitation of existing treatment and conveyance systems where time delays may threaten the public health or safety. Such approvals shall be subject to the following requirements:

1. The Department shall be informed by telephone, prior to construction, as to the project location, the extent of work to be performed, and the reason for the emergency.

2. Within 15 calendar days of commencing the activity for which an emergency approval is authorized, an application for a treatment works approval and/or sewer ban exemption shall be submitted to the Department for review and issuance of the required permit. "As-built" drawings, if applicable, shall be submitted.

3. The Department reserves the right to deny an emergency approval request if it is determined that an emergency approval request is not justified, the activity would be inconsistent with any applicable rules, or a more prudent alternative is available.

4. Failure to comply with the requirements of (k)1 or 2 above, the construction or operation of treatment works inconsistent with the emergency authorization, or submission of false information may subject the applicant to enforcement action by the Department, including the imposition of fines or penalties.

(l) For most industrial treatment works, treatment works approvals will be issued in the form of a General Industrial Treatment Works Approval. The submission requirements for a General Industrial TWA are contained in N.J.A.C. 7:14A-22.6, and are administrative in nature. Within 30 days of receipt of a complete General Industrial TWA application, the Department will issue a General Industrial TWA or notify the applicant that due to a potentially significant health risk, environmental impact, or past performance of the facility the project cannot be granted a General Industrial TWA and an individual treatment works approval is required.

7:14A-22.6 Information and submission requirements for general industrial treatment works approvals

(a) Industrial treatment works not exempt pursuant to N.J.A.C. 7:14A-22.4 shall submit the following information as an application for a General Industrial Treatment Works Approval:

1. The Department's standard application form CP-1 (original) signed, dated and imprinted with a seal where applicable;

2. The minimum fee for a treatment works pursuant to N.J.A.C. 7:1C-1.5;

3. A certification signed and sealed by a New Jersey licensed professional engineer stating the following:

i. The proposed treatment works, as designed, will enable the facility to meet all applicable Federal, State and local effluent limitations, conditions and/or requirements;

ii. The proposed treatment works or contributing facility will not dilute any portion of its waste stream for the purpose of meeting any applicable NJPDES effluent limitation or condition; and

iii. The permittee currently holds a valid final NJPDES permit, General permit authorization, or for indirect dischargers, the applicant is specifically exempted by the Department;

4. A completed Licensed Operator Grading sheet;

5. A resolution, certification and/or written statement of consent from the affected municipality, sewerage authority, owner of the receiving treatment plant; owner/operator of the wastewater conveyance system into which the project will directly connect; and district sludge management lead planning agency (if applicable, see (a)5ii below) or completion of the Department's form WQM003;

i. Required consents shall be in conformance with N.J.A.C. 7:14A-2.1(k).

ii. A written statement of consent from the district sludge management lead planning agency is required only for applications that involve construction of residual management units at ultimate residuals management sites.

iii. Written statements of consent from the affected sewerage authority must contain a certification concerning the plant's compliance with the applicable NJPDES permit requirements.

iv. A written statement of consent from the owner/operator of the conveyance system must certify that the conveyance system has adequate conveyance capacity as defined in N.J.A.C. 7:14A-1.9, to convey the additional flow.

v. If an applicant is unable to obtain the required endorsement or written statement of consent, then the procedures stated in N.J.A.C. 7:14A-2.1(k) shall apply. An application may be considered complete only after the 60 day period of notification, as required in N.J.A.C. 7:14A-2.1(k), has elapsed;

6. One set, each, of final construction plans and specifications, signed and sealed by a New Jersey licensed professional engineer.

7. An engineering abstract containing, at a minimum, the following:

i. A description of waste treatment system;

ii. The ultimate destination of all wastewater and residuals;

iii. A listing of all pollutants, including regular and intermittent flows, which may enter the system;

iv. Average and peak flow requirements; and

v. The expected composition of effluent from the treatment system; and

8. Copies of notification to local agencies by certified mail, return receipt requested, in accordance with N.J.A.C. 7:1C-1.5.

(b) The Department, within 30 days of receipt of a complete application for an Industrial Treatment Works Approval, shall issue a General Industrial TWA, or notify the applicant that based upon the potential for significant health risk, environmental impact, or past performance of the facility an individual treatment works approval review is required.

1. At the time of notification to the applicant that the project does not qualify for a General Industrial TWA, the applicant will also be notified of the additional administrative requirements, if any, necessary for the application to be considered administratively complete pursuant to N.J.A.C. 7:14A-22.8.

(c) A General Industrial TWA permit shall consist, at a minimum, of the following:

1. The name of the facility and permittee receiving the General Industrial TWA;

2. The General Industrial TWA permit number and applicable NJPDES number or authorization;

3. The licensed operator classification where applicable;

4. The date of authorization for construction, operation or modification of the industrial treatment works; and

5. Such other general conditions as are appropriate.

(d) For direct dischargers to surface or groundwater or for indirect dischargers required to obtain an SIU permit from the Department, applications for General Industrial TWA's will not be accepted for review unless the applicant has previously obtained a valid NJPDES permit or general permit authorization.

7:14A-22.7 Requirements for preliminary review of applications for treatment works approval—stage I

(a) Stage I approvals are optional but are recommended for new or expanded treatment plants and for projects involving new or innovative technologies or designs.

(b) Applications submitted for stage I review shall contain the following:

1. A letter of request for a Stage I review from the applicant or applicant's agent; and

2. A project report which, at a minimum, contains the following:

i. Project concept, scope and purpose;

ii. Water quality management considerations;

iii. A brief description of proposed treatment and/or conveyance methods, and appropriate basis for design;

iv. For new or innovative technology application, performance data from similar facilities; and

v. A sludge management proposal;

(c) The Department will respond to the applicant with the review findings for appropriate consideration.

(d) Any applicant who proceeds to a stage II design, without first obtaining a stage I approval shall bear the full responsibility for the adequacy of design to meet the intended purpose and the Department reserves the right to require the applicant to investigate the feasibility of alternate treatment or conveyance methods during the stage II application process, if the Department determines that drawbacks may exist with the submitted design.

7:14A-22.8 Requirements for construction, installation, or modification of treatment works—stage II

(a) Persons who propose to build, install or modify treatment works that require the Department's approval pursuant to this subchapter, shall submit the following information and documents in the manner prescribed in this subchapter:

1. The Department's standard CP-1 form (original) signed, dated and imprinted with a seal where applicable; and

2. The appropriate fee, calculated in accordance with N.J.A.C. 7:1C-1.5, made payable to Treasurer, State of New Jersey, Environmental Services Fund;

3. A resolution and/or original written statement of consent from the affected municipality, sewerage authority, owner of the receiving treatment plant, owner/operator of the wastewater conveyance system into which the project will directly connect, and district sludge management lead planning agency (if applicable, see (a)3ii below) or completion of the Department's form WQM003.

i. Endorsements shall comply with the requirements of N.J.A.C. 7:14A-2.1(k).

ii. A written statement of consent from the district sludge management lead planning agency is required only for applications that involve construction of residual management units at ultimate residuals management sites.

iii. Written statements of consent from the affected sewerage authority shall contain a certification concerning the plant's compliance with applicable NJPDES permit requirements.

iv. A written statement of consent from the owner/operator of the conveyance system shall certify that the conveyance system has adequate conveyance capacity as defined in N.J.A.C. 7:14A-1.9, to convey the additional flow.

v. If an applicant is unable to obtain the required endorsement or written statement of consent, then the applicant may choose to follow the procedures stated in N.J.A.C. 7:14A-2.1(k). An application may be considered complete only after the 60 day period of notification, as required in N.J.A.C. 7:14A-2.1(k), has elapsed.

4. Copies of notification to local agencies by certified mail, return receipt requested, in accordance with N.J.A.C. 7:1C-1.5;

5. For wastewater collection and conveyance systems, an original signed copy of the Department's Engineering Report Form WQM006. The Engineer's Report shall be signed and sealed (embossed) by a New Jersey licensed professional engineer;

6. For treatment units, holding tanks, equalization tanks, or treatment works other than collection and conveyance systems, in addition to the Department's form WQM006, the applicant shall prepare and submit a technical report addressing the requirements specified in N.J.A.C. 7:14A-23.5;

7. An itemized engineering cost estimate for the proposed treatment works. The cost estimate shall be in sufficient detail to indicate the basis for the estimate and the approximate separation of costs for individual sewerage facilities;

8. One set, each, of final construction plans and specifications, signed and sealed by a New Jersey licensed professional engineer, and meeting the requirements stated in N.J.A.C. 7:14A-23.4;

9. One original Dry Sewer Affidavit, if applying for a stage II "construction only" permit pursuant to N.J.A.C. 7:14A-22.9;

10. A copy of a USGS Quad Map with the project site location boundaries drawn to scale;

11. Copies of Pinelands approval or certificate of filing, or Delaware and Raritan Canal Commission approval, if required;

12. For sewage holding tank applications, the following additional items are required:

i. A letter of consent from the local board of health; and

ii. Evidence of contracts with two licensed waste haulers (one as a back-up); and

13. For a hauling/diversion treatment works application, the following additional items are required:

i. Evidence of contracts with two licensed waste haulers (one as a back-up);

ii. For projects involving wastewater hauling, a letter of consent from the entity accepting the wastewater for treatment and final disposal and for projects involving wastewater diversion, a letter of consent from the municipality or authority accepting additional flow through its collection system; and

iii. A statement concerning the frequency and amount of wastewater which will be hauled/diverted. This amount shall be at least equivalent to the project's projected flow pursuant to N.J.A.C. 7:14A-23.3.

(b) All submissions, including the application, engineer's report, specifications, and plans shall bear an embossed seal of a New Jersey licensed professional engineer.

(c) Applications shall be signed by the applicant, a responsible official of the applicant as defined in N.J.A.C. 7:14A-2.4, or an authorized agent providing that an authorization for signature is submitted with the application.

1. A responsible official is an individual meeting the requirements set forth in N.J.A.C. 7:14A-2.4(a)2i.

2. Signatures older than one year at the time of submission to the Department are not acceptable, except in the case of a previously denied application, in which case the Department shall have the discretion to accept signatures older than one year, or require more recent signatures, depending upon the specific circumstances.

7:14A-22.9 Stage II "construction only" treatment works approvals

(a) "Dry/construct only" treatment works approvals are stage II approvals, for which operation may not occur until the Department issues a formal stage III approval in accordance with the provisions of this subchapter. Generally, the Department will consider applications for "dry/construct only" facilities in the following circumstances:

1. The proposed project is located in an area that is not currently served by a sewage collection system, and is located within a future sewer service area as identified in the appropriate water quality management plan. In such cases, the application shall include the following:

i. Permits for individual septic systems issued by the administrative authority pursuant to N.J.A.C. 7:9A, or a certification from the administrative authority attesting to the suitability of the soils to support on-site subsurface disposal systems in accordance with N.J.A.C. 7:9A; and

ii. A statement from the municipality and the person financially responsible for the project, that the septic systems will be abandoned and connection to the domestic treatment works will occur at such time as sewer lines become available.

2. The proposed project is located in an area currently subject to a sewer connection ban and the applicant seeks permission to

construct sewage collection and conveyance facilities that will not become operational until the sewer connection ban is rescinded by the Department. The Department's consideration of this request is dependent upon submission and compliance with the following:

i. The owner of the receiving sewage treatment plant or downstream collection/conveyance facility which is subject to the sewer ban is in compliance with one of the following:

(1) An executed administrative consent order with the Department, which provides a schedule for all corrective work that is necessary for rescission of the sewer connection ban; or

(2) A treatment works approval permit has been issued for construction, the completion of which will result in rescission of the sewer connection ban, and a contract with a specific date for the completion of construction has been awarded;

ii. Submission of a written statement with appropriate documentation that the project can be financially managed during the expected duration of the sewer connection ban, or submission and concurrent approval of an interim means of sewage disposal pursuant to N.J.A.C. 7:14A-22.13 or 22.14; or

3. The project is for the construction of sewer lines in conjunction with a road paving project, will not have any immediate source of contributory flow, and is located in a current or future sewer service area as identified by the appropriate wastewater management plan.

(b) "Dry/construct only" treatment works approval applications shall include the following:

1. All items identified under N.J.A.C. 7:14A-22.8, for requirements of stage II treatment works approvals, with the exception of non-applicable sections of the Department's WQM003 consent form for treatment plants or collection systems subject to a sewer connection ban; and

2. A Dry Sewer Affidavit signed by (as applicable) the property owner, the municipality in which the project is located, and appropriate official of the receiving sewage treatment plant, stating at least the following:

i. The affected authority/municipality shall not allow the use of the sewerage facilities without prior written approval from the Department;

ii. That operation of the treatment works will not be permitted until the sewer connection ban has been rescinded by the Department (if applicable) or adequate downstream sewerage facilities are available as determined by the Department (if applicable);

iii. That the possibility exists a treatment works approval for operation (stage III) may not be granted, or may be excessively delayed and that the applicant is proceeding at his own risk; and

iv. The applicant is aware that subsequent construction of the permitted "dry" treatment works, in and of itself, does not qualify the project for a sewer ban exemption pursuant to N.J.A.C. 7:14A-22.22.

(c) A "dry/construct only" treatment works approval shall be filed with the appropriate county clerk as notice to prospective purchasers of restrictions that may apply to the property. The "dry/construct only" TWA shall remain filed with the deed of record until such time as a treatment works approval for operation (stage III) has been issued by the Department.

7:14A-22.10 Requirements for stage III treatment works approval applications

(a) No person shall operate a treatment works for which a treatment works approval from the Department is required except in conformance with the provisions of this subchapter.

(b) For treatment works approvals that have been issued concurrently as stage II and stage III approvals ("construct and operate"), operation of the facilities may occur upon completion of the project, inspection and approval of the facilities by the licensed professional engineer overseeing the construction, approval by the local authority, and submission to the Department of Form WQM005, Certification of Approval.

(c) For treatment works approvals that have been issued as stage II ("construct only"), except for the temporary operation of treatment works for the purpose of performance testing, operation may begin only after written approval in the form of a stage III treatment works approval is issued by the Department. Requirements for a stage III approval include:

1. Inspection and approval of the facilities by the licensed professional engineer overseeing the construction and submission of a properly completed form WQM005 to the Department;

2. Submission of a written request for operation from the applicant or duly authorized agent and a written statement in which proof that all conditions of the stage II TWA to construct have been satisfied;

3. An appropriate fee for a permit notification pursuant to N.J.A.C. 7:1C-1.5; and

4. Submission of "as-built" plans and specifications if different than the approved plans and specifications.

7:14A-22.11 Modifications and revocations of treatment works approvals

(a) The Department may modify, suspend or revoke a treatment works approval in whole or in part for cause, including, but not limited to:

1. Violation of any term or condition of the treatment works approval;

2. Obtaining a treatment works approval by misrepresentation or failure to disclose fully all relevant facts; or

3. If such treatment works approval is inconsistent with any duly authorized effluent limitation, permit, regulation, statute, or other applicable local, State or Federal law.

(b) The Department shall determine whether any material changes, design or construction alterations, or changes in flow, which occur after the issuance of a treatment works approval permit will require a modification. When assessing the need for a modification, the Department will evaluate how the proposed changes affect the design or conditions of approval of the original permit. Generally a treatment works approval modification is not required for the substitution of units or materials with others that are structurally, hydraulically, and functionally equivalent, except in cases when a detailed engineering review is needed to determine equivalency. Changes in location, unit sizing and capacity, flow or project scope will require a modification.

(c) Unless such a requirement is specifically waived by the Department, a modification request will generally not be considered, and instead, a new treatment works application will be required for major modifications of the project scope including, but not limited to, the addition of a pumping station or alternate treatment units or processes, significant changes to the collection system and the inclusion of sewage generating structures not covered in the original approval.

1. Requests for modifications shall include the following documents:

i. An appropriate fee pursuant to N.J.A.C. 7:1C-1.5;

ii. A written request from the applicant stating the nature, scope and reasons for the modification;

iii. Revised construction plans and specifications (if applicable);

iv. A revised WQM006 Engineer's Report (if applicable);

v. A copy of the original treatment works approval permit; and

vi. Written consent from the appropriate sewerage authority if the modification will result in an increase in the project's projected flow, or if the modification requires a change or alteration to the point of connection of the proposed sewer to the existing collection system.

2. The Department will accept permit modification requests only for treatment works approvals that are valid (not expired) at the time that the modification request is submitted to the Department. In addition requests for modification will only be considered for a maximum period of two years following the last construction activity on the treatment works conducted in accordance with the Department's original approval.

7:14A-22.12 Extensions of time for treatment works approvals

(a) Stage II treatment works approvals are valid for an initial period of two years, unless otherwise stated in the approval document. A stage II approval will expire unless building, installing or

modifying of the treatment works has begun within the initial approval period stated on the permit, unless the permit is extended pursuant to this subchapter.

(b) At the Department's discretion, a treatment works approval may be extended beyond the original two year approval date, to a maximum period of five years from the original issuance date. Each extension, if granted, will be for a maximum period of one year.

1. A request for an extension of time must be received by the Department prior to the expiration date of the permit and shall include the following:

i. An appropriate fee pursuant to N.J.A.C. 7:1C-1.5(b);

ii. A written request from the applicant or authorized agent; and

iii. Consent for the time extension from the sewerage authority if the sewerage authority has notified the Department, in writing, that all time extension requests under its jurisdiction must be accompanied by the authority's consent.

2. If the extension request is not received by the Department prior to the expiration date of the permit, then in addition to the information required under (b)1 above, the applicant shall also submit written proof of consent for the time extension from the sewerage authority or municipality which owns the receiving treatment plant, and the minimum fee in accordance with N.J.A.C. 7:1C-1.5. In such cases, if the request is approved, the Department will issue the permit extension in the form of a new TWA valid for one year, but extendible up to a maximum of five years from the issuance date of the original approval.

(c) The Department's decision on whether or not to grant a time extension is dependent upon the circumstances which exist at the time the request is made, including, but not limited to, the status of any sewer connection ban. Generally, the request will be denied if a sewer connection ban is in place and the project does not qualify for a sewer ban exemption pursuant to this subchapter.

(d) The earliest a time extension request will be considered by the Department is one year prior to the permit expiration date.

(e) Once the construction of sewerage facilities is legally initiated, the TWA is considered to be in effect and further time extensions are not required. However, if construction is interrupted for a period of more than two years, the Department, at its discretion, may revoke the TWA and deny the extension request. The factors to be considered in making such decisions include, but are not limited to, a sewer connection ban or conveyance problem, time span for which construction is interrupted, the status of the construction, and the reasons for construction interruption.

7:14A-22.13 Administrative requirements for wastewater holding tanks (non-industrial)

(a) Wastewater holding tanks for temporary use may be approved by the Department in the following circumstances:

1. Simultaneous or subsequent to the issuance of a Stage II "dry/construct only" treatment works approval issued by the Department pursuant to N.J.A.C. 7:14A-22.9(b)2, for projects located in sewer ban areas; or

2. To serve a proposed project that is located in an area not presently served by sanitary sewers and where a treatment works approval has been issued and a contract has been awarded which contains a scheduled completion date for the construction of downstream facilities necessary for the elimination of the holding tank.

(b) An administrative authority may, pursuant to N.J.A.C. 7:9A-3.12, approve the temporary use of a sewage holding tank for a period of up to 180 days for an existing structure served by a malfunctioning septic system that is causing a public health hazard.

(c) Wastewater holding tanks as a permanent means of sewage disposal may be approved in the following circumstances:

1. The holding tank will be utilized to eliminate a failed subsurface disposal system which has been certified by the local board of health or the Department to be a health hazard, connection to a domestic treatment works is not possible or practical, and the holding tank will not be utilized for additional sources of wastewater flow resulting from a building expansion, change in use, or other source;

i. For holding tanks to serve a facility with a projected flow of less than 2,000 gallons per day, the applicant shall demonstrate in accordance with N.J.A.C. 7:9A-3.4(d)1 through (d)5, that the existing system was legally constructed and cannot be repaired or rehabilitated and there are no feasible alternatives or substitutes.

ii. For holding tanks to serve a facility with a projected flow of 2,000 gallons or more, in addition to demonstrating that the existing system cannot be repaired or rehabilitated, an amendment to the appropriate wastewater management plan pursuant to N.J.A.C. 7:15-4.3 may be required, unless in accordance with N.J.A.C. 7:15-4.2 the use of the holding tank is mandated by an administrative consent order executed between the Department and the applicant; or

2. The holding tank will be utilized at a marina or dock which serves watercraft that are equipped with marine sanitation devices.

(d) The holding tank shall meet the technical design requirements specified in N.J.A.C. 7:14A-23.5.

(e) The entity identified as the receiving treatment plant for the final treatment and disposal of hauled wastewater shall have sufficient capacity to handle the additional flow and not be subject to a sewer connection ban.

7:14A-22.14 Temporary wastewater hauling/diversion

(a) Wastewater hauling is the removal and transportation of a permitted quantity of wastewater from the headworks of a facility and prior to treatment, by a licensed waste hauler, from a treatment facility which is subject to a sewer ban, to a treatment facility which is not subject to a sewer ban. Wastewater diversion is the redirection of a permitted quantity of wastewater flow from a collection or conveyance system to an alternate collection system not subject to a sewer connection ban.

1. Flow diversion may be accomplished by constructing various temporary gravity sewers or pumping stations or by modifying an existing collection system so that flows are re-directed to an alternative treatment works.

(b) The temporary use of wastewater hauling/diversion may be approved by the Department simultaneous or subsequent to the issuance of a stage II "dry/construct only" treatment works approval issued by the Department pursuant to N.J.A.C. 7:14A-22.9(b)2, for projects located in sewer ban areas, or if authorized by the Department through an administrative consent order executed by the applicant and the Department.

7:14A-22.15 Requirements for flow equalization tanks

(a) The use of flow equalization tanks located at the head of treatment plants, regional pumping stations or pre-treatment facilities for the purpose of improving the treatment process is encouraged by the Department, and will be approved providing that all administrative and technical requirements of this subchapter and the technical requirements specified in N.J.A.C. 7:14A-23 are met.

(b) Flow equalization tanks proposed to serve areas with significant future growth potential will not be approved as permanent facilities. The problems associated with existing conveyance capacity in these areas should be addressed through appropriate corrective measures such as repairing, replacing, or upgrading the existing inadequate sewerage systems, controlling inflow and infiltration or other applicable remedies.

(c) In addition to the situation specified in (a) above, flow equalization tanks may be approved for permanent use when the following conditions are satisfied:

1. It is shown that a flow equalization tank is the most appropriate means of providing sewer service to the area under consideration, it is designed as an integral part of the sewage conveyance system and there are no other practical or feasible alternatives, and its use will be on a regional basis (not for individual developments); and

2. The use of the flow equalization tank is to serve areas with severely limited potential for growth and for which the applicant has demonstrated to the Department's satisfaction that the upgrading of the existing downstream conveyance system is not economically feasible due to the limited sources of contributory flow anticipated from future connections in the service area.

(d) To the maximum extent possible, the utilization of flow equalization tanks should be consolidated to accommodate multiple users. In general, the individual use of flow equalization tanks on a project specific basis is discouraged.

(e) As part of the submission of a treatment works application for a permanent flow equalization tank, the owner of the affected collection system shall submit an engineer's report meeting the requirements of N.J.A.C. 7:14A-23.5.

(f) If requested by the applicant, upon receipt of the information referenced in (e) above, the Department will conduct a Stage I review pursuant to N.J.A.C. 7:14A-22.7 and will render a finding as to the acceptability of the proposed permanent flow equalization tank.

(g) Flow equalization tanks may be approved on a temporary basis for the purpose of improving situations when inadequate conveyance capacity exists in a collection system. In such a situation, the eventual elimination of the equalization tank must be assured through either an administrative consent order that contains provisions for the corrective work to enable the elimination of the equalization tank, or through the issuance of a treatment works approval that provides a specific and mandatory schedule for the construction of downstream facilities necessary for the elimination of the equalization tank.

7:14A-22.16 Capacity assurance program

(a) Whenever the committed flow reaches or exceeds 80 percent of the permitted capacity of a treatment works, the participating municipalities and/or sewerage authorities shall submit to the Department a program to be implemented in order to prevent an overloading of their facility or a violation of their NJPDES permit. This program shall include, but is not limited to, the following:

1. Implementation of water conservation measures;

2. Reduction of inflow and infiltration (I/I) where appropriate. Measures shall be taken, to the satisfaction of the Department, which appropriately identify the causes and course of corrective action within a specified time frame;

3. Implementation of measures to maximize treatment plant capacity at a minimum cost;

4. Construction of improvements;

5. Preparation for the imposition of a self-imposed sewer connection ban, as required by N.J.A.C. 7:14A-22.17, in the event that it is anticipated that additional flows will result in violations of any pollutant parameter limits contained in the plant's NJPDES or NPDES permit; and

6. If, in the sewerage authority's opinion, the affected sewage treatment plant can treat flows in excess of its permitted capacity and still maintain compliance with the pollutant limits specified in its NJPDES permit, then in addition to the requirements in (a)1 through 5 above, the authority shall submit a detailed technical report demonstrating its findings and providing justification for the issuance of treatment works approvals for flows above the permitted capacity.

(b) If the participating municipalities and authorities do not comply with (a) above, then the Department may issue a warning notice. A warning notice shall require the sewerage authority or municipality to prepare and submit a program pursuant to N.J.S.A. 58:10A6(h)(3) and (a) above, within 45 days of receipt of the notice.

(c) Upon approval by the Department of a program submitted pursuant to (a) or (b) above, the sewage authority and participating municipalities shall give public notice of the program in a manner designed to inform local residents, developers, local planning board and other affected persons. Such notice shall include at least the following information:

1. The name, mailing address and telephone number of the owner of the treatment works;

2. The permitted capacity of the treatment works;

3. The committed flow to the treatment works;

4. A statement that the treatment plant is approaching its permitted capacity and the possibility exists that a sewer connection ban will be imposed if the plant is unable to maintain compliance with its discharge limits; and

5. Description of the service area including the participating municipalities.

(d) In the event that the committed flow to a sewage treatment plant is at or above 100 percent of the plant's permitted capacity, and the Department determines that issues involved in (a), (b) or (c) above have not been appropriately addressed and that additional flows above the plant's permitted capacity may result in violations of their NJPDES permit, the Department may cease the further issuance of treatment works approvals for additional flow to the plant. In the event that such a decision is made, the Department, at its discretion, may grant exceptions for projects that require a TWA providing the project meets the sewer ban exemption criteria specified in N.J.A.C. 7:14A-12.22.

(e) Neither this section nor the provisions of N.J.A.C. 7:14A-22.17 shall apply to industrial treatment works that are direct dischargers to the waters of the State.

7:14A-22.17 Sewer ban imposition

(a) A sewer connection ban shall be imposed in accordance with this subchapter, when any one of the following events occurs:

1. The downstream sewerage facilities do not have adequate conveyance capacity as defined in N.J.A.C. 7:14A-1.9;

2. For a three month consecutive period, a treatment works has discharged effluent to a surface water which violates the limitations for any of the conventional pollutants, as defined in (b) below, of its NJPDES or NPDES permit, as determined by the arithmetic average of the permit parameters for the period;

3. For a three month consecutive period, a treatment works has discharged effluent to the surface water which violates any non-conventional pollutant of its NJPDES or NPDES permit, as determined by the arithmetic average of the permit parameters for the period, and the sewerage authority or municipality does not meet one of the following requirements for relief from the sewer connection ban imposition:

i. The treatment plant owner has entered into an administrative consent order with the Department that contains a schedule for the completion of improvements necessary to enable the treatment facility to comply with all the conditions and limitations of its NJPDES permit; or

ii. A treatment works approval permit for the improvements necessary to enable the treatment facility to comply with all conditions and limitations of its NJPDES permit has been issued and the authority has awarded a contract for construction; or

4. For a three month consecutive period a treatment works has discharged effluent to ground water which violates any effluent or flow limitations of its NJPDES or NPDES permit, as determined by the arithmetic average of the permit parameters for the period.

(b) For the purpose of the sewer ban imposition and rescission criteria, "conventional pollutant" shall mean NJPDES discharge permit limitations established for oxygen demanding pollutants (BOD, CBOD, NBOD and TBOD), total suspended solids (TSS), pH and bacterial quality indicators (fecal coliform, total coliform, enterococci).

(c) For surface water dischargers, violations of NJPDES or NPDES effluent requirements for flow, percent removal or toxicity shall not require the imposition of a sewer connection ban. In the case of a treatment facility at or above 80 percent of its permitted flow, the facility shall be subject to the provisions of the Capacity Assurance Program specified at N.J.A.C. 7:14A-22.16.

(d) For the purposes of ban imposition and rescission criteria only, if a valid NJPDES permit contains more than one means of measuring an oxygen demanding pollutant (example: CBOD or NBOD or TBOD), then consistent compliance with only one measurement is required.

(e) In the event that the sewerage authority and/or municipality does not impose the required sewer connection ban, the Department may cease issuing treatment works approval permits, direct the imposition of a sewer connection ban and take other enforcement actions that it deems necessary.

(f) Sewer connection bans in effect and imposed pursuant to N.J.A.C. 7:14A-12.21 shall remain in full force and effect unless specifically allowed to be rescinded by the Department in writing, and in accordance with N.J.A.C. 7:14A-22.18(f).

7:14A-22.18 Procedures and effective date for the imposition of a sewer connection ban

(a) Within 20 days of the treatment works becoming subject to a ban pursuant to N.J.A.C. 7:14A-22.17, the owner/operator of the subject treatment works shall:

1. Adopt a resolution imposing the sewer connection ban;

2. Cease the further approval of sewer connections to the subject treatment works as of the effective date of the ban;

3. Notify the affected municipalities that they shall cease the issuance of building permits and condition all other approvals which will require or modify a sewer connection, and which has not already obtained a valid treatment works approval issued by the Department before the effective date of the ban as specified in (e) below;

i. For projects that do not require a treatment works approval and/or sewer ban exemption pursuant to N.J.A.C. 7:14A-22.20, the local authority may issue building permits or other local approvals; and

4. Give notice of the sewer connection ban to the Department, to residents of the area that contributes to the subject treatment works, landowners therein, local planning boards, and other persons or legal entities affected by the ban, within 10 days of adoption of the ban imposition resolution, and at intervals of no more than six months in a manner reasonably expected to be received by such persons.

(b) Other than in (a)3i above, the affected sewerage authority and participating municipalities shall not issue sewer connection approvals or endorse sewer connection applications for specific projects in the affected unless the following requirements have been met:

1. A sewer connection ban has been implemented in accordance with this subchapter;

2. Sewer connection ban exemption criteria equivalent to, or more stringent than, those contained in N.J.A.C. 7:14A-22.22 have been adopted; and

3. The sewer connection ban ordinance, or resolution, and the sewer ban exemption for the specific project has been approved by the Department.

(c) Treatment works applications filed with the Department prior to the effective date of the sewer connection ban will be considered for approval providing that at the time of the sewerage authority's certification on the Department's Form WQM003, the treatment works was operating in compliance with all applicable conditions as stated in the WQM003 Form.

(d) When the participating municipalities and/or affected sewerage authorities have failed to comply with (a) and (b) above, the Department shall cease issuing treatment works approvals and may also direct the imposition of a sewer connection ban, issue administrative orders, assess civil administrative penalties, seek judicial relief, or take any other enforcement action it deems necessary.

(e) The effective date for any sewer connection ban required to be imposed by this subchapter shall be 20 days following the date upon which the first of either of the following occurs:

1. The due date of the Discharge Monitoring Report which would indicate non-compliance in accordance with N.J.A.C. 7:14A-22.17; or

2. The date of identification of a lack of adequate conveyance capacity as defined in N.J.A.C. 7:14A-1.9.

(f) Any sewerage authority or municipality may apply to the Department for a rescission or modification of a sewer connection ban implemented pursuant to this subchapter at such time as it can show that the reasons which required the imposition of the sewer ban pursuant to N.J.A.C. 7:14A-22.17 no longer exist. No ban may be rescinded without written approval from the Department.

7:14A-22.19 General policy and procedure for sewer connection ban exemptions

(a) Each affected sewage authority, or municipality that owns a treatment works, upon the institution of a connection ban, shall adopt exemption criteria at least as stringent as those included in this subchapter in order to provide relief to persons who qualify for such relief. The burden of proof is upon the applicant for all exemption requests and the Department and each affected sewerage authority shall presume that all applicants have knowledge of the sewer connection ban after the effective date of its imposition.

(b) No exemption shall be granted to any person who subsequently proceeds with a proposed project without first obtaining all necessary approvals, and thereby increases or creates a self-imposed hardship.

(c) For projects which require a treatment works approval pursuant to N.J.A.C. 7:14A-22.3, a sewer ban exemption approval, if required pursuant to this subchapter, shall be obtained from the Department or delegated agency, prior to filing the treatment works approval application.

(d) Before making a final decision, the Department may request additional documentation or information that is relevant to the project. Failure of the applicant to supply the additional information may serve as a basis for denial of the application.

(e) Water conservation plumbing is required in all instances of new or modified plumbing or piping. Water conservation plumbing is a condition of the exemption and does not constitute the basis for a sewer ban exemption.

(f) An exemption granted for a specific project at a determined location is not transferable to any other project or location, and is only transferable to a new owner providing the location, scope and other relevant conditions of granting the original exemption remain unchanged. Transfers to new owners meeting the requirements of this subsection do not require Department approval.

(g) Projects which have changed in scope or for which the conditions of granting the original exemption have changed are not considered to be exempt. The applicant/owner of such projects shall apply for a new sewer ban exemption in accordance with this subchapter.

7:14A-22.20 Activities which do not require an exemption from the Department

(a) Any project which has proceeded in accordance with a valid stage II and stage III treatment works approval from the Department for the construction and operation of treatment works will not require a sewer ban exemption from the Department provided that construction of the facilities is undertaken in accordance with the Department's approval.

(b) For projects which do not require a treatment works approval pursuant to N.J.A.C. 7:14A-22.4, a sewer ban exemption from the Department is not required provided that the owner/applicant of the project has obtained a building permit prior to the effective date of the sewer connection ban, and is otherwise lawfully entitled to initiate construction in conformance with previously issued valid approvals.

(c) Modifications, additions or deletions to the internal plumbing or piping of any lawfully, pre-existing building will not require a sewer ban exemption provided that:

1. The size of the building will not increase (gross area); and

2. The category and scope of use of the building will remain unchanged in accordance with N.J.A.C. 7:14A-23.3, Projected flow criteria.

(d) The replacement, rehabilitation or modification of existing conveyance and treatment facilities will not require a sewer ban exemption provided that the project does not involve any additional contributory flow, as determined by the Department.

7:14A-22.21 Application procedures for obtaining a sewer connection ban exemption from the Department

(a) The sewerage authority or municipality imposing the ban shall provide the applicant with the following:

1. A copy of the ban exemption regulations contained in N.J.A.C. 7:14-22.18 through 22.22;

2. The Department's ban exemption application form, WFR001, entitled: "Application for Exemption from a Sewer Connection Ban";

3. The effective date of the sewer connection ban; and

4. A copy of the authority's sewer ban exemption criteria.

(b) An applicant requesting an exemption shall submit the Department's application form for an exemption from a sewer connection ban and any other appropriate documentation to the ap-

propriate sewerage authority or municipality, who shall review the request for compliance with the applicable criteria.

(c) If the affected sewerage authority or municipality determines that the applicant meets the criteria specified in N.J.A.C. 7:14A-22.22, or more stringent criteria that may be locally adopted, the authority shall forward the application package and a written letter of consent, to the Department for a final decision, unless the local authority has been delegated the authority to approve exemption requests pursuant to N.J.A.C. 7:14A-22.23.

(d) If the sewerage authority or municipality denies the sewer ban exemption request, that decision cannot be appealed to the Department.

(e) After reviewing the application for a sewer connection ban exemption, the Department will notify the affected sewerage authority of the results of its review.

(f) Before making a decision, the Department may request that the applicant supply additional documentation. If the additional requested information is not supplied, the Department may deny the exemption request.

(g) The granting of an exemption by the Department and the affected sewerage authority does not relieve the applicant of the responsibility to comply with all other State and local requirements, including compliance with the appropriate water quality management plan requirements and obtaining a treatment works approval from the Department, if required.

7:14A-22.22 Sewer ban exemption criteria

(a) A sewer ban exemption may be granted for projects that meet any one of the following criteria:

1. If the proposed project will have a total projected flow of 600 gallons per day or less, calculated in accordance with the Department's flow criteria contained in N.J.A.C. 7:14A-23.3, and meets the following requirements:

i. The project will be constructed and/or operated on a tax lot which was in existence prior to the effective date of the ban, or on a tax lot which is the result of a one-time subdivision of a single lot into two lots, subsequent to the date of the ban. In this instance, a total of 600 gallons per day may be approved for the combination of both lots; and

ii. The proposed project does not require a sewer extension;

2. If the project will replace a building/facility, at the same location, which was in existence prior to the effective date of the sewer connection ban, and was or is currently connected to the treatment works subject to the ban, and the replacement facility will create flow equal to or less than the former facility, calculated in accordance with either one of the following:

i. The projected flow of the proposed building is less than or equal to the projected flow of the existing building based on the criteria contained in N.J.A.C. 7:14A-23.3; or

ii. The projected flow of the proposed facility, based on N.J.A.C. 7:14A-23.3, is equal to or less than the actual flow of the existing building, based upon water use records for the most recent 12 month period available;

3. If, in the Department's opinion, there exists a sufficient public need for the proposed project such as for health, safety, food or shelter, there are no reasonable alternatives including alternate sites, and the project meets any one of the following:

i. The project is publicly owned or operated, including, but not limited to, a long term health care facility which has received a certification of need from the New Jersey Department of Health, a school, hospital, or fire or police station; or

ii. At least 10 percent of the project's operating costs are provided by a public entity such as the State, county, municipality or an agency of such, the project is for the purpose of ensuring the public welfare by a "not-for-profit" organization. Such projects include a volunteer ambulance squad, school or facility for people with disabilities, an emergency shelter for persons in need, and other projects of a similar nature;

4. If the project is designed to house people with low or moderate incomes, and the affected sewerage authority or municipality is in compliance with either an administrative consent order with the Department, or a judicial consent order with the U.S. Environmental Protection Agency, or has obtained a treatment works approval and awarded a contract for construction of facilities necessary to eliminate the reasons for the sewer connection ban, and it can be demonstrated that the project meets any one of the following requirements:

i. The project is to be occupied exclusively by senior citizens with low incomes and meets all of the following conditions:

(1) The project will be owned or operated by a not-for-profit organization incorporated pursuant to N.J.S.A. 55:14I-1 et seq.;

(2) The project is to be built with funds provided pursuant to section 202 of the Federal Housing Act (12 U.S.C.A. 1701q); and

(3) The monthly rents will be subsidized by funds provided pursuant to section 8 of the U.S. Housing Act of 1937 (42 U.S.C.A. 1437);

ii. The project is a rental housing project which meets all of the following conditions:

(1) The project will be located in a municipality which is, or has been at one time, designated as an Urban Aid Municipality as defined by the Department of Community Affairs;

(2) Twenty percent of the housing units will be occupied by low income households as defined pursuant to the Fair Housing Act (N.J.S.A. 52:27D-301 et seq., N.J.A.C. 5:92-1.3 and N.J.A.C. 5:14-1.3(a));

(3) The project is receiving, or has a commitment from the Department of Community Affairs to receive grants or loans through either the Urban Multi-Family Production Program, P.L. 1988, c.47, or the Neighborhood Preservation Balanced Housing Program implemented by the Department of Community Affairs at N.J.A.C. 5:14; and

(4) The housing project consists of buildings or structures to be occupied for residential, rental purposes only, and the units will remain rental for no less than 15 years if the project is receiving or has a commitment to receive a grant or loan through the New Jersey Urban Multi-Family Production Program, or for the amount of time set forth at N.J.A.C. 5:14 if the project is receiving or has a commitment to receive a grant or loan through the Neighborhood Preservation Balanced Housing Program;

iii. Occupancy of the proposed housing project is limited solely to households of low and moderate income as defined pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., and the project meets all of the following conditions:

(1) The housing project consists of buildings or structures to be occupied for residential purposes only;

(2) The owner of the proposed housing project is, or will be, a public entity or a nonprofit corporation or association, including, but not limited to, a mutual housing sponsor as defined at N.J.S.A. 52:27D-59 et seq.; and

(3) The project is receiving, or has a commitment to receive public funding pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. in accordance with all applicable rules adopted by the Council of Affordable Housing at N.J.A.C. 5:91 and 5:92, the Department of Community Affairs at N.J.A.C. 5:14 and/or the New Jersey Housing and Mortgage Finance Agency at N.J.A.C. 5:80; or

iv. Occupancy of the proposed housing project is limited solely to households of low or moderate income, and the project has been approved by the Council on Affordable Housing (COAH) as part of a "Regional Contribution Agreement";

5. If an existing building or group of buildings constructed prior to the effective date of the sewer connection ban with lawfully constructed, individual subsurface sewage disposal systems is certified by the local health authority and proven to the satisfaction of the Department to be currently creating a health hazard due to sewage overflow, contamination of the waters of the State, or other malfunction and a New Jersey professional engineer, geologist or soil scientist who is knowledgeable of soils and subsurface disposal system design certifies that the system cannot be reasonably rehabilitated and submits appropriate supporting documentation acceptable to the Department;

6. If the project is for a ground water remedial action which has been approved by the Department's Site Remediation Program and for which no other feasible discharge alternatives exist including

on-site treatment and discharge to ground water, or discharge to an alternate surface water location. Exemptions will not be granted under this category for projects located in areas subject to a sewer connection ban due to inadequate conveyance capacity or in situations where the additional discharge will create bypasses or other health hazards at treatment plants that have reached their design capacity, unless adequate provisions for conveyance are included in the project scope;

7. If a project is for a not-for-profit organization that serves a fundamental public need such as providing food/shelter and other essential services regardless of race, creed or religion, to the needy or people with disabilities, meets the criteria for a tax exempt charitable organization under section 501(c)(3) of the Internal Revenue Code, and no alternative to the proposal exists, then the applicant may apply for a sewer ban exemption. The above conditions in this paragraph, by themselves, are not adequate to entitle the applicant to an exemption and the Department shall rule on applications based on the amount of anticipated flow, the progress the affected sewerage authority has made toward resolving the reason for the ban imposition, and the feasibility of alternative discharge methods or alternate facility sites.

8. If the municipality, prior to November 3, 1986, has issued a building permit, or preliminary or final subdivision approval, provided that construction of improvements has taken place, the remaining construction covered by such permit or approval may be eligible for an exemption, providing the applicant shows that, in good faith reliance upon the permit or approval, substantial expenditures have been made by the applicant for physical improvements to the property prior to the effective date of the ban.

i. The payment of taxes, the purchase price, expenditures for preparation of engineering and architectural plans and for legal fees, and other costs not expended for physical improvements to the land shall be ineligible for consideration in determination of "substantial expenditures."

ii. All claims for eligible expenditures shall be accompanied by certified true copies of contracts, receipts or invoices. An unverified list of expenses is not acceptable for establishing expenditures. In addition, the applicant shall submit an estimate of the total project cost with a certification that the estimate is true and accurate.

iii. For the purposes of this paragraph, "substantial expenditures" shall mean those eligible costs in excess of:

(1) 25 percent of the cost of those projects whose total cost is equal to or less than $100,000;

(2) $25,000 plus 10 percent of the costs in excess of $100,000 for those projects whose total cost is less than $10,000,000 but more than $100,000; or

(3) $1,015,000 plus five percent of the project costs in excess of $10,000,000 for those projects whose total cost exceeds this amount.

7:14A-22.23 Delegation

(a) Except as stated in (g) below, the Department may delegate its authority to approve or disapprove sewer ban exemption applications, to a municipality or sewerage authority in accordance with the provisions of this subchapter.

(b) Any municipality or sewerage authority, which is the owner of the affected sewerage facilities, may make an application to the Department to be considered as a delegated agency for the purpose of this subchapter. To be considered for delegation by the Department, the sewerage authority or municipality shall satisfy all of the following:

1. The sewerage authority or municipality shall demonstrate that it is capable of effectively implementing the rules, regulations and standards adopted by the Department for administration of the sewer ban exemption program; and

2. The sewerage authority or municipality shall have sufficient resources, including qualified staff to implement the delegated ban exemption program.

(c) If the sewer ban exemption program or portion thereof is delegated by the Department, the affected sewerage authority or municipality shall comply with the following:

1. The delegated agency shall adopt an ordinance or resolution containing all required provisions of the rules, and include provisions for enforcement and administration of the program.

2. The delegated authority shall submit a quarterly report with a list of approvals or denials of projects, including the project scope and location, a certification by the appropriate official that all projects granted approval meet the requirements of this subchapter. If no actions were taken during the quarter, a statement to this effect shall be submitted to the Department.

3. The delegated authority shall execute a binding memorandum of understanding with the Department specifying, at a minimum, each party's authority and obligations, and the specific review standards, monitoring and record keeping requirements for the delegated agency.

(d) The Department shall review the delegation arrangement and its effectiveness at least every three years from the date of initial approval, and reserves the right to rescind any previously issued delegation of authority for any valid reason.

(e) In the event that the Department amends any of the rules in this subchapter, the delegated agency shall implement the amended rules as of their effective date.

(f) Delegation pursuant to this subchapter shall not waive the Department's right to monitor and inspect any documents or project sites or to seek fines or penalties pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

(g) Sewer ban exemption applications submitted pursuant to N.J.A.C. 7:14A-22.22(a)3, (a)6 and (a)7 (public need, ground water remediation and not-for-profit organization projects) shall not be delegated.

(h) Any authority or municipality accepting delegation pursuant to these provisions shall review and approve or deny projects in accordance with the provisions of this subchapter and applicable provisions contained in N.J.A.C. 7:14A-23.

7:14A-22.24 Requests for adjudicatory hearings

(a) Any interested person who considers himself or herself aggrieved by the approval or denial of a treatment works approval may request an adjudicatory hearing in accordance with the procedures specified in N.J.A.C. 7:1C-1.9 of the "Rules and Regulations Governing 90 Day Construction Permits".

(b) Any interested person aggrieved by the approval or denial of a sewer ban exemption request by the Department may request an adjudicatory hearing within 30 days of receipt of the Department's denial. Adjudicatory hearing requests shall be in writing and shall be accompanied by:

1. A copy of the approval or denial and the same documents that were submitted with the application;

2. A statement specifying which of the Department's reasons for denial are contested; and

3. Additional statements describing, in detail, how that person is aggrieved by the decision, and which findings of fact and conclusions of law are being challenged.

(c) Requests for hearing shall be sent to the Department's Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, CN-402, Trenton, New Jersey 08625-0402.

(d) All hearings pursuant to this section shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

SUBCHAPTER 23. TECHNICAL REQUIREMENTS FOR TREATMENT WORKS APPROVAL APPLICATIONS

7:14A-23.1 Purpose

The purpose of this subchapter is to establish technical requirements for the approval of the design, construction and operation of domestic and industrial treatment works so that wastes are properly collected, conveyed and treated before discharge to the waters of the State.

7:14A-23.2 Scope

(a) These rules apply to individuals, sewerage authorities, municipalities, governmental agencies, private firms and all persons who propose to design, construct and/or operate any treatment works for the collection, conveyance or treatment of domestic or industrial wastes in the State of New Jersey, and for which a treatment works approval from the Department is required pursuant to N.J.A.C. 7:14A-22.

(b) These rules establish specific criteria and standards for the construction and operation of treatment works. In promulgating these requirements, the Department recognizes that, at times, deviations from these requirements may be necessary to address specific circumstances. The Department will consider deviations from these design criteria provided that appropriate documentation addressing the need for deviation and justification for the proposed design is submitted with the treatment works approval applications and includes a signed and sealed statement from the design engineer attesting to the treatment works ability to meet the purposes intended.

(c) These rules do not specify any technical standards explicitly for the construction of industrial treatment works due to the high degree of variability of the wastestreams, and treatment process options available to deal with the various pollutants that may be present at an industrial facility. Because of this variability, it would not be prudent to impose specific technical standards on facilities where such standards may not be appropriate. It is the responsibility of the design engineer to design industrial treatment works to meet all applicable Federal, State or local limitations, conditions, and/or requirements, including, but not limited to, the requirements of a facility's NJPDES or NPDES permit. When appropriate, the general technical standards specified in this subchapter for domestic waste treatment and conveyance systems may be used.

7:14A-23.3 Projected flow criteria

(a) The values specified below are to be used in computing the projected flow to wastewater conveyance and treatment facilities and when making an application for a treatment works approval pursuant to N.J.A.C. 7:14A-22. The specific measurement unit listed for each category shall be used as the basis for the projected flow. No additional provisions for inflow and infiltration are required. For the purposes of design only, other values, proposed by the design engineer, through actual water usage data, may be accepted at the Department's discretion, with an appropriate safety factor. However, all determination concerning whether or not any specific project requires a treatment works approval and/or sewer ban exemption shall be based upon the projected flow criteria established below.

Type of Establishment	Measurement Unit	Gallons Per Day
Residential Dwellings		
Single Family	Per Dwelling	300
Duplex units, townhouses,	1 Bedroom	150
condominiums, apartments	2 Bedrooms	225
	3 or more Bedrooms	300
Transit dwelling units		
Hotels	Bedroom	75
Lodging houses and tourist homes	Bedroom	60
Motels and tourist cabins	Bedroom	60
Boarding houses (max. permitted occupancy)	Boarder	50
Camps		
Campground/mobile rec. vehicle/tent	Site	100
Parked mobile trailer site	Site	200
Children's camps	Bed	50
Labor camps	Bed	40
Day camps—no meals	Person	15
Restaurants (including washrooms and turnover)		
Average restaurant	Seat	35
Bar/cocktail lounges	Seat	20
Fast food restaurant	Seat	15
24 hour service restaurant	Seat	50
Curb service/drive-in restaurant	car space	50
Clubs		
Residential	Member	75
Nonresidential	Member	35
Racquet club	(per court per hour)	80
Bathhouse with shower	Person	25
Bathhouse without shower	Person	10
Institutions (includes staff)		
Hospitals	Bed	175
Other institutions	Bed	125
Schools (includes staff)		
No shower or cafeteria	Student	10
With cafeteria	Student	15
With cafeteria and showers	Student	20
With cafeteria, showers and laboratories	Student	25
Boarding	Student	75
Automobile service stations		
	per filling position	125
Service bays	per bay	50
Mini-market	Sq. Ft.	0.125
Miscellaneous		
Office buildings (gross area)	Sq. Ft.	0.125
Stores and shopping centers (gross area)	Sq. Ft.	0.125

Factories/warehouses (add process wastewater)	Employee	25
with showers, (add process wastewater)	Employee	40
Laundromats	Per machine	580
Bowling alleys	Alley	200
Picnic Parks (restrooms only)	Person	10
Picnic Parks with showers	Person	15
Fairgrounds (based upon average attendance)	Person	5
Assembly halls	Seat	3
Airports (based on passenger use)	Passenger	3
Churches (worship area only)	Seat	3
Theater (indoor)	Seat	3
Dinner theater	Seat	20
Catering/Banquet Hall	Person	20
Sports stadium	Seat	3
Visitor Center	Visitor	5

(b) Flow for facilities that have combined uses shall be determined by the summation of all appropriate projected flow values for each use.

(c) The Department recognizes that the table in (a) above may not cover all establishments and facilities, and in particular facilities that require an industrial treatment works approval. In the event that a facility is not covered, the applicant shall propose the projected flow based upon operation of similar facilities or best professional judgment. The Department reserves the right to accept, modify or deny the proposed flow values.

7:14A-23.4 Plans and specifications submitted to the Department with treatment works approval applications

(a) Maps, drawings, plans and profiles submitted as part of a treatment works approval application shall conform to the following:

1. Plans shall be drawn to standard scale and show the entire area of the project, including a general site plan;

2. The name of the New Jersey licensed professional engineer responsible for the design and his or her signature and embossed seal shall appear in the title block of each sheet of the submitted plans;

3. In the event that there is more than one sheet of plans, all shall be bound together and an index provided;

4. Plans shall not exceed 30 inches by 42 inches in size;

5. Streams and wetland areas, if present, shall be clearly indicated;

6. Plans shall show municipal boundaries, property lines, easements and all existing and proposed streets, including the existing and proposed surface elevations at all street intersections where sewer lines are proposed; and

7. All existing and proposed structures, sanitary sewers and combined sewers, both above and below ground, shall be shown and clearly labeled.

(b) Symbols used on submitted drawings shall conform to the following:

1. Existing and future sewers shall be shown by standard conventions;

2. All topographical symbols and conventions used shall conform to those of the United States Geological Survey; and

3. Elevations shown shall meet the following requirements:

i. Elevations of the surfaces of streets shall be placed outside the street lines, opposite their respective locations;

ii. Elevations of sewer inverts shall be shown at intersections, ends of lines, and wherever a change in sewer grade occurs;

iii. The elevation of sewers shall be written close to the point to which they refer, parallel with the sewer lines and between the street lines;

iv. The elevations of surfaces shall be drawn to the nearest 0.1 foot and those of the sewer inverts to the nearest 0.01 foot; and

v. All elevations shall be referenced to the North American Vertical Datum of 1988.

(c) The horizontal distances and stationing between manholes, grades in percent and sewer sizes and materials shall be shown for all proposed sewer lines.

(d) All sewer appurtenances, such as manholes, siphons and pumping stations shall be designated on the plans by appropriate symbols and referenced by a legend.

(e) Plans labeled preliminary are not acceptable for review unless a note is added to each sheet submitted stating that the plans are final with respect to sanitary sewer design.

(f) Plans submitted for treatment works that are already constructed shall show the "as-built" conditions (as determined through field investigation) and the title block of each sheet shall include the term "as-built."

(g) Profiles and construction details shall meet the following requirements:

1. Profiles shall indicate all manholes, pumping stations, sanitary, combined or industrial sewer lines, concrete encasements, sleeves, and any significant crossings such as storm sewers, potable water lines or utility lines.

2. In the case of stream crossings, elevations of stream beds, normal flow lines and the type of sewer pipe with the length of concrete encasement, as required by N.J.A.C. 7:14A-23.6(b), shall be indicated.

3. The size and gradients of sewers, surface elevations and sewer inverts shall be shown at or between each manhole.

4. Profiles of gravity and forced sewer lines shall be drawn to standard scale with all symbols indicated in the legend.

5. Detail drawings of all sewer appurtenances, such as manholes, drop manholes, inspection chambers, siphons, pumping stations, force main connections into manholes and other related items shall accompany the general sewer system plans.

6. For sewage treatment plants, in addition to all other requirements, the plans shall contain the following:

i. A general plan showing site boundaries including areas reserved for future expansions;

ii. All buildings or building lots within 500 feet of the plant property;

iii. A detail plan of the various units and structures which comprise the plant; and

iv. Detail plans showing a flow diagram, and longitudinal and transverse sections sufficient to explain the construction of each unit including hydraulic gradient.

(h) Specifications for the construction of treatment works shall be directly applicable to the engineering (including hydraulic) features of the proposed project and shall meet the following minimum requirements:

1. Detailed information shall be included on the construction methods and materials proposed for use so as to provide the construction contractor with the specific details necessary to satisfy the project design; and

2. Specifications shall address the following:

i. The quality of materials and workmanship;

ii. The operating characteristics and equipment rating;

iii. Allowable infiltration/exfiltration and the testing procedures to be followed;

iv. Requirements for all mechanical and electrical equipment necessary for the treatment works; and

v. A program for maintaining the operation of existing sewerage systems during construction.

7:14A-23.5 Engineering design reports to be submitted to the Department with treatment works approval applications

(a) Engineering reports required to be submitted pursuant to N.J.A.C. 7:14A-22.8 for domestic treatment systems shall, at a minimum, include:

1. A complete description of the selected waste treatment system;

2. For the modification of an existing system which has not previously been granted a treatment works approval, the capacities of the existing units and a brief description of the operation of each, and a statement concerning which units are existing and which are proposed at the time of the application. If there exists a previously issued treatment works approval for the subject facility, the date of issuance and the TWA number shall be provided;

3. The basis and computations for the projected wastewater flow;

4. Hydraulic profiles of the flow of wastewater through the system;

5. A unit by unit mass balance for all discharge parameters;

6. The ultimate disposal location of all effluent;

7. The basis and computations for average and peak flow requirements;

8. The expected composition of the influent and effluent from the treatment system including the average, maximum and minimum values of the pollutant parameters specified in the facility's NJPDES permit;

9. An evaluation of the quantity and quality of any and all residuals generated and projected to be generated, including a hydraulic profile and unit by unit mass balance for the flow of residuals through the system;

10. Documentation of adequate storage and handling facilities for residuals;

11. Provisions for the ultimate management of residuals pursuant to the State Solid Waste Management Plan and/or the Statewide Sludge Management Plan, as applicable. For proposed upgrading or expansion of domestic treatment works, sludge management planning forms may be submitted pursuant to the Statewide Sludge Management Plan, Appendix K, to satisfy this requirement;

12. Details of flow monitoring and control, alarm systems, auxiliary power, storage facilities for treatment chemicals and wastes, and a plan for bypassing units during construction or maintenance; and

13. A signed and sealed statement from the New Jersey licensed professional engineer who designed the treatment works attesting to the proposed treatment works' ability, as designed, to meet the requirements of this subchapter and to attain all applicable discharge limits.

(b) For treatment works applications involving the temporary or permanent use of holding tanks, the engineering reports required to be submitted by N.J.A.C. 7:14A-22.13 and 22.8 shall include:

1. A description of the high water alarm to be provided to alert the responsible persons that the holding tank has reached 75 percent of its capacity and which will allow sufficient time to take appropriate measures to prevent overflows;

2. A description of provisions for aeration at a rate of two cubic feet per minute per 1,000 gallons to prevent septic conditions and solids settling;

3. Identification of a source of washdown water for routine maintenance and emergency situations, adequately protected by a backflow prevention device;

4. A description of the holding tank area, including adequate measures to protect it from vandalism and safeguards for public health and safety;

5. Engineering drawings containing construction details for all system components;

6. Specifications including construction practices and operation and maintenance procedures; and

7. Sizing of holding tanks which, at a minimum, provides two days of waste storage, as determined in accordance with the projected flow requirements in N.J.A.C. 7:14A-23.3.

(c) Engineering reports required to be submitted for projects involving the use of equalization tanks within a collection system, pursuant to N.J.A.C. 7:14A-22.15, shall include the following:

1. A description of the method for placing the tank into operation and the timing and procedure for releasing the effluent back into the collection system, including quantity of flow and duration held;

2. Average and peak flow requirements;

3. A description of the high water alarm to be provided to alert the responsible persons that the equalization tank has reached 75 percent of its capacity and which allows sufficient time to take appropriate measures to prevent overflows;

4. A description of the equalization tank area, including adequate measures to protect it from vandalism and safeguards for public health and safety such as covers, overflow protection, fencing, etc.;

5. The engineering drawings containing construction details for all system components; and

6. The specifications including construction practices and operation and maintenance procedures.

(d) Engineering reports required to be submitted pursuant to N.J.A.C. 7:14A-22.14 and 22.8, for flow diversion, shall include, but are not limited to, the following:

1. The existing and anticipated average and peak flow events within the collection system;

2. The ultimate disposal location of all effluent; and

3. A report outlining the procedures to be used in the hauling/diversion operation, including, but not limited to, the location at which the wastewater will be withdrawn, the frequency and time of withdrawal, and the effect that the procedure may have upon the treatment capabilities of both treatment facilities.

(e) Engineering reports required to be submitted pursuant to N.J.A.C. 7:14A-22.8, for industrial treatment works approval applications shall include, but are not limited to:

1. A complete description of waste treatment system;

2. A mass balance and, if temperature change across any unit will exceed 10 degrees Celsius, a heat balance;

3. The ultimate destination of all wastewater, sludge and residuals;

4. Average and peak flow requirements and rationale for design;

5. A listing of all pollutants, including regular and intermittent flows, and expected composition that may enter the system;

6. The composition and quality of all sludge generated, name and registration number of the sludge hauler, frequency and parameters for periodic analysis;

7. Documentation of adequate storage and handling facilities for residuals;

8. Provisions for the ultimate management of residuals pursuant to the State Solid Waste Management Plan and/or the Statewide Sludge Management Plan, as applicable;

9. The expected composition of effluent from the treatment system;

10. A listing of any standards, ordinances, permits, court orders, contracts, etc. which regulate the discharge;

11. An evaluation of the capability of the system to meet the most stringent applicable effluent limitation for each pollutant parameter from the NJPDES permit or other authorizations such as an administrative or judicial consent order;

12. Potential spills from within the industrial facility which may enter the treatment system and provisions for treatment and containment;

13. Provisions for metering and monitoring of the effluent;

14. A discussion of: instrumentation, reliability of system components, storage and handling facilities, provisions for treatment during construction, safety features, laboratory facilities and analytical capabilities; and

15. A plan for bypassing units during maintenance or down time.

7:14A-23.6 Gravity sewer design

(a) Proposed sewerage systems shall connect into downstream sewer lines and pump stations that have adequate conveyance capacity.

(b) Gravity sanitary sewers, including outfalls, shall be designed to carry at least twice the estimated average projected flow when flowing half full. In the case of large interceptor sewer systems, consideration may be given to modified designs. In addition, sanitary sewer conveyance systems shall meet the following requirements:

1. Materials used in sewer construction shall be acceptable to the Department for the purposes and conditions they are intended to serve;

2. Sewers shall be designed with the following minimum hydraulic slopes (grades producing velocities of greater than 10 feet per second are not recommended unless supported by adequate justification acceptable to the Department):

PVC Pipe (Polyvinylchloride) Pipe diameter (based on Kutter's or Manning's formula with n = 0.01)	Fall in feet per 100 feet of sewer
8 inches	0.30
10 inches	0.20
12 inches	0.15
15 inches	0.10

All Other Pipe Material (based on Kutter's or Manning's formula with n = 0.013)

Pipe Diameter	Fall in feet per 100 feet of sewer
8 inches	0.40
10 inches	0.29
12 inches	0.22
14 inches	0.17
15 inches	0.16
16 inches	0.14
18 inches	0.12
20 inches	0.10
21 inches	0.095
24 inches	0.080
27 inches	0.067
30 inches	0.058
36 inches	0.046

i. When grades or sizes less than those specified in this paragraph are proposed, justification for the use of such grades shall be provided with the treatment works approval application.

ii. The minimum diameter of sewer extensions shall be eight inches, however, consideration will be given to the use of smaller diameter sewers for lateral connections;

3. Sewers crossing streams and located within 10 feet of the stream embankment, or where site conditions so indicate, shall be constructed of steel, reinforced concrete, cast iron or other suitable material;

4. Sewers conveying sanitary flow, combined sanitary and stormwater flow, or industrial flow shall be separated from water mains by a distance of at least 10 feet horizontally. If such lateral separation is not possible, the pipes shall be in separate trenches with the sewer at least 18 inches below the bottom of the water main, or such other separation as approved by the Department;

i. Where appropriate separation from a water main is not possible, the sewer shall be encased in concrete, or constructed or ductible iron pipe using mechancial or slip-on joints for a distance of at least 10 feet on either side of the crossing. In addition, one full length of sewer pipe should be located so both joints will be as far from the water line as possible. Where a water main crosses under a sewer, adequate structural support for the sewer shall be provided. The Department may also require additional structural support for storm sewers crossing over sewer lines;

5. Any sewer within 100 feet of a water supply well or a below-grade reservoir shall be constructed of steel, reinforced concrete, ductile iron or other suitable material, shall be completely watertight and shall be tested for watertightness after installation;

6. The construction of sewer lines through storm sewer pipes or manholes will not be approved;

7. Sewer lines, including force mains and laterals, shall be constructed at least three feet below the proposed grade (as measured from the top of the pipe to the grade elevation);

8. Sewer pipes, including force mains and laterals, shall be sized to adequately convey the projected contributory flow in accordance with this subchapter. In general, sewer lines that are larger than hydraulically necessary to carry the projected flow and for which the larger size is proposed only for the purpose of achieving the minimum slope requirements specified in this section are not permitted;

9. Sewer lines shall not be approved for the use of storage or detention of sewage unless they are designed as an integral part of an existing combined sewerage system (sanitary/storm) where in-line storage is being proposed as a corrective measure to prevent the discharge of untreated wastewater from the treatment works;

10. New sewerage systems or extensions shall be designed as separate systems, in which all water from roofs, cellars, streets and other areas is excluded; except that separate connections to an existing combined system may be approved when it is demonstrated to the satisfaction of the Department that no other alternative is feasible. In addition, the Department may permit, on a case-by-case basis, the introduction of contaminated stormwater from containment areas into sanitary sewers; and

11. To minimize the development of septic conditions, the Department may require special operational and/or maintenance procedures for treatment works if the initial contributory flows to the treatment works will be substantially below the design capacity.

(c) For sewers other than circular in cross section, the submitted data shall include the geometrical shape, dimensions and hydraulic characteristics of the proposed sewer.

(d) Approval for curved sewers will be considered by the Department only under the following circumstances:

1. Areas where curved streets comprise the general layout, or the use of curved sewers would permit substantial savings in cost to avoid deep cuts due to rocks or obstructions;

2. The minimum diameter of the sewer is eight inches and the minimum radius of curvature is 100 feet; and

3. Manhole spacing does not exceed 300 feet.

(e) All sanitary sewers, manholes, and cleanouts shall be tested by an infiltration, exfiltration or pressure test after being flushed and before being placed into use. The maximum rate of infiltration/exfiltration shall not exceed 100 gallons per inch diameter per mile per day.

7:14A-23.7 Inverted siphons

(a) Inverted siphons shall be constructed of cast iron or other approved material and shall not have less than two barrels.

(b) Provisions shall be made for rodding and flushing.

(c) A velocity of 3.0 feet per second shall be maintained and flow control gates in chambers shall be provided.

7:14A-23.8 Manholes

(a) Manholes shall be provided at the ends of each sewer line and at intersections and at all changes in grade, size or alignment.

(b) Distances between manholes shall not exceed 400 feet for sewers 18 inches or less in diameter and 500 feet for sewers greater than 18 inches in diameter.

(c) A drop pipe shall be provided for sewers entering manholes above the manhole invert whenever the difference in elevation is two feet or more.

(d) No manholes or connections to a sanitary sewer system are permitted within 100 feet of a public water supply well or a below-grade reservoir.

(e) Adequate provisions shall be made for ventilation.

(f) Watertight manhole covers are required for all street elevations less than 10 feet above the North American Vertical Datum of 1988 and wherever the top of a manhole may be flooded by street runoff or high water. These manholes shall be properly protected, of watertight construction, and shall be tested for watertightness after installation.

(g) The minimum diameter of manholes is 48 inches; larger diameters are preferable for large diameter sewers. A minimum access diameter of 22 inches shall be provided.

7:14A-23.9 Outfalls

(a) Ocean outfalls from municipal wastewater treatment works shall extend at least 1,000 feet in length beyond the mean low water mark. Manholes are required on the shore end of all gravity outfalls.

(b) Outfalls, other than those to the ocean, shall be submerged and so located as to accomplish effective dispersion of flow.

7:14A-23.10 Wastewater pumping stations

(a) Raw sewage pumping stations shall conform to the following requirements:

1. Sewage shall be screened before pumping. Comminutors may be approved in lieu of screens, however, the requirement for screening raw sewage may be waived, at the Department's discretion, for individual, privately owned pumping stations;

2. Pumping stations shall provide for stage pumping, preferably by the use of variable speed pumps, so as to eliminate, as far as practical, surges of flow to or through the treatment plants;

3. Pump stations shall be provided with two power sources, one as a back-up;

4. Automatic sound alarms, operating independently of the main power system, shall be installed to give warning of high water, power failure, or breakdown. Such alarm systems shall extend by wire to a police station or other staffed location so that competent emergency assistance can be obtained on a 24 hour basis;

5. Pumping stations shall be protected against flooding and adequate provision shall be made for access to the stations during storm events;

6. Adequate light and ventilation shall be provided at all pumping stations;

i. Where operational or maintenance duties are required in enclosed areas or pits, forced ventilation by appropriate means shall be provided with sufficient capacity to induce at least 12 air changes per hour;

ii. Appropriate equipment to guard against explosion shall be utilized; and

7. Adequate fresh-water facilities shall be provided to permit routine washdown and cleaning operations at all pumping stations;

i. Where a domestic water service connection is provided to a pumping station, the water supply shall be adequately protected by a backflow prevention device;

ii. Connections between potable water lines and wastewater pumps or sewers is not permitted.

(b) At least two pumps, each designed to handle peak flows equivalent to 2.5 times the average daily flow (using the Department's projected flow criteria specified in N.J.A.C. 7:14A-23.3) shall be provided. If more than two pumps are provided their capacities shall be such that, upon failure of the largest pump, the remaining pumps can handle peak flows.

(c) When ejectors are provided as the method of raising sewage, at least two compressor units (one as a standby) are required and shall be so interconnected that the standby unit will commence operation in the event of failure of the one in use.

(d) Pumps installed in dry wells shall operate under a positive suction head.

(e) A means of flow measurement shall be provided in municipally owned, regional pumping stations.

(f) Shut-off valves shall be provided on suction and discharge piping, which shall be flanged or otherwise removable, and check valves shall be provided on all discharge lines. Shut-off valves shall be accessible during all operating conditions.

(g) Force main velocities of less than two feet/second at normal pumping rates will not be approved. Properly designed air release valves shall be provided on the high points of the force main and cleanouts shall be provided on low points of the force main.

(h) The use of low pressure force mains is permitted in only those circumstances when all other means of sewage conveyance have been explored and it has been demonstrated to the satisfaction of the Department that the use of low pressure force mains is the most prudent alternative available.

7:14A-23.11 Submersible wastewater pumps

(a) In addition to the requirements specified at N.J.A.C 7:14A-23.10, submersible wastewater pumps shall meet the following additional requirements:

1. Submersible pumps and motors shall be designed specifically for raw sewage use, including total submersion during a portion of each pumping cycle;

2. Submersible pumps shall be readily removable and replaceable without dewatering the wet well or disconnecting any piping in the wet well;

3. The motor control center shall be located outside the wet well and be protected by a conduit seal or other appropriate measures meeting the requirements of the National Electrical Code, to prevent the atmosphere of the wet well from gaining access to the control center. The seal shall be so located that the motor may be removed and electrically disconnected without disturbing the seal; and

4. Winch and guide rails shall be provided to facilitate pump removal.

(b) An effective method to detect shaft seal failure or potential seal failure shall be provided, and the motor shall be of squirrel-cage type design without brushes or other arc-producing mechanisms.

7:14A-23.12 Dry wells and wet wells

(a) The construction of dry wells and wet wells for sewage pumping stations shall meet the following requirements:

1. Dry and wet wells shall be completely separated and have adequate ventilation and drainage;

2. Dry wells and wet wells shall have a means of entrance and exit, preferably by a stairway;

3. Dry wells shall have sufficient accessible space for the repair and removal of pumps;

4. The detention time of a wet well shall not exceed ten minutes when the flow is at the average dry weather rate. The detention time is calculated by dividing the volume of the wet well (volume between the pump on and the pump off switch levels) by the projected flow for the pumping station;

i. Wet well detention times greater than 10 minutes may be approved by the Department for small pump stations that cannot meet this requirement due to the minimum available size of the wet well and an estimated low volume daily wastewater flow. If longer detention times are proposed, additional measures necessary to prevent the development of septic conditions may be required;

ii. To minimize the development of septic conditions during the early phases of pump station operation, the Department may require special operational and/or maintenance procedures particularly when the initial contributory flows will be substantially below the approved design flow;

5. The base of pump station wet wells shall slope at least 45 degrees toward the pump suctions to prevent solids accumulation; and

6. A sump pump or other effective method to drain accumulated water from the dry well to the wet well and to prevent sewage from entering the valve pit during surcharged wet weather conditions shall be provided.

7:14A-23.13 Wastewater treatment plants

(a) Adequate treatment shall be provided for all wastewater before discharge into the waters of the State.

1. The minimum level of sewage treatment shall be as specified by the Department in the applicable NJPDES permit.

2. The design of the proposed treatment system shall be adequate to meet all NPDES or NJPDES permit requirements, and shall take into consideration the topography of the plant site, receiving waters, operating costs and effects of any industrial waste component.

(b) Treatment plants shall be designed to produce an effluent which will consistently meet the limitations specified in the applicable NPDES or NJPDES permit and be conducive to the attainment and maintenance of such water quality criteria for the various classifications of surface and ground waters of the State.

(c) Siting requirements for wastewater treatment plants are as follows:

1. Treatment plants shall be located as far from existing or future residential structures as practical;

2. To the extent possible, the treatment plant units shall not be situated within 500 feet of the plant property lines. If this is not possible the Department may impose additional requirements concerning plant design, location, landscaping and operation;

3. Treatment plants shall be raised above the flood elevation level, or adequately flood proofed. For the purposes of this requirement, the flood elevation level is considered to be one foot above the 100 year flood elevation for non-delineated waterways and up to the Flood Hazard Design Flood Elevation for delineated waterways (see N.J.A.C. 7:13); and

4. The plant layout shall be designed for ease of operation, safety and accessibility.

(d) A suitable operating building shall be provided meeting the following requirements:

1. The building shall be heated, ventilated and lighted and contain an office, workshop, laboratory, storage space, drinking water, toilet, lavatory, and shower facilities;

2. An adequate supply of water under pressure shall be installed. Any domestic service connection shall be protected by an approved backflow prevention device acceptable to the Department; and

3. Taps supplying non-potable water shall be clearly labeled "Unfit for Drinking."

(e) Treatment plant sites shall be appropriately landscaped and graded.

(f) Drains shall be installed and soil stabilized to prevent washing into tanks, basins or filters and to prevent erosion.

(g) The following safety features shall be incorporated into the treatment plant design:

1. At a minimum, railings, guards, and handrails shall be provided;

2. Flame traps at all gas outlets, a blower and hose, and adequate ventilation of enclosures shall be provided;

3. Non-slip treads on stairs shall be provided;

4. Warning signs shall be posted in hazardous locations;

5. A readily accessible first aid kit shall be provided; and

6. The plant site shall be secure and enclosed by a fence with lockable gates.

(h) Treatment plants shall be provided with an adequate auxiliary source of power that is capable of maintaining the necessary plant functions to assure compliance with the facility's NJPDES permit.

1. When a plant is not staffed on a 24-hour basis, the auxiliary source of power shall have the ability to be automatically activated.

2. Emergency generators shall be tested regularly and maintained in proper working order at all times.

(i) An alarm system operating on an independent source of power shall be provided for all treatment plants when 24-hour supervision is not provided.

1. The alarm system shall extend to a police station or other location where competent 24-hour assistance can be obtained in an emergency.

(j) All electrical equipment work shall comply with the Fire Underwriters' regulations and with the National Electric Code.

(k) Adequate means shall be provided for dewatering all treatment units for inspection and maintenance while still maintaining NJPDES permit compliance.

(l) Piping located under plant units shall be encased in concrete.

(m) Plant designs which propose the use of bypass lines that would circumvent treatment units and allow untreated or partially treated wastewater to be discharged will not be approved by the Department. The need for such bypassing is to be eliminated by providing adequate auxiliary treatment facilities.

(n) Treatment units should be designed for the population and wastewater flow that is anticipated 10 years or more after the completion of construction.

(o) Unless accurate data justifying a lesser design are submitted and approved by the Department, the hydraulic design of piping, channels, flumes and pumps shall be based on not less than 250 percent of projected flow, and treatment units shall be designed so as to provide adequate treatment to meet all NJPDES permit effluent conditions.

1. Where recirculation is employed, the resulting additional flow from this source shall be considered in the design.

2. Organic loading shall be based upon a minimum five-day B.O.D. content of 250 mg/l for domestic sewage, to which B.O.D. values for industrial wastes shall be added. For existing sewer systems, higher B.O.D. values may be used if an analyses based on composite samplings indicate a higher actual B.O.D.

3. For systems designed to treat wastewater from proposed or recently constructed buildings which have been equipped with water conservation devices or designed to be served by wastewater treatment and recycling systems, appropriate adjustments for higher B.O.D. values and reduced volume of wastewater should be considered in the treatment unit design.

7:14A-23.14 Measuring, recording, and sampling requirements at treatment plants

(a) At treatment plants, a means for continuous measuring, indicating and recording of the sewage flows shall be installed.

(b) Meters shall be installed in such a manner and location so as to provide a true indication of actual flow.

(c) All wastewater treatment plant designs shall include provisions in terms of number and location for sampling and monitoring as required by its NJPDES permits, Sludge Quality Assurance Reports, Bioassay, and Local Pretreatment Discharge Limits.

1. At a minimum, all wastewater treatment facilities shall be designed and constructed to provide for the collection of representative samples as follows:

i. Influent quality before introduction of recycled waste which may be incorporated within the wastewater facility's processes (for example, wastewater quality prior to introduction of supernatant from sludge thickening or digestion and prior to the introduction of scrubber water from sludge incineration etc.);

ii. Effluent quality after the last treatment plant unit at the point of discharge;

iii. Sludge at a location meeting the requirements established under the Sludge Quality Assurance Regulations, N.J.A.C. 7:14-4. In addition, the provisions for sludge sampling shall meet the following minimum requirements:

(1) Sludge sampling points shall be established at a location which assures homogeneity and best represents the physical and chemical quality of all sludge which is removed from the treatment works for ultimate management;

(2) Sludge sampling points shall provide for sample collection at the frequency required under the Sludge Quality Assurance Regulations; and

(3) Sampling equipment shall be constructed of materials which will not contaminate or react with the sludge (for example, galvanized or zinc coated items may not be used); and

iv. Wastewater quality after every treatment unit.

2. In specific cases, the Department may require the installation of additional sampling points and equipment to assure adequate collection of technical data relevant to protection of the environment or public health.

(d) Monitoring chambers shall meet the following minimum requirements:

1. The monitoring chamber shall be constructed of a permanent and durable material with an opening large enough for access by both sampling personnel and equipment.

i. The sampling chamber shall have a minimum seven foot ceiling clearance;

ii. Electrical outlets shall be provided so that 24 hour sampling equipment can be accommodated; and

iii. The access door or manhole shall have a minimum opening of 24 inches and shall be lockable;

2. An accurate flow measuring device with a totalizer and recording equipment with a documented regular calibration program shall be provided;

3. High water alarms shall be included in all sumps;
4. Pickup probes for all monitoring and sample collection devices shall be provided;
5. All influent streams into the public sewer which are required to be monitored by the applicable permit shall be free of external sources of water (for example, supernatant return, stormwater runoff, unless such runoff is being monitored, tidal water, etc.);
6. A back flow prevention device shall be installed if pumping or flowing to a force main;
7. If the sampling chamber is not in a secured area, it shall be surrounded by a chain link fence;
8. The sampling chamber shall be accessible by motor vehicle; and
9. Adequate lighting and ventilation shall be provided and the area shall be free of any safety hazard.

7:14A-23.15 Screening and comminution

(a) All sewage treatment plants shall be provided with a means for screening or comminuting coarse material in the sewage. Except in small plants with a design capacity of less than 150,000 gallons per day, screening equipment shall be of the mechanical type.

(b) Operation of mechanically cleaned devices shall be continuous or automatically controlled.

(c) Bar screens shall conform to the following:

1. Bars of nonmechanical screens preceding treatment plants shall be spaced so that the maximum clearance between bars is not greater than 1½ inches and not less than one inch;
2. Clear openings for mechanically cleaned screens shall not be less than ⅝ inch;
3. Bar clearance for coarse racks or screens preceding mechanically cleaned screens or comminutors shall not exceed 1¾ inches;
4. At sewage pumping stations, openings in bar screens shall be at least one inch smaller than the solid size which can be handled by the pump;
5. Motors shall be of the type suitable for operation in a damp atmosphere if placed below ground;
6. The screen chamber shall be designed to provide a velocity through the screen of not less than one foot per second at average flow and not more than three feet per second, based on the screen openings projected vertically between the invert and the crown;
7. Hand-cleaned screens shall be inclined from 30 degrees to 45 degrees from horizontal; and
8. Where only one mechanical screen is provided, auxiliary hand-cleaned screens shall be provided for use in case of failure of the mechanically cleaned screens.

(d) Disposal of screenings shall be in conformance with the following:

1. Adequate facilities shall be provided for prompt removal, handling and sanitary disposal of screenings;
   i. A platform shall be provided at the top of hand-raked screens; and
   ii. Appropriate containers shall be provided for removal of screenings;
2. An appropriate method shall be provided for drainage of screenings, both on the platform and in containers, such that water content is not a limitation to ultimate disposal. The disposal and treatment method for the drainage from the screenings shall be indicated;
3. Where screen chambers are located substantially below grade, a suitable hoist shall be provided. Such chambers shall have a stairway and adequate lighting; and
4. Screen chambers shall be adequately ventilated. Where required, forced draft fans with explosion-proof motors shall be installed.

(e) Comminutors shall be in conformance with the following:

1. Comminuting devices shall have slots not less than ¼ inch wide and be designed to cut or shred material below the surface of the sewage. Comminuting capacity shall be adequate to handle peak flows when the largest unit is out of operation;
2. A bypass screen shall be provided except where there are multiple units; and
3. Gates shall be provided to isolate each channel, and provisions shall be made for the removal of mechanisms for repair and maintenance.

7:14A-23.16 Grit removal equipment

(a) Except in small sewage treatment plants with a design flow of less than 150,000 gallons per day, mechanical grit removal devices shall be provided.

(b) Grit chamber channels and flumes shall be designed to produce velocities of not less than 0.5 foot per second and not greater than one foot per second. Detention shall be adequate to deposit grit coarser than 0.20 millimeters.

(c) All grit chambers shall be provided with a means for washing the grit and return of washwater to wastewater flow.

(d) Grit removal facilities shall include adequate means for the collection and temporary storage of grit material prior to sanitary disposal.

1. A stairway or ladder shall be provided for entrance if the unit is four feet or more below ground level.
2. Adequate lighting and ventilation shall be provided.
3. Provisions for dewatering shall be made such that water content is not a limitation to ultimate disposal.
4. Provisions for the treatment and disposal method for drainage of the grit shall be provided.

7:14A-23.17 Settling tanks

(a) Multiple units or independent compartments shall be provided except in small installations of less than 150,000 gpd design flows.

(b) Channels shall be designed to maintain a velocity of one foot per second at 50 percent of design flow.

(c) Baffling shall be provided to dissipate inlet velocity and diffuse flow equally across the cross section of the tank. Baffles shall also be provided to retain scum in primary tanks. Scum collectors shall be provided.

(d) Weirs shall be adjustable.

(e) The minimum slope of the side walls of sludge hoppers shall be 1.7 vertical to 1.0 horizontal.

(f) The use of upward flow settling tanks may be considered when accompanied by supporting data on their hydraulic characteristics and results of operation in actual plants.

(g) Walls of settling tanks shall extend at least 18 inches above the surrounding ground surface.

(h) Mechanical means shall be provided for the collection and removal of sludge from settling tanks, and shall meet the following design requirements:

1. Primary tanks, except those preceding the activated sludge process, shall have a surface settling rate that does not exceed 600 gallons per square foot per day of design flow, and a minimum water depth of six feet;
2. Inlets shall be designed to dissipate inlet velocity promptly so as to diffuse the flow and to prevent short-circuiting; and
3. Adjustable outlet weirs shall be provided.

(i) Final settling tanks shall be designed according to the following:

Type of Treatment	Side Water Depth	Maximum Surface Settling Rate gals./sq. ft./day (At Design Flow)
Standard Rate Trickling Filter	6 feet minimum	1,000
High Rate Trickling Filter	8 feet minimum	800
Activated Sludge (2.0 m.g.d. and less design flow)	8 feet minimum	800
Activated Sludge (Over 2.0 m.g.d. design flow)	10 feet minimum	1,000

7:14A-23.18 Chemical coagulation

(a) This method of sewage treatment is considered to be a degree of treatment intermediate between sedimentation, and sedimentation plus oxidation. Chemical coagulation will not be considered as a substitute for oxidation.

(b) Coagulants shall be applied to the sewage in a suitable and approved form proportional to the sewage flow.

(c) A chamber or tank for the rapid and thorough mixing of the sewage and coagulants shall be provided with a detention period of not less than one minute based on design flow.

(d) Two or more flocculation tanks, with individual controls, shall provide a combined detention period of between 20 and 30 minutes. Diffused air or paddles with a slow rotary motion shall be provided for continuous agitation of the full content of the flocculation tanks.

(e) The automatic control of apparatus for feeding chemicals shall include equipment to provide variation in chemical dosage with variation in sewage flow.

7:14A-23.19 Trickling filters

(a) Trickling filters of the "standard rate" or "high rate" type may be used for the treatment of sewage amenable to treatment by a biological process.

(b) Filters shall be preceded by effective preliminary treatment and shall be followed by individually controlled and mechanically cleaned settling tanks.

(c) When the average five-day B.O.D. of the raw sewage exceeds 325 parts per million, two stages of trickling filter treatment are required, with or without intermediate sedimentation. Consideration may be given to designs providing supplementary preliminary treatment in the case of strong sewages or industrial wastes.

(d) The sewage shall be distributed uniformly over the filter so that at least 95 percent of the surface area receives sewage directly.

1. Distribution devices may be actuated by twin siphons, pumps or gravity discharge from preceding treatment plant units.

(e) The filter media may be crushed rock, manufactured material, or other approved material. Manufactured media shall be resistant to ultraviolet degradation, disintegration, erosion, aging, all common acids and alkalies, organic compounds, and fungus and biological attack. In addition, manufactured media shall be structurally capable of supporting a person's weight or a suitable walkway shall be provided to allow for distributor maintenance.

1. Where applicable, the upper 18 inches of the filter bed shall have a loss, measured by the 20-cycle sodium sulfate test, of less than ten percent and the balance shall pass the 15-cycle test.

2. Wear shall not exceed 20 percent after 500 revolutions of Los Angeles Rattler Test as determined by the current ASTM Standard, Designation No. C-131.

3. Rock media shall be approximately cubical in shape, free from dust, clay, sand or fine material and of a size that passes a four-inch screen and is retained on a 2½ inch screen.

4. Material shall be screened or forked, and washed to remove fine grains and shall be so placed as to avoid breaking the underdrains.

(f) The underdrainage system shall be resistant to the action of sewage wastes and shall cover the entire floor. Inlet openings into the underdrains shall have an unsubmerged gross combined area equal to at least 15 percent of the surface area of the filter. Use of half-tile for underdrains will not be approved.

1. Lateral underdrains shall have a minimum slope of one percent.

2. Main underdrain and effluent channels shall be designed to provide a velocity of not less than two feet per second.

3. The entire underdrainage system shall be designed to permit free passage of air, and be of such size that not more than 50 percent of the cross sectional area of the flow channels in the underdrains will be submerged during operation of the filter at the maximum design rate. Provisions shall be made for flushing lateral underdrains from the main drain or head channel.

(g) Standard rate trickling filters shall be designed as follows:

1. The volume of sewage to be treated by standard rate filters shall not exceed 14,400 gallons per day per 1,000 cubic feet of filtering media and the average rate of organic loading shall not exceed 15 pounds of five-day B.O.D. per thousand cubic feet per day.

2. The average rate of application during dosing periods shall not exceed 22 gallons per thousand cubic feet of media per minute. The time intervals between dosing cycles to the filter shall not exceed five minutes at design flow.

3. The minimum depth of filtering media at any point in the filter, measured from the top of the underdrains to the surface of the media, shall not be less than five feet, and the maximum depth shall not exceed eight feet.

4. Means for Psychoda fly control, such as provisions for backflooding and filter flushing, shall be provided. The application of chemicals is discouraged unless other forms of control have been ineffective and the use of chemicals shall be in conformance with all other applicable laws, ordinances and regulations.

5. Means shall be provided for recirculating a portion of the effluent from intermediate or final settling tanks during periods of low flow.

(h) High rate trickling filters shall be designed as follows:

1. Organic loading to high rate filters shall not exceed 67 pounds of five-day B.O.D. per thousand cubic feet of filter media per day, based on the total volume of the filters.

2. The depth of filtering media at any point in the filter, measured from the top of the underdrain block to the surface of the media, shall not be less than five feet nor more than eight feet. The distributor shall clear the media by not less than eight to nine inches; and the filter retaining walls shall not be less than three inches higher than the media.

3. High rate trickling filters shall be equipped with rotary distributors and flushing devices shall be provided at the outer end of each distributor arm.

4. Provisions shall be made for controlled recirculation to maintain a continuous application rate of not less than 230,000 gallons per 1,000 square feet per day. Devices to measure flows to the filter and the recirculated effluent shall be provided.

5. The number and capacities of the recirculation pumps shall be such that the conditions of (h)4 above can be met if the largest pump for each point of return is out of service unless other provisions are made which will achieve adequate and effective degree of treatment if power or pump failure occurs.

(i) Under conditions where treatment of unusually strong sewage is necessary and two-stage filtration is adopted, intermediate settling tanks may be required, with suitable sludge and scum removal devices to provide a detention period of one hour based upon projected flow.

7:14A-23.20 Rotating biological contactors

(a) Rotating biological contactors (RBC) process may be used when wastewater is amenable to biological treatment.

(b) RBCs shall be preceded by properly designed settling facilities. Efficient grease and scum removal devices shall be provided. In addition, flow equalization shall be provided when the ratio of peak (maximum instantaneous) to average daily flow exceeds 2.5.

(c) At least four stages shall be provided for secondary treatment applications. Additional stages may be necessary for nitrification and additional BOD removal.

(d) Permanent buildings or covers shall be used to protect the RBC units from sunlight and winter weather. Provisions shall be made for access to the RBC units for observation and repairs. Buildings shall have adequate ventilation, heating, and humidity control, and an internal hoisting device for the removal of the shaft/media assembly. Covers shall be made in removable sections, or have some other means of allowing removal and replacement of the shaft/media assembly.

(e) Drive systems shall be variable speed and may be mechanical or air driven. Air driven systems shall have positive air flow metering and control to each RBC unit.

1. Bearing units shall be self-aligning and shall be located outside of media covers to allow easy access for lubrication and maintenance.

2. A provision for auxiliary power during power outages is required.

(f) Operation and maintenance requirements, including biofilm control, drive train and radial support arm maintenance and repair,

and media/shaft repair and replacement, shall be considered in the design and layout of RBC treatment systems. Provisions shall be made for positive flow control to each stage, allowing flexibility in feeding and discharge. Tank depth and configuration shall be such that solids are not deposited in the tank; also, provisions shall be made for draining the tank.

(g) To avoid system failure, flexibility shall be considered in RBC designs. Flexibility can be achieved by having variable rotational speed, the ability to periodically reverse rotational direction, supplemental aeration, or the potential for chemical addition (for example, hydrogen peroxide or chlorine).

(h) Final settling shall provide a detention time of not less than 90 minutes, with a maximum surface settling rate of 600 gpd/sq. ft. and a weir overflow rate not greater than 5,000 gallons per day per linear foot. Higher surface settling and weir overflow rates may be used if the contactor is to be followed by tertiary treatment.

7:14A-23.21 Activated sludge

(a) The activated sludge process may be used when wastewater is amenable to biological treatment.

(b) The design data outlined in this section are presumed to achieve a removal of 90 percent or more of the B.O.D. and suspended solids susceptible to treatment from sewage of normal characteristics and may not be appropriate where only partial removals are intended.

(c) Provisions for pre-chlorination of the raw sewage shall be made depending on the condition of the influent.

(d) The design of plants which may receive abnormally strong concentrations of wastewater, or require an unusual aeration period or special equipment, may be considered for approval as an activated sludge process upon presentation of appropriate supporting data obtained from existing installations that demonstrate the efficiency of the process.

(e) Settling tanks for the activated sludge process shall be designed in conformance with the following:

1. A skimming tank, or equivalent, shall be provided for wastewater which contains greater than 100 milligrams per liter (mg/l) of oil or grease;

2. Except in small sewage treatment plants with a design capacity of less than 150,000 gallons per day, a minimum of two preliminary settling tanks shall be provided with a total capacity that provides a detention period of 90 to 150 minutes and a maximum surface settling rate of 1,000 gallons/square foot/day based upon design flow;

3. For plants having a design capacity of 2.0 M.G.D. or less, final settling tanks shall have a minimum eight foot side water depth and a maximum surface settling rate of 800 gallons per square foot per day. For plants with a design capacity of more than 2.0 M.G.D. final settling tanks shall have a minimum 10 foot side water depth and a maximum surface settling rate of 1,000 gallons per square foot per day;

4. Final settling tanks shall be provided in multiple units except in small installations;

5. Mechanical means shall be provided for the collection and removal of sludge from all settling tanks; and

6. The use of upward flow settling tanks may be considered when accompanied by supporting data on their hydraulic characteristics and results of operations in actual plants.

(f) If the incoming wastewater to an activated sludge system contains less than 2.0 parts per million dissolved oxygen, preaeration of the pre-settled wastewater is required before the admixture of returned sludge.

(g) Aeration tanks for the activated sludge process shall be designed in conformance with the following:

1. Multiple units, capable of independent operation, shall be provided for all installations;

2. Total required detention period of aeration tanks, based upon 125 percent of design flow, shall not be less than six hours. If provisions are made for the re-aeration of the returned sludge before admixture with the pre-settled sewage, a lesser detention period in the aeration tanks can be considered (the greater the return sludge aeration period, the less the required mixed liquor detention period);

3. Applied loading shall not exceed 38 pounds of B.O.D., exclusive of return sludge, per 1,000 cubic feet of tank volume;

4. Liquid depths of not less than 10 feet, nor more than 15 feet, shall be provided; and

5. Means to minimize foaming in aeration tanks shall be provided.

(h) All inlets and outlets shall be equipped with suitable devices for controlling the flow to each tank unit and to withdraw any unit from service. Velocity between bays or around baffles shall not exceed 0.5 feet per second.

1. Channels and pipes shall be designed to provide self-cleaning velocities, or shall be equipped with mechanical devices for maintaining solids in continuous suspension.

(i) Devices shall be provided for indicating rates of flow of pre-settled effluent, return sludge, air to each tank unit, and total volume of wasted sludge. These devices shall also totalize and record as well as indicate flows.

(j) Requirements for air supply are as follows:

1. Air requirements at all times shall be sufficient to:

i. Maintain at least two parts per million of dissolved oxygen in all parts of the aeration tank;

ii. Maintain sufficient turbulence to maintain intimate contact of sludge particles with sewage; and

iii. Prevent deposition of solids in any part of aeration unit.

2. Aeration capacity at standard temperature and pressure shall be at least 1.5 cubic feet per gallon of incoming raw sewage plus the capacity required for reaeration of returned sludge.

3. Blowers shall be in multiple units and of such capacity that full operation requirements can be met with the largest unit out of service.

4. Blower capacity required to deliver air to channels, sludge pumps, foam-control pumps, or similar demands shall be in addition to that required for tank aeration as specified in 1 above.

5. The air diffuser system shall be capable of delivering 150 percent of normal requirements. Normal requirements are considered to be 1,000 cubic feet per pound of B.O.D. to be removed from the sewage entering aeration tanks.

6. Air filters shall be capable of supplying a continuous air supply having a dust content of not more than 0.5 milligrams per 1,000 cubic feet.

7. Each blower shall be equipped with a silencer.

8. Aeration plates, tubes or jets shall be designed to permit removal for inspection or cleaning, and for maintaining an even distribution of air throughout the aeration tanks.

9. Individual assembly units of diffusers shall have a substantially uniform pressure loss and shall be equipped with control valves with indicator markings.

(k) Return activated sludge pumps or air lifts shall have variable combined capacity, capable of pumping at least 25 percent of the projected flow with the largest single unit out of service. Normal return sludge capacity shall be at least 50 percent of the average dry-weather sewage flow.

1. In addition to capacity required for return sludge pumping, waste sludge pumping facilities shall be provided with a minimum capacity not less than 0.5 percent of design flow, or 10 gallons per minute, whichever is larger.

2. The means for the further treatment and management of waste activated sludge shall be specified.

(l) Extended aeration systems shall be designed in accordance with the following:

1. Screening equipment consisting of a comminuting device with a bar screen in parallel is required.

2. Aeration tanks shall provide a detention period of at least 24 hours based upon design flow without recirculation. At least two tanks shall be provided in plants with design capacities of 100,000 gallons per day or more.

3. Air blower equipment shall be at least in duplicate and shall have capacity with the largest unit out of service to provide either at least three cubic feet per minute per foot length of aeration tank or at least 2,100 cubic feet of air per pound B.O.D. of raw sewage, whichever is greater. Equipment shall provide for variation in the

volume of air to be delivered in at least three steps. Additional air capacity shall be provided if required for air lifts or other needs.

4. Provisions shall be made for the future installation of froth-breaking spray equipment, if necessary.

5. Final settling tanks shall provide at least a 3.5 hour detention period based upon design flow without recirculation.

i. Two or more tanks shall be provided on installations having capacities of 100,000 gallons per day or more.

ii. For tanks with hopper bottoms, the upper third of depth of hopper may be considered as effective settling capacity.

6. Return sludge capacity of at least 100 percent of design sewage flow shall be provided.

7. Appropriate means, such as a V-notch weir, shall be provided for measurement of sewage flow. For installations having capacities of 100,000 gallons per day or more, indicating-recording-totalizing equipment is required.

8. Waste sludge holding tanks with a capacity of at least one cubic foot per capita shall be provided.

(m) Contact stabilization systems shall be designed in accordance with the following:

1. Screening equipment consisting of a comminuting device with a bar screen in parallel is required.

2. Combined volumes of the contact aeration and sludge reaeration tanks shall provide a detention period of at least nine hours based on design flow without recirculation.

i. Aerobic digester tanks shall provide a capacity of at least three cubic feet per capita.

ii. At a minimum, duplicate tanks shall be provided in sewage treatment plants with design capacities of 100,000 gallons per day or more.

iii. When anaerobic digestion is employed, the design of the drying beds must be in conformance with N.J.A.C. 7:14A-23.28.

3. Air blower equipment shall be at least in duplicate, and shall have capacity with the largest unit out of service to provide at least 1,600 cubic feet of air per pound B.O.D. of raw sewage for contact aeration sludge reaeration and aerobic digester requirements.

i. The proposed equipment shall provide for variation in the volume of air to be delivered in at least three steps.

ii. Additional air capacity shall be provided if required for air lifts or other needs. The air supply requirements stated in (j)1 through 9 above also apply to contact stabilization.

7:14A-23.22 Intermittent sand filters

(a) For intermittent sand filters, at least two filter units shall be provided.

(b) Sod and similar coverings over intermittent sand filters are prohibited.

(c) Loading requirements for intermittent sand filters are as follows:

1. Organic loading of five-day B.O.D. shall not exceed 3.8 pounds per 1,000 square feet per day;

2. With acceptable primary treatment of normal sewage, volumetric loading shall not exceed 2,875 gallons per 1,000 square feet per day. For stronger sewage the rate of filtration shall be proportionately lower.

3. For chemical coagulation and sedimentation the volumetric loading shall not exceed 5,750 gallons per 1,000 square feet per day.

4. For standard or high rate trickling filters or activated sludge followed by secondary settling tanks, the volumetric loading shall not exceed 9,200 gallons per 1,000 square feet per day.

5. For schools, camps, and institutions, not having a full-time treatment plant operating staff, volumetric loading should not exceed 1,150 gallons per 1,000 square feet per day for primary tank effluent.

(d) Intermittent sand filter media shall be in conformance with the following:

1. Clean graded gravel shall be placed in at least three layers over the entire floor of the bed and around the underdrains and to a depth of at least six inches. Grading for the three layers shall be 1½ inches to ¾ inch, ¾ inch to ¼ inch and ¼ inch to ⅛ inch.

2. Underdrains shall have maximum spacing not exceeding six feet and shall be at least four inches in diameter, or of equivalent area.

3. Pipes shall be laid on a firm base with open joints with a space of approximately ¼ inch between ends.

i. A single layer of muslin, cheese cloth, burlap or other suitable material shall be wrapped around each joint of open joint underdrains.

ii. Tar paper or other waterproof material may not be used.

iii. Perforated clay or other approved perforated pipe may be used for underdrains.

4. Sand with an effective size of 0.3 to 0.6 millimeters and a uniformity coefficient of not more than 3.5 shall be provided to a depth of at least 30 inches. The sand shall be free from clay, loam or silt.

(e) Intermittent sand filter dosing shall be in conformance with the following:

1. A dosing tank or its equivalent with a capacity to dose each filter at least twice a day shall be provided. Where practical, a dosing tank or equivalent shall have a maximum detention time of two hours based upon the design flow.

2. The dosing tank volume shall be such that each filter bed will be covered to a depth not less than two nor more than four inches with each dose.

3. Siphons shall have a discharge capacity, at minimum head, of at least 100 percent in excess of the maximum rate of inflow to the dosing tank, and at average head, at least one cubic foot per second per 5,000 square feet of each filter bed.

(f) Intermittent sand filter distribution shall be in conformance with the following:

1. A rotary distributor may be used if nozzles are adjusted so flow will not erode the sand bed.

2. Troughs or piping used for distribution of the settled sewage over the filter surface shall be so located that the maximum lateral travel distance is not more than ten feet. Provision shall be made at each discharge port for adjustment of the flow.

3. Splash slabs shall be provided at each point of discharge.

4. A drain opening from troughs or discharge piping shall be provided.

(g) The base of the filter shall be either enclosed with concrete or lined with a material that has a permeability no faster than 10^{-7} cm/sec.

(h) Rapid sand filter design shall be in conformance with the following:

1. The use of rapid sand filters may be considered where treatment beyond secondary treatment is required and where skilled operational personnel will be present.

2. In general, rates shall not exceed three gallons per square foot per minute; backwash facilities shall be provided; the sand bed should not be less than 20 inches in depth; and suitable underdrainage of graded gravel shall be provided.

3. Operating head on the filter shall not exceed eight feet.

(i) The use of micro-strainers is acceptable when additional treatment such as reduction in B.O.D. and suspended solids is required after secondary treatment and final settling, and will be considered when accompanied by an engineer's report that contains complete data on the installation and accompanied by suitable plans.

7:14A-23.23 Chlorination

(a) Chlorination devices shall be of the solution feed type, installed in duplicate or with duplicate essential parts. Chlorinators shall be of an automatic feed type for sewage treatment plants with a design capacity of greater than 150,000 gallons per day.

(b) Chlorinating devices shall be designed in accordance with the following:

1. The devices shall be placed in separate rooms with an outside entrance only and shall be provided with adequate ventilation.

2. Rooms containing chlorinating devices shall have doors that open outward.

3. Provisions for heating during the winter season are required.

4. Suitable gas masks shall be provided and maintained in good operating condition, and shall be stored in an accessible location outside the chlorine room.

5. An automatic alarm, or an observation window to permit visual inspection without opening the door, should be provided.

(c) For reduction in fecal coliform, a chlorine contact period of at least 30 minutes, based upon design flow, shall be provided in a separate baffled tank, and a contact period of not less than 20 minutes shall be providing during peak hourly flow. For reduction of enterococci or other pathogenic indicators increased contact periods and/or application rates may be required.

(d) Provisions shall be made for the thorough mixing of the disinfectant and the sewage before discharge to the chlorine contact tank.

(e) Scales shall be provided for determining chlorine consumed, and a suitable means for measuring residual shall also be provided.

(f) If hypochlorite feeders are provided, duplicate solution tanks each having at least 36 hours storage capacity are recommended.

(g) Automatic chlorinators with residual recorders and alarm systems to indicate chlorinator failures are required.

(h) Capacity of chlorinators shall be in conformance with the following:

1. For disinfection, the capacity of chlorinators shall be adequate to produce a concentration of residual chlorine in the effluent so as to dependably and consistently reduce the fecal coliform concentration to that specified in the applicable discharge permit. For normal domestic sewage the following minimum dosing capacities are required:

Type of Treatment	Dosage (Based on Average Design Flow)
Raw Sewage	30 ppm
Primary Sedimentation Effluent	20 ppm
Trickling Filter Plant Effluent	15 ppm
Activated Sludge Plant Effluent	10 ppm
Sand Filter Effluent	10 ppm

2. For reduction of enterococci or other pathogenic indicators increased contact periods and/or application rates may be required.

7:14A-23.24 Dechlorination

(a) Dechlorination chemicals shall be applied in an area where the flow is turbulent and short circuiting is minimal, immediately preceding discharge of the effluent. A contact period of one to five minutes is recommended.

(b) If sulfur dioxide is utilized for dechlorination, safety precautions similar to those for chlorination systems are required, including the provision of self-contained breathing apparatus. Steps shall be taken to prevent the accidental interconnection of chlorine and sulfur dioxide lines to avoid an explosion hazard.

7:14A-23.25 Ultraviolet disinfection

(a) The following provisions apply to the design of ultraviolet disinfection (UV) systems:

1. The turbidity and color of the wastewater shall be addressed in the design. Treatment of the influent wastewater prior to the UV units by intermittent sand filtration, or other filtration, as approved by the Department, is recommended. Removable screens, located upstream of the UV unit, are recommended to prevent debris from entering the system.

2. Wastewater shall pass over the UV source in a thin film, so that the maximum depth of penetration is no greater than two inches. The UV contact time shall be dictated by water absorbance and film thickness.

3. A UV intensity sensor shall be installed at the maximum depth from the source with an alarm to alert operators when the UV level falls below acceptable levels. The UV intensity reading shall be displayed by a meter on the control panel. UV sensors shall be properly maintained to insure reliable, accurate readings.

4. The UV unit shall be protected from dust, excessive heat, and freezing temperatures. Adequate ventilation of heat-generating electrical components shall be provided.

i. An alarm system shall be provided to alert the operator of excessive temperatures in the ballast power panel.

5. When utilizing a closed channel UV system two separate units, or one UV unit and another approved form of disinfection, each capable of treating peak flow, shall be provided.

6. Open channel UV systems shall be equipped with a sufficient number of bulbs such that a safety factor of at least 125 percent will be provided. Separate electrical racks shall also be provided to permit maintenance of the system without removing the entire unit from service.

7. Electrical wiring shall be properly sized and the wire covering shall be resistant to UV radiation effects.

(b) UV lamps/sleeves shall be chemically cleaned semi-annually if automatic wipers are present, or three to four times per year if automatic wipers are not present. A clean water supply equipped with a back flow prevention device shall be available at all times.

(c) UV bulbs shall be replaced when dead life occurs (60 percent of initial emission).

7:14A-23.26 Sludge digestion and management

(a) The Department does not examine plans covering fire and explosive hazards, heat controlling equipment or safety devices and such safeguards are the responsibility of the design engineer.

(b) Supernatant liquor from sludge digestion tanks shall be returned downstream of the influent monitoring points to the raw sewage except that at activated sludge plants, or other plants utilizing air as a method of biological treatment, provisions may be made for disposal in aeration or reaeration tanks. The wastewater treatment facility shall be designed to treat the increased pollutant concentration and hydraulic loading of the supernatant or means shall be provided for separate treatment.

(c) The minimum diameter of all sludge pipes shall be eight inches for gravity flow and six inches for sludge pumping.

(d) A fresh-water hydrant near the sludge digestion tanks is recommended, and, if present, shall be provided with a suitable backflow-prevention device.

(e) Provisions shall be made for the introduction of chemicals into all sludge storage or digestion tanks.

(f) Digesters which are proposed to be utilized to satisfy stabilization requirements shall be designed to meet the requirements of a Process to Significantly Reduce Pathogens as defined in 40 CFR 257 and in Part 4-I of the Statewide Sludge Management Plan or equivalent criteria established under 33 U.S.C.A. §§1251 et seq.

(g) Sludge digestion tanks shall be in conformance with the following:

1. Two or more separate units shall be provided, a single digestion tank may be approved if the plan and report show all emergency provisions and the proposed use is for small installations (design capacity of less than 150,000 gpd) where alternate sludge storage is available for emergency use without creating a local nuisance, and where pumps and piping are available for such emergency.

2. Suitable equipment to insure mixing or circulation of the tank contents shall be provided for primary digesters.

3. The proportion of tank depth to area shall be such as to permit the formation of a reasonable depth of supernatant liquor.

4. Tank bottoms shall slope toward the withdrawal pipe not less than three inches per foot. Flat bottom tanks will not be approved.

5. At least two access manholes of adequate size shall be provided in the top of the digester in addition to the gas dome. An access manhole in the side wall of the tank is recommended.

6. In the case of multiple tanks, a provision shall be made to direct the raw sludge to any tank. In circular tanks the raw sludge inlet shall be at a point that is removed from the overflow or supernatant draw-offs by a distance at least equal to the radius of the tank. In rectangular tanks the raw sludge inlet shall be at the opposite end from the overflow and digested sludge draw-off lines.

7. An emergency overflow shall be provided. Provisions shall be made for sampling and removal of supernatant from several levels.

8. Means shall be provided for sampling of digested sludge in accordance with N.J.A.C. 7:14A-23.14. Digested sludge withdrawal piping shall extend from the center and bottom of circular tanks.

Means shall be provided for backflushing digested sludge withdrawal piping. Adequate transfer piping shall be provided.

9. Unheated primary anaerobic digestion tanks will not be approved.

10. The mixing of the contents of anaerobic digesters by air is prohibited.

(h) Separate sludge digestion capacity shall be in conformance with the following:

1. Separate sludge digestion capacity shall be as follows, unless acceptable justification is submitted for an alternate design:

Type of Plant	Minimum Cubic Feet per Capita
Primary	2 to 3
Primary plus standard filter	2.5 to 3
Primary plus high rate filter	3 to 4
Chemical coagulation	4 to 6
Activated sludge	4 to 6

2. Larger volumes of sludge digestion capacity shall be provided for smaller plants.

3. The sludge digestion capacity shall be increased when industrial wastes and/or garbage solids are present, and may be reduced if the sludge is thickened. Volumes shall be computed on the basis of the bottom sloping up 30 degrees from the horizontal unless mechanical sludge collection is employed.

(i) Anaerobic digestor gas collection shall meet the following general requirements:

1. Waste gas burners shall be provided for excess gas.

i. Burners shall be placed at least 25 feet away from structures if placed at ground level, or may be located on roofs of buildings provided they are remote from digestion tanks.

ii. Burners shall be equipped with pilot lights and means for igniting manually, and shall be equipped with flame traps.

2. All enclosures containing gas piping or apparatus shall be equipped with forced draft ventilation either of the wind-driven or motor-operated type. If of the motor type, the design shall be such that the motor does not come in contact with gases; or spark-proof motors shall be used.

3. A gas meter shall be provided and a bypass installed.

4. Boilers utilizing gas shall be located in a separate enclosure having adequate means of ventilation and preferably located at ground level.

5. All gas lines shall have suitable flame traps and other safety equipment.

(j) Anaerobic digestor heating shall meet the following general requirements:

1. Preference shall be given to means of external heating by means of a heat exchanger. Heating capacity shall be adequate to maintain sludge at 85 to 95 degrees Fahrenheit at all times. Suitable controls shall be provided for automatic operation.

2. Thermometers shall be provided to show temperatures of sludge in the digester, and the sludge going to and from the heat exchanger. Thermometers shall also be provided to show the temperature of the water going to and from the heating coils or heat exchanger.

3. An auxiliary fuel shall be provided, such as oil or commercial gas.

7:14A-23.27 Sludge pumps

(a) Duplicate sludge pumps shall be provided and shall be so arranged with appropriate valves such that either may be used, in emergencies, for handling either raw or digested sludge.

(b) The capacity of each pump for handling raw sludge shall be such as to remove sludge from hoppers of settling or concentration tanks in not less than one hour nor more than two hours. Pump capacity shall be adjustable.

(c) A minimum positive head of 24 inches shall be provided at the suction side of centrifugal pumps and is desirable for all types of pumps. Maximum dynamic suction lift of plunger pumps shall be 10 feet.

(d) Sludge sampling facilities shall be provided in accordance with N.J.A.C. 7:14A-23.14. The size of valve and piping shall be at least 1½ inches.

(e) Pressure gauges shall be provided on the discharge line of sludge pumps to denote pumping and to indicate unusual discharge heads due to clogging.

7:14A-23.28 Drying beds for residuals

(a) The following table of requisite areas applies to domestic sewage, the sludge of which is digested by an anaerobic method. Based upon the physical and chemical characteristics of the residual (for example, domestic/industrial, solids concentration, and/or method of prior stabilization) appropriate adjustments can be made to the following table. Written justification for any adjustments or alternative designs shall be provided in the engineer's report. However, under most circumstances drying beds will not be approved for dewatering unstabilized sewage sludge unless appropriate provisions to control odors have been included.

	Area in sq. ft./capita	
Type of Treatment	Open Beds	Glass Covered Beds
Primary	1.50	60 percent
Standard Rate Filter	1.75	of the area
High Rate Filter	1.75	of open
Activated Sludge	2.00	beds
Chemical Precipitation	2.25	

(b) The following are minimum requirements governing the design of drying beds and phragmites reed beds:

1. Not less than two beds or compartments shall be provided;

2. For conventional sand drying beds:

i. Gravel shall be at least 12 inches deep with the top at least six inches above underdrains. Gravel shall be graded from ⅛ to one inch in effective diameter; and

ii. Depth of sand shall be at least six inches and shall consist of clean coarse sand.

3. All drying beds shall be provided with underdrains of bell and spigot vitrified clay tile pipe, porous tile, perforated pipe, or other suitable material or drainage. Lateral drains shall be at least four inches in diameter laid with open joints. Burlap or similar material shall be provided around joints. Drains shall be spaced not more than eight feet apart on center and have a minimum slope of one percent.

4. The permeability of the bottom and side walls shall not be greater than 1×10^{-7} cm/sec and shall extend 15 to 18 inches above the sand surface. Walls shall be at least six inches above the surrounding ground elevation to prevent soil from washing on beds;

5. Means shall be provided to facilitate the removal of dried sludge from drying beds;

6. Influent piping shall provide for uniform distribution of residuals across the entire drying bed area. Splash slabs shall be provided.

7. Residual bed effluent shall be treated and suitable means shall be provided for the satisfactory management of the residual cake.

8. The capacity of the beds shall be sufficent to process the residuals generated to prevent any day to day accumulations.

9. Drying beds proposed to be utilized to satisfy stabilization requirements shall be designed to meet the requirements of a Process to Significantly Reduce Pathogens (as defined in 40 CFR 257 and in Part 4-I of the Statewide Sludge Management Plan) or equivalent criteria established under 33 U.S.C.A. §§1251 et seq. For Phragmites reed beds, a minimum capacity to allow three weeks between loadings to the same bed at the projected sludge production shall be provided. Additional capacity to allow for bed evacuation is recommended.

7:14A-23.29 Residual dewatering lagoons

(a) The use of lagoons for the drying of residuals is permissible provided that:

1. The lagoons shall be sufficiently isolated from existing and possible future residences as to afford such residences reasonable

protection from odors or other nuisances which may arise from the operation of such lagoons;

2. The permeability of the bottom and sides of the lagoon shall not exceed 1×10^{-7} cm/sec, for solid waste classes I.D. 12, 73, and 74 as defined by N.J.A.C. 7:26-2.13(g). For other solid waste I.D. classes of residuals, the bottom and side permeability shall be approved by the Department, on a case-by-case basis, after evaluating the specific chemical characteristics of the residuals to be dewatered;

3. The area provided shall be at least double that specified for open drying beds, and a sufficient number of lagoon units shall be available to permit withdrawals from service and cleaning at necessary intervals. The means provided for residual removal, ultimate management and resting intervals shall be indicated;

4. Shallow residual dewatering lagoons shall meet the requirements of N.J.A.C. 7:14A-23.32(d);

5. Residuals shall be properly stabilized prior to discharge to the lagoon as defined at 40 CFR 257 and in Part 4-I of the Statewide Sludge Management Plan or equivalent criteria established pursuant to 33 U.S.C.A. §§1251 et seq.; and

6. Means shall be provided for obtaining representative samples of the residual prior to discharge to the residual lagoon pursuant to the measuring, recording, and sampling requirements in N.J.A.C. 7:14A-23.14.

7:14A-23.30 Mechanical dewatering of residuals

(a) For installations where residuals are mechanically dewatered, mechanical dewatering equipment shall be provided in duplicate unless nuisance-free storage of residuals is provided in a manner approved by the Department.

1. Duplicate installation shall include duplicate conditioning equipment, conveyors, feeders and other appurtenances.

2. Capacity shall be sufficient to process the residuals generated to prevent any day-to-day accumulation.

3. The engineer's report shall include complete data on capacity, residual volume to be handled, conditioning methods, and equipment, chemical storage and satisfactory management of residual cake.

4. The plans shall show provisions for housing the dewatering equipment, for ventilation and odor control, for handling and/or loading the residual cake and the area and method proposed for ultimate management.

5. Filtrate collection and treatment shall be provided and indicated.

7:14A-23.31 Stabilization of residuals

(a) All residuals stabilization equipment shall be designed to meet the requirements of 40 CFR 257 and Part 4-I of the Statewide Sludge Management Plan or equivalent criteria established pursuant to 33 U.S.C.A. §§1251 et seq.

(b) Residual composting operations, or expansions shall be designed in accordance with the following requirements:

1. Active composting and curing operations shall be enclosed and vented and shall be in compliance with the Department's air pollution control rules at N.J.A.C. 7:27.

2. All transfer conveyors and associated equipment shall be constructed of fire resistant materials.

3. Composting systems shall be designd to achieve a minimum total solids content of 40 percent in dewatered sludge and bulking agent mixtures prior to the commencement of composting.

4. Composting systems shall be designed to produce a sludge derived product that has a final solids content between 50 and 60 percent.

5. The aeration system shall be designed to distribute oxygen evenly throughout the composting mass, to maintain aerobic conditions, and to control temperatures within acceptable ranges in active composting pursuant to 6 below.

6. Aeration equipment shall, at a minimum, be capable of delivering 350 cubic feet per minute per dry ton of composting mass during active composting. The Department may accept the operation of high rate aeration equipment at lower rates of air supply where the permittee can demonstrate that the composting temperature range is between 55 degrees Celsius and 65 degrees Celsius for three days pursuant to 40 C.F.R. Part 257 and between 45 degrees Celsius and 65 degrees Celsius thereafter to assure the activity of decomposition microbes.

7. For design purposes, the capacity of equipment shall be based upon the assumption that ninety percent of the bulking agent utilized in the residual only composting process will be wood chips within a range of two inches × two inches × 0.5 inch and 1.25 inches × 1.25 inches × 0.25 inch. Where other bulking agents are to be used in the process, the engineering report shall address equipment capacity and the suitability of the alternative bulking agent.

8. In vessel compost processes which utilize wood chips as a bulking agent shall be designed such that a minimum of 95 percent of the bulking agent specified will pass through a number four mesh screen and a minimum of 95 percent will be retained by a number eight screen.

9. The design of the temperature monitoring system shall be capable of demonstrating compliance with the temperature requirements stated in (b)6 above, or equivalent criteria established under 33 U.S.C.A. §§1251 et seq.

10. Leachate collection and treatment shall be provided.

11. Equipment capable of adequately mixing bulking agent and dewatered sludge to the desired porosity, structure, and moisture content prior to composting shall be provided.

12. Dewatering equipment shall be designed to provide the proper residual solids content for effective composting.

13. Storage capacity for six months production of compost product shall be provided, unless suitable alternative contingency arrangements, as acceptable to the Department, are demonstrated.

14. The total time for active composting, curing and product storage shall not be less than 90 days, of which 10 to 21 days shall be active composting and 30 days shall be curing.

15. The maximum height of a static pile shall not exceed seven feet.

16. Compost and curing pads shall provide for drainage away from piles and shall have a minimum slope of two percent.

17. Screening equipment shall be sized to screen the total annual compost production within a six month period.

18. Curing pile designs shall provide aeration either through the installation of aeration equipment, or through mechanical turning at least two times per week. For compost curing on pads, the maximum height of the curing piles shall not exceed 10 feet.

7:14A-23.32 Storage of residuals or septage; and septage handling

(a) All new, upgraded, or expanded domestic treatment works shall be designed to provide adequate residuals storage capacity based on anticipated downtimes (that is weather, maintenance closures, etc.) of the ultimate residual management alternative. This design shall insure the continual, uninterrupted operation of all residual production/processing activities when the ultimate residual management alternative cannot be utilized.

(b) The design of sludge or septage storage facilities shall:

1. Prevent overtopping from normal or abnormal operations, overfilling, wind and wave action, precipitation, run-on and run-off, malfunctions of equipment, and human error;

2. Specify materials that have the appropriate physical and chemical properties, wall thickness, and structural integrity to prevent massive failure due to climatic conditions, pressure gradients, and daily operational stresses;

3. Provide for the periodic removal of stored residuals, cleaning, and inspection;

4. Prevent the migration of residuals to ground water and/or surface waters;

5. Provide for adequate collection and treatment of supernatant or leachates where applicable;

6. Permit residuals sampling and collection pursuant to N.J.A.C. 7:14A-23.14; and

7. Include overflow prevention devices and/or high level alarms and automatic shut off valves on influent lines.

(c) Slurry tanks shall be designed to provide for mechanical mixing equipment capable of homogenizing stored residuals for removal and sampling.

(d) Surface impoundments shall be designed in accordance with the following conditions:

1. A depth indicator (gauge) which indicates residuals quantities in storage shall be provided.

2. A fence shall be provided around the surface impoundment to prevent unauthorized access or entry.

3. Surface impoundment liners shall conform to the following design requirements:

i. The permeability of the liner materials shall be no greater than 1×10^{-7} cm/sec for the material being contained. Permeability shall be determined by utilizing the liquid portion of the intended contents to be stored.

ii. The liner shall be adequately supported by a foundation or base so as to resist any pressure gradients that may cause settlement, compression, or uplift.

iii. Liners shall be of materials that are capable of resisting failures caused by: pressure gradients, including static head and hydrogeologic forces, physical contact with the contents, climatic conditions, and stresses associated with installation and daily operations.

4. The design shall provide for a minimum freeboard level of two feet.

5. Mechanical mixing equipment capable of homogenizing stored residuals for removal and sampling shall be provided.

6. When flow is to, from, or between impoundments, all interconnections shall be piped or lined with an impervious material and other appropriate safeguards to prevent both the degradation/erosion of impoundment banks or dikes, and discharges to groundwater.

7. Surface impoundments shall be utilized to store only stabilized residuals that have met the stabilization requirements for pathogen reduction and vector attraction specified in 40 CFR 257 and Part 4-I of the Statewide Sludge Management Plan or equivalent criteria established under 33 U.S.C.A. §§1251 et seq.

8. Surface impoundments require an application be submitted for a NJPDES permit for potential groundwater discharges pursuant to N.J.A.C. 7:14A-10.7.

(e) Bunker silos, pads, and storage sheds shall be in conformance with the following:

1. The storage surfaces of bunker silos, pads, and storage sheds shall be designed with a minimum slope of two percent to permit the drainage of leachate away from storage piles for collection and treatment.

2. The management and treatment method for the drainage from bunker silos, pads or storage sheds shall be indicated.

3. Storage surfaces shall be constructed of reinforced concrete, asphalt, or other suitable material capable of preventing discharges to groundwater.

(f) Septage handling/receiving facilities shall be designed to provide the following:

1. An unloading ramp for the haul trucks with a hard surface sloped to a drain to facilitate the cleaning of any spillage and washing the haul truck, connector hoses, and fittings. The ramp drainage shall be a tributary to treatment facilities and shall exclude excessive stormwater;

2. A flexible hose fitted with an easy connect coupling to provide a direct connection from the haul truck to the receiving facility;

3. Washdown water with adequate pressure, a hose, and a spray nozzle for cleaning the receiving station and the haul trucks. If a potable water source is utilized, it shall be protected with a suitable backflow prevention device;

4. An adequate off-line septage receiving tank which allows for the collection of representative samples from any truckload of waste accepted for discharge at the wastewater treatment plant. The receiving tank shall be designed to provide complete draining and cleaning by means of a sloped bottom equipped with a drain sump. The design shall also provide for adequate mixing, testing, uniform septage strength, and chemical addition for treatment or odor control purposes;

5. Screening, grit, and grease removal as appropriate to protect downstream treatment units;

6. Valving and piping designed with sufficient operational flexibility so as to control the flow rate and point of discharge of septage to the wastewater treatment plant;

7. Laboratory facilities for determining septage strength and/or toxicity to the wastewater treatment processes; and

8. Any pumps provided for the handling of septage shall be of the non-clogging design and shall be capable of passing three inch diameter solids.

7:14A-23.33 New treatment methods and technologies

(a) Designs for new treatment methods or for methods not included in these rules shall be accompanied by detailed supporting data from full scale tests performed under competent supervision. In evaluating the acceptability of applications for new treatment methods, or for technologies not included in these rules, the Department shall utilize the best available information including, but not limited to, texts, reports and U.S. Environmental Protection Agency publications that contain research, test, and design information relevant to the applicant's proposal.

(b) The Department may disapprove new treatment methods if in its opinion such disapproval is in the interest of environmental protection.

7:14A-23.34 Closure requirements for wastewater treatment units

(a) This section applies to any and all wastewater and sludge facilities and equipment permanently removed from use or operation including, but not limited to, wastewater treatment plants, collection systems, pump stations, holding tanks, sludge digesters, and sludge dewatering equipment. The intent of this section is to protect public safety and health and to assure that no contamination of ground or surface water will occur as a result of removing such facilities and equipment for service either through the act of closure or through continuing the discharge of pollutants into or through the equipment; or through leaking, leaching, or discharge of pollutants from wastewater or residuals remaining in facilities or equipment which has been removed from use but remains on site.

(b) The closure of a wastewater treatment facility or equipment means either the termination of the source of wastewater or sludge, or the permitted conveyance of wastewater or sludge to an alternate location (such as a regional facility) in such a manner that no further treatment storage or conveyance of wastewater or sludge is performed by the facility.

(c) Wastewater treatment works closures shall conform with the following procedures:

1. On or before 60 calendar days prior to taking the facility or certain operating equipment out of service a permittee shall:

i. Submit to the Division of Facility Wide Enforcement the following information concerning closure activities:

(1) The date the facility will cease operation or the date that discharge to specific operating equipment will cease;

(2) The date the influent and effluent pipes will be sealed;

(3) Proof of submission to the Wastewater Facilities Regulation Program, plans (signed and sealed by a New Jersey licensed professional engineer) for final disposition of the physical facilities, including all treatment units, outfall line, and all mechanical and electrical equipment and piping;

(4) Proof of submission to the Wastewater Facilities Regulation Program, plans (signed and sealed by a New Jersey licensed professional engineer) for elimination of all equipment and/or conditions that could possibly pose a safety hazard, either during or after shut-down of operations;

(5) Verification that there are no lines in the collection system which are cross connected (receiving both sanitary and storm water) or which do not contain adequate conveyance capacity as defined in N.J.A.C. 7:14A-1.9;

(6) The name of the licensed individual responsible for the maintenance and operation of the wastewater pumping station and/or wastewater collection or treatment systems that are still to be maintained; and

(7) A request for a site inspection to verify cessation of the discharge. The Division of Facility Wide Enforcement may be contacted by writing to:

Director
Division of Facility Wide Enforcement
CN 029
Trenton, New Jersey 08625-0029
Attn: Water & Hazardous Waste Enforcement; and

ii. Notify the Wastewater Facilities Regulation Program, in writing, concerning any deactivated lagoons or other actual or potential discharges to ground water which may exist at the site. The Wastewater Facilities Regulation Program may be contacted by writing to:

Administrator
Wastewater Facilities Regulation Program
CN 029
Trenton, New Jersey 08625-0029

2. Proper management and/or removal of all residual materials (collected grit and screenings, scums, sand bed material, and dried or liquid sludges), as well as filter media, and all other solids from the treatment process that may remain in the abandoned treatment works is required.

i. The permittee shall submit to the Wastewater Facilities Regulation Program proof of ownership of or contractual arrangement with an operation or operations permitted to manage all such waste materials. A contract with a hauler will only be accepted as proof of proper waste management if documentation of management at an approved site or sites is included. In addition, all necessary State or Federal permits/approvals must accompany the submission.

ii. Sludge quality assurance reports which are representative of the sludge removed following closure shall be submitted. Where quality information is not available, new samples shall be obtained and analyzed upon closure. All sludge samples and analyses shall be prepared in accordance with the Sludge Quality Assurance Regulations, N.J.A.C. 7:14-4.

iii. All residual material shall be removed within 180 calendar days after the facility is taken out of service. Proof of proper residuals management shall be submitted to the Wastewater Facilities Regulation Program within 30 calendar days after their removal. The dates of removal and quantities removed shall be specified.

3. Upon completion of closure activities, a permittee must complete a "Certification of Closure" form (form can be obtained by contacting the Division of Facility Wide Enforcement) which will provide certification that all waste materials have been properly managed, and that the remaining components of the facility have been properly secured regarding public health and safety. This form shall be completed after closure activities cease, signed in the presence of a Notary Public, and submitted to the Wastewater Facilities Regulation Program. Incomplete Certifications of Closure are unacceptable and will be returned to the permittee.

(d) Upon satisfaction of closure requirements specified in (c) above, the Division of Facility Wide Enforcement shall be contacted, in writing, to schedule a final site inspection.

(e) Upon satisfactory completion of the items specified in (c) and (d) above, an "Application for Termination" (application may be obtained from the Division of Facility Wide Enforcement) from the New Jersey Pollutant Discharge Elimination System shall be completed and submitted to the Wastewater Facilities Regulation Program, Bureau of Permit Management with a copy to the appropriate permitting bureau. The application form includes information concerning the facility, its NJPDES permit number, the nature of the discharge, and a certification to the effect that the closure has been performed in accordance with all submissions made to the Department. Applications received before completion of items (c)1 through 3 above, shall not be processed and shall be returned for resubmission upon satisfactory completion of all closure requirements by the permittee.

7:15-5.18 Future wastewater jurisdictions, service areas, and domestic treatment works

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

(f) The wastewater management plan shall document the basis for the estimated flows attributed to residential, commercial, and industrial sources under (d)8 and (e)3 above. Where actual, accurate gauging is available for a sewer system already in existence, such gauging shall be used in preparing these flow estimates, with an allowance for future changes in wastewater flow. There shall be a reasonable relationship between these flow estimates and sewer service areas identified under (c)4 and 5 above. There shall be a reasonable relationship, consistent with (b) above, between these sewer service areas and residential, population estimates under (d)7 and (e)2 above. [The average domestic flow from new residences, exclusive of other flow such as industrial flow, commercial flow, and infiltration/inflow, shall be assumed to be 65 gallons per capita per 24-hour period, except that values different than 65 gallons may be considered for this purpose when supported by adequate engineering data.] **The average domestic flow from new development, exclusive of industrial flows, shall be calculated utilizing the projected flow criteria found at N.J.A.C. 7:14A-23.3. In instances where future specific residential dwelling types are unknown, the residential flow calculation may be computed using 75 gallons per capita per day. No additional provisions for inflow and infiltration shall be made as the above flows include allowances for inflow and infiltration.**

(g)-(i) (No change.)

(a)

OFFICE OF AIR QUALITY MANAGEMENT

Enhanced Inspection and Maintenance Program

Proposed Amendments: N.J.A.C. 7:27-15.1, 15.2, 15.4 through 15.8 and N.J.A.C. 7:27B-4.1, 4.5, 4.6 and 4.7

Proposed New Rules: N.J.A.C. 7:27-15.9 and 15.10 and N.J.A.C. 7:27B-4.8, 4.9 and 4.10

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

Authority: N.J.S.A. 13:1B-3(e), 13:1D-9, 26:2C-8 et seq., specifically 26:2C-8 and 8.1 through 8.5, and sections of P.L. 1993, c.69.

DEPE Docket Number: 42-93-07/199.

Proposal Number: PRN 1993-422.

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

September 17, 1993 at 10:00 A.M. at:
Department of Treasury
War Memorial Building
John Fitch Way
Trenton, New Jersey 08625

Please note: One hour prior to the public hearing, DEPE and the Division of Motor Vehicles (DMV) personnel will be available at the War Memorial Building to answer questions on the proposal. This question and answer period will **not** be part of the public record, however, the public is encouraged to ask questions on this highly technical proposal and subsequently provide written or oral comment.

Submit written comments, identified by the document number given above, by September 24, 1993 to:

Janis Hoagland, Esq.
Office of Legal Affairs
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

A number of documents have been cited within this notice as references or as documents being incorporated by reference. Copies of these documents may be requested from:

Dave West, Chief
Bureau of Transportation Control
Office of Air Quality Management
Department of Environmental Protection and Energy
CN 411
Trenton, N.J. 08625

Copies of the documents incorporated by reference may also be obtained from the Office of Administrative Law.

These new rules will become operative 60 days after adoption by the Commissioner (see N.J.S.A. 26:2C-8).

The agency proposal is set forth below. It contains six major components: a "Summary" section which describes the purpose and scope of proposed rules, a "Social Impact" section which describes the anticipated social effects of the proposed rules, an "Economic Impact" section which sets forth the anticipated costs and benefits of the proposed rules, an "Environmental Impact" section which sets forth the anticipated emission reductions to be obtained, a "Regulatory Flexibility" section which examines the effect of the proposed rules on small businesses, and a full statement of the text of the proposed amended rules.

Summary

The Department of Environmental Protection and Energy (Department) is proposing to amend and add new rules to N.J.A.C. 7:27-15 (Subchapter 15—Control and Prohibition of Air Pollution from Gasoline-Fueled Motor Vehicles) and N.J.A.C. 7:27B-4 (Subchapter 4—Air Test Method 4: Testing Procedures for Motor Vehicles), its rules governing standards and testing procedures for the inspection of gasoline-fueled motor vehicles.

The primary purpose of the proposed amendments and new rules is to reduce emissions of air pollutants from gasoline-powered motor vehicles as part of New Jersey's overall effort to attain and maintain National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO) and ground-level ozone. Motor vehicles have been determined to be significant contributors of carbon monoxide, volatile organic compounds (VOCs) and oxides of nitrogen (NO_x). In the presence of sunlight, VOCs, NO_x and other compounds in the ambient air react to form ozone. Ozone is a known respiratory irritant and may significantly reduce the yield of important food crops. Ozone also causes degradation of paints, plastics, textiles and rubber.

In addition to their participation in the formation of ozone, NO_x alone exhibit serious human health effects. Although nitric oxide (NO) itself is a relatively nonirritating gas, it is rapidly oxidized to nitrogen dioxide (NO_2), which can damage respiratory defense mechanisms, allowing bacteria to proliferate and invade the lung tissue. Carbon monoxide is a poisonous gas at certain threshold levels. It is absorbed into the bloodstream and may have both direct and indirect effects on the cardiovascular system. A detailed description of the public health problems and damage to natural resources and property associated with increased levels of ozone, NO_x and carbon monoxide is presented below under the Social Impact and Environmental Impact statements.

These proposed amendments and new rules are mandatory under the Clean Air Act (CAA), 42 U.S.C.A. §7401 et seq., as amended by the Clean Air Act Amendments of 1990 (CAAA), Pub.L. 101-549, November 15, 1990. Pursuant to the CAA, the United States Environmental Protection Agency (EPA) has established NAAQS for ozone and carbon monoxide as .12 parts per million (ppm) (1-hour average) and nine ppm (eight-hour average) or 35 ppm (one-hour average), respectively. 42 U.S.C.A. §7409(a)(1), 40 C.F.R. Part 50. CAA requires certain areas which have failed to achieve the NAAQS to submit a State Implementation Plan (SIP) to the EPA which describes an enforceable plan for achieving and maintaining those standards within a prescribed time frame. 42 U.S.C.A. §7410.

New Jersey is subject to this requirement because it has not attained the NAAQS for ozone virtually Statewide, or for carbon monoxide in certain urban areas. The EPA has designated 18 of the State's 21 counties as being in "severe" nonattainment for ozone, based upon levels more than 50 percent above the NAAQS, that is, with a design value of 0.180 up to 0.280 ppm, in those areas. (Warren County is classified as marginal, that is, with a design value of 0.121 up to 0.138 ppm, and Atlantic and Cape May Counties are classified as moderate, that is, with a design value of 0.138 up to 0.160 ppm).

The CAAA further direct states in which serious or worse ozone nonattainment areas are located (New Jersey's 18 counties in severe nonattainment for ozone are worse than serious) to revise their SIPs to provide for an Enhanced Inspection and Maintenance (I/M) Program to reduce hydrocarbon (HC) and NO_x emissions from in-use motor vehicles registered in each urbanized area (in the nonattainment area) as defined by the Bureau of the Census, with a 1980 population of 200,000 or more. CAA section 182(c)(3). In addition, the CAAA mandates that a state that is in an ozone transport region (as is New Jersey) provide for an enhanced I/M program in each area that is a metropolitan statistical area or part thereof with a population of 100,000 or more. CAA section 184(b)(1)(A). The Department, in cooperation with the Division of Motor Vehicles (DMV), is proposing to implement an enhanced I/M program Statewide.

The proposal to go Statewide, as opposed to county by county, represents an effort to mitigate implementation and administration difficulties and to increase air quality benefits. The DMV is publishing pre-proposed new rules elsewhere in this issue of the New Jersey Register, in accordance with Title 39 et seq., which will establish operational procedures of the enhanced I/M program including inspection frequency, inspector training, registration and compliance enforcement.

On November 5, 1992, EPA, as required by section 182 of CAAA, published its final rule regarding enhanced I/M programs (40 C.F.R. part 51) (Reference #1). Specifically, 40 C.F.R. §51.373 provides that enhanced I/M programs shall be implemented as expeditiously as practicable. It provides further that enhanced I/M programs shall be implemented by January 1, 1995, but that, in the case of a switch from an existing test-and-repair network to a test-only network (as is being proposed in New Jersey), the State may phase-in the change between January of 1995 and January of 1996. The Department proposes that the enhanced I/M program become operative on January 1, 1995.

The amendments proposed in this rulemaking do not pertain to the inspection of diesel-powered vehicles. Amendments to standards and test procedures for diesel-powered vehicles at N.J.A.C. 7:27-14 will not be proposed at this time.

New Jersey first implemented I/M standards for light-duty gasoline vehicles (under 6000 pounds) on February 1, 1974. On July 1, 1983, the State phased in enhancements to the vehicle inspection program. These enhancements included tighter emission standards for light and heavy-duty vehicles and emission component inspections. In addition, the DMV began to license private reinspection centers as official inspection stations on a temporary basis. This designation eventually became permanent, thus creating the current hybrid design of Private Inspection Centers (PICs) and State-operated, centralized inspection stations under which the motorist has the option of having either an initial inspection or retest conducted by a PIC or a State station.

The following is a summary of the program design elements of the current New Jersey I/M program:

1. Network type: hybrid inspection system—80 percent of motorists use the centralized (State-operated lanes) and 20 percent use the decentralized (PICs); vehicle fleets in the State of 10 or more vehicles may use on-site inspection services when licensed by the State as a private inspection center;
2. Test frequency: annual;
3. Model year coverage: testing of all model years of vehicles;
4. Vehicle type coverage: all gasoline-powered light-duty and heavy-duty motor vehicles, except historical vehicles and motorcycles;
5. Exhaust emission test type: concentration measurements of carbon monoxide and HC from the vehicle exhaust with the engine running at a curb idle;
6. Emission Standards: post-1980 vehicles are subject to standards of 1.2 percent carbon monoxide and 220 ppm HC; previous years are subject to less stringent standards;
7. Emission control device inspection: visual inspection of the catalytic converter and fuel inlet restrictor on all 1975 and later model year vehicles;
8. Stringency: the program is designed for a 20 percent failure rate of pre-1981 model year vehicles for the initial emissions test;
9. Waiver rate: no waivers are issued;
10. Compliance rate: windshield sticker surveys indicate that about 96 percent of the vehicles eligible for inspection are actually inspected on time;
11. On-road testing: The program includes on-road testing of one percent or 40,000 motor vehicles as a supplement to the periodic inspec-

tion. The on-road test procedure is the same as the annual inspection test.

The EPA established an emission reduction performance standard in its enhanced I/M regulations at 40 C.F.R. §51.351. The performance standard is expressed in terms of reduced emission levels to be achieved from highway mobile sources as a result of the implementation of the enhanced I/M program. New Jersey's enhanced I/M program design must meet or exceed this minimum performance standard, and be submitted as part of a SIP revision by November 15, 1993. Compliance with the performance standard is determined through computer modeling of the program parameters using the most current version of the EPA's mobile source emission factor model available at the time of SIP submission. The EPA has based the enhanced I/M performance standard on the following program design:

1. Network type: centralized inspection system, all testing must be performed at test-only State, State-licensed or State-authorized contractor-operated inspection lanes;

2. Enhanced inspections starting by January, 1995 of at least 30 percent of the subject vehicle fleet with full program implementation by January 1, 1996;

3. Test frequency: annual, although the EPA regulation at 40 C.F.R. §51.355(a) indicates other schedules may be approved if the required emission targets are achieved. EPA strongly recommends that States implement biennial test programs if they can demonstrate such equivalency.

4. Model year coverage: testing of 1968 and later vehicles;

5. Vehicle type coverage: light-duty gasoline vehicles and light-duty gasoline trucks, rated up to 8,500 pounds gross vehicle weight rating;

6. Exhaust emission test type:

a. Transient, mass emission testing on 1986 and later model year vehicles using the IM240 driving cycle;

b. Idle and 2500 RPM testing of 1981-1985 vehicles; and

c. Idle testing of pre-1981 vehicles;

7. Emission Standards: exhaust emissions from 1986 and newer vehicles will be measured in terms of mass (grams per mile) rather than concentration (percent or parts per million); in addition to measuring HC and CO, the test will now also measure oxides of nitrogen (NO_x);

1994 and later vehicles meeting the federal Tier I vehicle standards will be subject to more stringent standards;

1981-1985 vehicles will be subject to the current 1.2 percent carbon monoxide and 220 ppm concentration HC standards;

8. Emission control device inspection: visual inspection of the catalytic converter and the fuel inlet restrictor on all 1984 and later model year vehicles;

9. Evaporative system function checks:

a. Evaporative system integrity (pressure) test on 1983 and later model year vehicles to check for leaks in the hoses or connectors;

b. Evaporative system functional (purge) test on 1986 and later model year vehicles to check for proper evaporative canister flow;

10. Stringency: 20 percent of pre-1981 model year vehicles are expected to fail the initial emissions test;

11. Waiver rate: three percent of all vehicles failing inspection may be exempted from meeting the emission standards after spending at least $450.00 for repairs;

12. Compliance rate: at least 96 percent of all vehicles subject to inspection must be inspected; those vehicles not receiving a waiver or that are uninspected must be denied vehicle registration renewal.

13. Evaluation date: enhanced I/M programs must demonstrate that the projected model program emission reductions are obtained by the year 2000 for HC and NO_x and by the year 2001 for CO.

14. On-road testing: the program must include on-road testing of at least 0.5 percent of the subject vehicle population or 20,000 vehicles, whichever is less, as a supplement to the periodic inspection. On-road testing can include both random roadside pullovers and remote sensing methods.

15. Sample testing: to provide a quantitative "rate of progress" measure, the program must include the testing of no less than 0.1 percent of the vehicle population using the transient IM 240 test or equivalent test.

16. On-board diagnostics (OBD): (Reserved). EPA has proposed on-board diagnostics regulations (September 24, 1991; 56 FR 48272) requiring new vehicles to be equipped with OBD systems. These requirements would be phased in beginning with the 1994 model year. EPA has indicated that it expects to make a proposal requiring OBD inspection by the states as part of an enhanced I/M program after finalizing the regulation requiring installation of OBD systems on new vehicles. The Department will propose an amendment to these rules to provide for such an OBD inspection after this EPA rulemaking.

The Department, therefore, is proposing amendments and new rules at N.J.A.C. 7:27-15 and N.J.A.C. 7:27B-4 to establish the test procedures and standards to be used in an overall enhanced I/M program design that will comply with the performance standard established by the EPA. The DMV is also proposing amendments to N.J.S.A. 39:3-1 et seq. and pre-proposing new rules at N.J.A.C. 13:20-43 to establish testing frequencies, inspection authorities and other program design elements that, in conjunction with the Department's proposed amendments, will establish the enhanced I/M program.

As mentioned previously, the EPA has based the enhanced I/M performance standard on the use of a transient mode emission test, designated the IM240. The term 240 designates the duration of the test—240 seconds or four minutes. The IM240 has been demonstrated to correlate with the Federal Test Procedure (FTP), which is the official test procedure by which manufacturers must certify vehicle emission control systems prior to sale to the public. The exhaust testing phase of the FTP takes approximately 21 minutes to complete. The IM240 is, therefore, a shortened version of the FTP.

While the EPA had initially estimated that centralized programs utilizing the IM240 emission test can expect an average throughput rate of 12 vehicles per hour, per lane, more recent estimations yield a somewhat lower predicted throughput rate. However, since such a program has not yet been tested under real life conditions, it is uncertain just what throughput rate should be expected. The DMV's current estimate for this program is a throughput rate of eight vehicles per hour, per lane. Currently, the centralized inspection stations operated by the DMV have an average throughput rate of 28 to 32 vehicles per hour, per lane.

The DMV has estimated that, if it were to implement the IM240 test on a biennial basis while maintaining an acceptable waiting time at the centralized stations, an additional 148 inspection lanes would be required.

The DMV and the Department have, therefore, evaluated alternatives to the IM240 test that could satisfy the emission reduction performance standard established by the EPA while achieving considerably higher vehicle throughput rates and, therefore, lower cost.

Discussions with the EPA have resulted in the proposal of an alternative emission test which has a high probability of satisfying the emission reduction performance standard while achieving a throughput rate greater than that achievable by the IM240. This alternative test, referred to in this proposal as Alternative Exhaust Test A (short transient), is a shortened derivative of the IM240. This test utilizes the same analytical equipment as the IM240; however, only a portion of the driving schedule from the IM240 is used. Under the proposed Alternative Exhaust Test A, vehicles will be driven on a dynamometer through the transient driving cycle while the exhaust emissions are measured on a gram per mile basis. For pre-1986 model year vehicles, full time four-wheel drive vehicles and heavy-duty gasoline vehicles, a two-speed idle test will be used to measure exhaust emissions.

The EPA believes that implementation of the Alternative Exhaust Test A in the centralized lanes could achieve a vehicle throughput rate of 15 vehicles per hour. Additional tests are being performed to verify this assertion. In addition, since the test utilizes a portion of the IM240 driving schedule, it should correlate with the IM240 test. Therefore, there is a high likelihood that this test may meet the CAA statutory criteria of achieving EPA's performance standard through a design standard selected by the State in its exercise of reasonable flexibility to fashion effective, reasonable, and fair programs for the affected consumer. See 42 U.S.C.A. §§182(a)(2)(B)(ii) and (c)(3)(b)(i).

The DMV and the Department are also proposing an additional alternative exhaust emissions test, Alternative Exhaust Test B, also referred to as the Acceleration Simulation Mode (ASM) 5015/2500 RPM test. As with the short transient test (Alternative Exhaust Test A), the ASM 5015/2500 RPM will require the inspected vehicle to be driven on a dynometer. An ASM 5015 test can be performed in 30 to 90 seconds, followed by a 2500 RPM (high idle) test for an additional 30 seconds. The ASM 5015 test is a steady-state, loaded mode emission test under which the vehicle is operated at 15 miles per hour under a constant load that is equivalent to 50 percent of the maximum load to which the vehicle is subjected on the FTP. For full time four-wheel drive vehicles and heavy-duty gasoline vehicles, a two-speed idle test will be used to measure exhaust emissions. The advantages of the ASM 5015/2500 RPM test over the IM240 are: (1) higher vehicle throughput rates can be

achieved; (2) the test equipment is less costly (approximately $40,000 versus $140,000 for IM240 test equipment); and (3) since the equipment is less costly, the repair industry is more likely to acquire the same test equipment, with which it can duplicate the test and, therefore, verify the effectiveness of the vehicle repair, avoiding repeat failures.

Since August 31, 1992, the DMV has operated an ASM 5015 demonstration test at the Wayne Inspection Station. Use of this test in the real-life inspection lane environment has shown throughput rates as high as 23 vehicles per hour.

The EPA has performed a preliminary study to evaluate the effectiveness of a short test (four-mode steady state test) which is somewhat similar to the ASM 5015 test. The repair effectiveness benefit of the study was based on a sample of 17 vehicles, although about 150 vehicles received both tests to compare excess emission identification rates. This evaluation is set forth in the report issued by the EPA on May 11, 1993 entitled "Evaluation of a Four-Mode Steady-State Test with Acceleration Simulation Modes as an Alternative Inspection and Maintenance Test for Enhanced I/M Programs." See Reference #2. In part, the report concludes that the four-mode steady state test used in this sampling identifies about 80 percent of the HC and NO_x excess emissions and 90 percent of the CO excess emissions identified by the IM240. The report did not measure the relative emission benefits of the four-mode steady state test as compared with a shortened version of the IM240 test and did not measure the relative emission benefits when Alternative Pressure Test A and Alternative Purge Test A are included as part of the test.

While there are certain recognized limits to steady state tests when compared with tests such as the IM240, by extending the coverage of the ASM5015 from the EPA-recommended 1986 model vehicle year to include all vehicle model years, including some heavy-duty gasoline vehicles up to 10,000 pounds GVWR, and by using alternative evaporative emission tests, the performance deficit between ASM5015 and IM240 may, in fact, be eliminated. The Department, therefore, requests comment on the ASM 5015, the extended coverage, the alternative evaporative test and the effectiveness of this test relative to EPA's IM240 and evaporative tests and on the conclusions of the above-referenced study conducted by the EPA. Furthermore, the Department requests comments on the concept of extending the vehicle model year coverage and vehicle GVWR coverage for the ASM5015 (Alternative Exhaust Test B), including the probability of a higher failure rate and the prospect of proper repairs for these vehicles, and the impact on errors of commission (false failures).

Table 1, below, offers some comparison amongst the current emission test, Alternative Exhaust Test A (coupled with Alternative Evaporative Pressure and Purge Tests A), Alternative Exhaust Test B (coupled with Alternative Evaporative Pressure and Purge Tests B) and EPA's benchmark exhaust test, the IM240.

Although the relative emissions effectiveness of either alternative exhaust test coupled with Alternative Evaporative Pressure and Purge Tests A has yet to be documented, the ASM5015 has demonstrated a significantly higher inspection lane throughput than the IM240. The cost savings resulting from the inspection lanes' greater capacity is likely to be substantial. Therefore, the net effect is that both alternatives have similar cost effectiveness ratios. This finding is described in greater detail in the Economic Impact statement below.

TABLE 1
COMPARISON OF MOTOR VEHICLE I/M TEST PROCEDURES AND PROGRAM PARAMETERS

	Exhaust Test	Exhaust Pollutants	Evaporative Test	Tampering Check	Test Frequency	Vehicle Coverage	Maximum Inspection throughput (Veh./hr.)	Relative Emission Effectiveness (IM240 = 1.0)
Current Test:	Idle	HC, CO	None	Catalytic converter & fuel inlet restrictor	Annual	All Light Duty Gasoline (LDG) vehicles; ≤8500 lbs	30[2]	.3
Proposed Tests:								
—Alternative A:	Short Transient	HC, CO, NO_x	Alternative Pressure and Purge Tests A or EPA Pressure and Purge (Alternative Tests B)[1]	Catalytic Converter	Biennial	1986 MY & later LDG vehicles ≤8500 lbs; others, 2 speed idle	15[4]	1.0[3]
—Alternative B:	ASM 5015/ 2500 RPM	HC, CO, NO_x	Alternative Pressure and Purge Tests A or EPA Pressure and Purge (Alternative Tests B)[1]	Same as above	Biennial—1st 5 yrs; annual thereafter	All LDG vehicles & some heavy duty gasoline (HDGV) trucks ≤ 10,000; others, 2 speed idle	23	1.0[5]
EPA Benchmark Test:	IM240	HC, CO, NO_x	EPA Pressure & Purge (Alternative Tests B)	Same as above	Annual	1986 MY & later LDG vehicles ≤8,500 lbs; others, 2 speed idle	12[4]	1.0

[1]Either Alternative Pressure and Purge Tests A or EPA Pressure and Purge Tests (Alternative Tests B) may be used in conjunction with either Alternative Exhaust Test.

[2]The emissions test is not the limiting throughput constraint in the current inspection lane (i.e. some safety and credential checks may take longer).

[3]Relative emission effectiveness is anticipated to be 1.0.

[4]Anticipated; to be demonstrated.

[4]Preliminary indications suggest a relative emissions effectiveness of 1.0 when Alternative Exhaust Test B is used in conjunction with the above-indicated Alternative Evaporative Tests A, increased inspection frequency, and increased vehicle coverage.

This proposal is part of New Jersey's continuing comprehensive program to control motor vehicle emissions, and represents the natural evolution of the State's existing inspection/maintenance program. Other components of the Statewide motor vehicle emission control plan include the Low Emission Vehicle (LEV) Program, the use of cleaner fuels, including the Department's demonstration of Alternative fuel vehicles, and actions taken by the Department of Transportation (DOT) to reduce motor vehicle use.

The specific provisions of the proposal are discussed in more detail below:

N.J.A.C. 7:27-15.1 Definitions:

N.J.A.C. 7:27-15.1 defines terms used in subchapter 15. Certain definitions were updated to be consistent with new test procedures being proposed by the Department.

The definition for "approved exhaust gas analytical system" has been changed to delete outmoded devices. The Department anticipates proposing new specifications later this year.

The definition for "heavy-duty motor vehicle" was changed from a gross vehicle weight rating in excess of 6,000 pounds to in excess of 8,500 pounds to coincide with Federal definitions.

The definition for "light-duty motor vehicle" has been deleted. The new definition for "light-duty gasoline vehicle" encompasses the same vehicle class and thus "light-duty motor vehicle" was no longer needed.

The definition of "model year of vehicle" was updated to maintain consistency with the Federal definition and the Department's proposed new regulations that utilize this term, that is, N.J.A.C. 7:27-26 (see 25 N.J.R. 1381(a)).

The definition of "new motor vehicle" was changed to reflect the fact that motor vehicles are not registered prior to sale in this State. Thus the clause "registered in New Jersey" was deleted from the definition.

"Person" was changed to include any individual or entity, without limitation, to broaden and clarify the definition.

In addition to updating definitions currently found in subchapter 15, the Department is proposing to add the following definitions to the rule:

The term "certified configuration" was added to define Federally certified vehicle engines or chassis designs. Vehicle certification is performed by the EPA prior to production of all vehicles for any given model year. As an associated change, the term "element of design" was added to describe any automotive part or system associated with a vehicle's certified configuration that affects any Federally-regulated emissions. The amendments to subchapter 15 relating to anti-tampering provisions necessitate the addition of these definitions.

The "gross vehicle weight rating (GVWR)" is used as a delineation between vehicle classes in order to set appropriate cutpoints. It is defined as the value specified by the manufacturer for the maximum design loaded weight of a single or combination vehicle.

The terms "light-duty gasoline vehicle (LDGV)" and "light-duty gasoline truck (LDGT)" were added to the rule to indicate which vehicles would be affected by the proposal and how these vehicles differ in form and function. "LDGV" is defined as a passenger car or passenger car derivative with a GVWR of less than 8,500 pounds. "LDGT" is defined as a motor vehicle with a GVWR of less than 8,500 pounds with a vehicle curb weight of 6000 pounds or less and a basic frontal area of 45 square feet or less, designed: 1) for the transportation of property, or 2) for the transportation of persons numbering more than 12, or 3) with the availability of special features enabling off-street or off-highway operation.

The definition of "NMHC" as non-methane hydrocarbons was added because the hydrocarbon emission standards for the proposed transient emission test are stated as non-methane hydrocarbons.

"Quasi-public" was added to extend certain prohibitions, such as the public highway standard, to areas that are privately owned yet which are publicly accessible to motor vehicles.

N.J.A.C. 7:27-15.2 Public highway standard

The Department is proposing to update the public highway standard described in N.J.A.C. 7:27-15.2. In addition to regulating the emission of HC and CO on any road, street or highway of the State or any public or quasi-public property in the State, the Department is proposing to also limit emissions of NO_x. This section was changed to make the cutpoints referenced by the highway standard consistent with the cutpoints for the new inspection procedures being proposed by the Department. The new standards for HC, CO and NO_x are set forth at N.J.A.C. 7:27-15.4 in Tables 1B, 2A and 2B.

N.J.A.C. 7:27-15.4 Motor vehicle inspection standard

The Department is proposing several changes to the inspection standard currently found at N.J.A.C. 7:27-15.4 to be consistent with the new inspection procedures. Model year and weight class coverage for anti-tampering inspections have been expanded to allow evaporative system pressure and purge tests on pre-1975 and heavy-duty vehicles. To comply with 40 C.F.R. §51.357, inspections will now be required on vehicles in non-certified configurations and vehicles which have been switched to a different fuel type or are operating on more than one fuel type, for example, dual-fueled.

Tables 1B, 2A and 2B were added to reflect the new cutpoints of the proposed inspection programs. Emission standard cutpoints for the proposed transient exhaust test are to be phased-in in two stages. The first set of standards is effective until December 31, 1997, at which time the second set of more stringent cutpoints becomes effective. EPA permits states to phase-in cutpoints for transient testing to help reduce the anticipated high initial failure rate.

N.J.A.C. 7:27-15.5 Operation of emission control apparatus

N.J.A.C. 7:27-15.5 was modified to prohibit any changes to a certified vehicle's elements of design and to prohibit the operation of any non-certified configurations on any road, street or highway of the State or any public or quasi-public property in the State. This will effectively prohibit modifications such as engine swapping, turbocharging, PROM chips, reconstructed vehicles and nitrous oxide injection systems on vehicles having emission control systems certified by the EPA.

The amendment would prohibit the offering for sale or lease of any tampered vehicle. The current rule only prohibits the actual sale of the vehicle, and thus has been difficult to enforce. The proposed expansion to prohibit the offering for sale or lease will allow for greater enforceability.

To further discourage tampering with an emission control device, the Department is also proposing to prohibit the sale and offering for sale of components that bypass or override an emission control system. See CAA section 203(a)(3)(B).

N.J.A.C. 7:27-15.6 Idle standard

The existing idle standard, currently set forth at N.J.A.C. 7:27-15.6, prohibits the idling of a gasoline-fueled motor vehicle for more than three consecutive minutes if the vehicle is not in motion, with two exceptions. It currently allows for an extended warm-up period of 30 consecutive minutes for vehicles operating on private property or at their permanent place of business, and a warm-up period of 15 consecutive mintues for vehicles which have had their engines stopped for three or more hours. As whatever convenience these exemptions might have provided are far outweighed by the need to reduce unnecessary emissions, the Department is proposing to eliminate them from the idle standard.

The Department is also proposing to eliminate one category of vehicles currently exempted from the idle standard: vehicles with sleeper berths. N.J.A.C. 7:27-15.6(b)8 was originally intended to apply to diesel-powered heavy-duty vehicles, which are addressed in subchapter 14. Since subchapter 15 addresses gasoline-powered motor vehicles, the Department felt it was not necessary to include this provision in this subchapter.

N.J.A.C. 7:27-15.7 Exceptions

In N.J.A.C. 7:27-15.7, the Department is proposing to eliminate the exception for vehicles with an engine displacement of less than 50 cubic inches (819 cubic centimeters). The EPA's enhanced I/M regulations do not permit the exception of these vehicles, setting no minimum weight or engine size limitation.

N.J.A.C. 7:27-15.8 Variances

Under the current rule, the Commissioner or the Director of the Division of Motor Vehicles may prescribe alternative emission inspection standards for vehicles deemed incapable of complying with the provisions of N.J.A.C. 7:27-15.4(b). The Department is proposing to eliminate this provision as it is inconsistent with EPA guidance at 40 C.F.R. §51.360(b). It has been the Department's experience that the need for such relief is de minimis.

N.J.A.C. 7:27-15.9 Waivers

Currently, aside from the variance discussed above, New Jersey has no provision for waiving compliance with inspection requirements. The Department proposes this new section to establish the criteria which would allow a motorist, under limited circumstances, to receive a waiver from the requirements of these rules, specifically N.J.A.C. 7:27-15.4.

Procedures concerning the obtaining of a waiver, for example, when and where one applies for a waiver, are specified in DMV's pre-proposal of its rules at N.J.A.C. 13:20-43, published elsewhere in this issue of the New Jersey Register.

For most vehicles, the cost of repairs needed to pass the emissions tests will not be excessive and will be significantly offset by the reduction in fuel consumption that is associated with repairs to malfunctioning vehicles. However, the Department recognizes that for some vehicles the cost of repairs may not be cost effective; in some cases the cost of repair may exceed the value of the vehicle.

To address these concerns, consistent with the requirements established by the EPA at 40 C.F.R. §51.360, the Department is proposing a cost-based waiver. After meeting certain criteria, a motorist who has spent a minimum of $450.00 to bring a failed vehicle into conformance could apply for a waiver, which would be effective until the vehicle is next due for inspection. This process would have to be repeated each time the vehicle fails the emissions test and repairs exceed $450.00. The $450.00 minimum expenditure will be adjusted in January of each year by the percentage, if any, by which the Consumer Price Index for the preceding year differs from the Consumer Price Index for 1989.

In addition, also consistent with 40 C.F.R. §51.360, the Department has reserved N.J.A.C. 7:27-15.9(a)7 in anticipation of providing for the approval of a one-time extension, until the next-scheduled inspection, to obtain needed emission repairs on a particular vehicle if the applicant demonstrates economic hardship. The Department recognizes that the $450.00 minimum repair expenditure required for a cost waiver may pose a hardship to the owners of older vehicles. Consistent with EPA guidance, in order to both provide further compliance with the enhanced I/M program and provide an economic safety valve, the Department intends to promulgate a well-controlled, non-renewable, time extension beyond the scheduled compliance deadline, to give motorists, in the case of economic hardship, additional time to make those repairs necessary to pass inspection or to sell the vehicle. In authorizing the states' granting of such an extension based on economic hardship at 40 C.F.R. §51.360(b)(9), EPA failed to provide the states with guidance in determining economic hardship, leaving such a determination to the states. Accordingly, the Department is soliciting comment and suggestions, in connection with the proposal, as to appropriate administratively-practicable criteria to be used in determining the existence of economic hardship at the time of inspection or reinspection. Based upon such comment, its own further research of this issue, and consultation with the DMV, the Department may formally propose and adopt language for such a compliance extension prior to the implementation of the enhanced I/M program on January 1, 1995.

The Department is also considering integration of a vehicle scrappage program into the enhanced I/M program to mitigate the impact of the program on owners of older vehicles. This program would offer owners of older, gross-emitting vehicles a fixed amount of money if the vehicle is scrapped. The Department is soliciting comments on the concept of a scrappage program in order to better define the goals and parameters of the program.

The Department believes that the proposed waiver options will sufficiently mitigate inconvenience and economic hardship to the motorist without significantly decreasing the emission reductions expected to be gained by the enhanced I/M program.

N.J.A.C. 7:27-15.10 Compliance with recall notices

In accordance with 40 C.F.R. §51.370, the Department is proposing to add N.J.A.C. 7:27-15.10 to address motorist compliance with emission-related recall notices. These recall notices are issued by motor vehicle manufacturers in accordance with Federal regulations in order to correct emission-related system failures or defects. The purpose of this section is to insure that all such recalled vehicles receive the necessary emission-related repairs in a timely fashion. Recall compliance will be monitored as part of registration renewal. These changes to the current inspection procedures are reflected in the DMV's pre-proposal.

Changes to N.J.A.C. 7:27B-4

N.J.A.C. 7:27B-4.1 Definitions

N.J.A.C. 7:27B-4.1 defines terms used in subchapter 4. Certain definitions were updated to be consistent with new test procedures being proposed by the Department.

The definition of "diesel-powered motor vehicle" was changed to "heavy-duty diesel-powered motor vehicle" and extended to include a gross vehicle weight rating (GVWR) in excess of 10,000 pounds.

In addition, the Department changed the gross vehicle weight rating designation for heavy-duty and light-duty motor vehicles. "Heavy-duty motor vehicle" now has a GVWR of 8,500 pounds or more and "light-duty motor vehicle" has a GVWR of less than 8,500 pounds. These weight classifications are being adjusted to be consistent with weight classifications set forth in the EPA's enhanced I/M regulations.

In specifying proposed new testing procedures under the enhanced I/M program design, the Department is proposing new definitions. The terms "inertia weight" and "vehicle curb weight" were added in order to describe the calculation of the dynamometer load used for the proposed emission tests. "Vehicle curb weight" is the acutal weight of the vehicle in operational status; "inertia weight" is defined as the vehicle curb weight plus 300 pounds.

As stated previously in definitions for subchapter 15, "gross vehicle weight rating (GVWR)" is used to delineate between vehicle classes in order to set appropriate cutpoints. It is defined as the value specified by the manufacturer as the loaded weight of a single or combination vehicle.

The terms "light-duty gasoline vehicle (LDGV)" and "light-duty gasoline truck (LDGT)" were added to indicate which vehicles would be affected by the proposal and how these vehicles differ in form and function. "LDGV" is defined as a passenger car or passenger car derivative with a GVWR of less than 8,500 pounds. "LDGT" is defined as a motor vehicle with a GVWR of less than 8,500 pounds with a vehicle curb weight of 6,000 pounds or less and a basic frontal area of 45 square feet or less, designed: 1) for the transportation of property, or 2) for the transportation of persons numbering more than 12, or 3) with the availability of special features enabling off-street or off-highway operation. These definitions are identical to the ones in subchapter 15.

The definition for "light-duty motor vehicle" has been deleted in Air Test Method 4 just as it was in subchapter 15. The new definition for "light-duty gasoline vehicle" encompasses the same vehicle class and thus "light-duty motor vehicle" was no longer needed.

The definition of "two-speed idle" was added to reflect new test methods used within the rule.

N.J.A.C. 7:27B-4.5 Exhaust emission testing procedures for gasoline-fueled motor vehicles subject to inspection by the State of New Jersey

While the Department does not propose any changes to the existing smoke test described at N.J.A.C. 7:27B-4.5(a)1, it proposes to replace the existing exhaust emissions test described at N.J.A.C. 7:27B-4.5(a)2 in order to comply with the EPA's enhanced I/M performance standards.

The Department is proposing two optional tests for reasons described previously under this Summary. In the final adoption, only one of these tests will be selected. Alternative Exhaust Test A is a shortened derivative of the EPA's transient test, the IM240. The IM240 is a 240 second driving cycle which involves a series of accelerations and decelerations that simulate typical driving patterns. The proposed Alternative Exhaust Test A involves a driving cycle that is 140 seconds long and is extracted directly from the IM240 driving cycle. The vehicle is operated with its drive wheels on a dynamometer set to simulate normal highway driving conditions. Exhaust emission samples are collected from the tailpipe and measured in terms of mass (grams/mile). Only post-1985 vehicles will receive this test. Vehicles failing this test initially would immediately receive a second chance retest identical to the initial test. Initially, they will be subjected to the following cutpoints: 1.2 grams/mile HC, 20 grams/mile CO and 3.5 grams/mile NO_x. At the completion of one full inspection cycle following implementation of the enhanced I/M program, more stringent cutpoints will be phased in to provide for maximum benefit of the program.

The Department is reserving N.J.A.C. 7:27B-4.5(a)3ii for provisions addressing fast-pass, fast-fail algorithms. The Department plans to use the algorithms which EPA is developing for the IM240 test. Use of these algorithms is expected to considerably shorten the test time for Alternative Exhaust Test A. These algorithms are in the pilot test phase which is expected to be completed within two to four weeks of publication of these proposals. Soon after the final algorithms become available, the Department will amend N.J.A.C. 7:27B-4.5 to include these provisions.

Under Alternative Exhaust Test A, vehicles of model years prior to 1986, as well as those not amenable to dynamometer testing, will receive a two-speed idle test, performed according to official EPA procedures. Full time four-wheel drive vehicles would not be amenable to dynamometer testing since conventional dynamometers can only accommodate two drive wheels. Heavy-duty vehicles are beyond the rated

weight capacity of the dynamometer. The two-speed idle test is similar to the current idle test, with the addition of a 2500 RPM, high idle test mode. The vehicle must meet the specified exhaust concentration cutpoints for HC and CO both at idle and at 2500 RPM.

Alternative Exhaust Test B is a steady-state loaded mode test, commonly referred to as an ASM 5015 test, followed by a 2500 RPM, high idle test. The Department believes that this combination of tests yield a better overall correlation with the Federal Test Procedure (FTP) than either test alone. The ASM 5015 involves operation of the vehicle on a dynamometer at a constant speed of 15 MPH under a load which is calculated to subject the vehicle to 50 percent of the maximum acceleration rate of the Federal Test Procedure (FTP) driving cycle. The full ASM 5015 test duration is 90 seconds with a fast pass at 30 seconds if the exhaust concentrations are significantly below the cutpoints. The 2500 RPM test is conducted with the vehicle's engine running at a speed of 2500 RPM for 30 seconds. All emission measurements are performed in terms of concentration (ppm or percent in air), which is then converted to a mass equivalent. In order for a vehicle to pass the emission test, it must meet the specified cutpoints for both the ASM 5015 test and the 2500 RPM test.

Emission standards (test cutpoints) will vary according to the weight class and model year of the vehicle.

Alternative Exhaust Test A (short transient) requires mass emission sampling and laboratory grade analyzers in conjunction with a transient mode dynamometer. The ASM 5015/2500 RPM test requires a BAR90 (Bureau of Automotive Repair) analyzer, which measures emission concentrations, and a non-transient mode dynamometer. The DMV has estimated that capital costs to implement the ASM 5015/2500 RPM test are expected to be $95,000,000. Capital costs to implement the short transient test biennially are estimated at $99,000,000 and it is anticipated that this test equipment will be more expensive to operate, repair and maintain relative to the ASM 5015.

The ASM 5015/2500 RPM test will take between 60 and 120 seconds to perform. The short transient test has a maximum test length of 140 seconds, although fast-pass and fast-fail algorithms will shorten average test times. Since implementation of either of the proposed emission tests will result in test times shorter than EPA's benchmark IM240 test, the proposed tests will require the construction of fewer new inspection lanes, thus decreasing capital construction, equipment and operational costs.

The EPA refers to the "ping-pong effect" as one of the possible problems associated with the IM240 test. Since repair technicians working on IM240 failures may not have access to IM240 test equipment because of its cost, they would be performing repairs without the ability to duplicate the test for diagnostic feedback. This could result in a process by which an initially failed vehicle is "repaired," that is, passes tests given at the repair facility but fails upon reinspection at the test facility, requiring one or more return trips to the repair facility. This process could continue several times while the mechanic searches for the problem causing the failure, resulting in motorist aggravation and increased repair costs.

Since Alternative Exhaust Test A uses the same equipment as the IM240, the "ping-pong effect" is still a potential problem for consumers if this test is implemented. Alternative Exhaust Test B can be conducted with less costly test equipment. Therefore, it is more likely that repair facilities would purchase the required test equipment if Alternative Exhaust Test B is implemented. This could reduce the occurrence of the "ping-pong effect." However, since repair technicians currently use automotive analyzers and diagnostic equipment which are better able to interface with on-board diagnostic systems and identify emission component failures, they have an additional system of diagnostic feedback. Thus, the likelihood of the "ping-pong effect" occurring with Alternative Exhaust Test A would be limited to very elusive emission system malfunctions.

N.J.A.C. 7:27B-4.6 Gasoline-fueled motor vehicle emission control apparatus compliance examination procedure

While retaining the existing visual examination for the presence of properly installed catalytic converters, the Department is proposing to delete the current examination for the fuel inlet restrictor, as it feels this test is no longer needed. At this time, leaded gasoline is generally unavailable in this and neighboring states.

In addition, the Department is proposing to add tests of the vehicle's evaporative emission control system to N.J.A.C. 7:27B-4.6. The addition of these evaporative tests is necessary to evaluate the evaporative emission control system as prescribed under the EPA's enhanced I/M regulation at 40 C.F.R. §§51.357(9) and (10).

Evaporative emissions from a vehicle's fuel storage and delivery systems constitute a significant source of VOC emissions. To date, I/M programs have not effectively tested the evaporative emission control systems on vehicles for integrity and function. The Department is proposing two alternative evaporative pressure and purge tests for implementation in New Jersey. The Department is soliciting comments on both alternative evaporative tests as well as comments on the possibility of adopting both tests simultaneously.

The Department is proposing the EPA's evaporative system integrity test (pressure test) as Alternative Pressure Test B. A pressure test evaluates the evaporative system for leaks. The EPA's recommended evaporative pressure test requires that the system be pressurized from the evaporative canister with nitrogen to 14 inches of water (± 0.5 inches) without exceeding 26 inches. The evaporative system is then sealed and monitored for pressure decay for a maximum of two minutes. After two minutes, the gas cap should be loosened and the system should be monitored for a sudden pressure drop, indicating that the fuel tank was pressurized.

The Department is also proposing the EPA's evaporative performance test (purge test) as Alternative Purge Test B. A purge test checks whether captured fuel vapor is correctly removed from the canister and delivered to the engine during vehicle operation. The EPA's recommended purge test consists of measuring the total purge flow (in standard liters) occurring in the vehicle's evaporative system during the exhaust emission test driving cycle. The purge flow measurement system connects to the evaporative system in series between the canister and the engine.

The EPA has recognized that states implementing enhanced I/M programs may elect to implement alternative evaporative system tests. The EPA has, therefore, indicated it will consider alternatives if the state can demonstrate that the alternative tests are equivalent to the EPA's recommended tests. Accordingly, the Department is proposing alternative pressure and purge tests that have been developed in conjunction with the DMV.

The proposed Alternative Pressure Test A will be performed by pressurizing the evaporative system, from the fuel tank to the evaporative canister, with nitrogen to 28 inches of water. The evaporative system is then monitored for a drop in pressure. Any pressure drop lower than 27 inches of water during the test shall be considered an evaporative emission failure. During the pressure test, the gas cap will be simultaneously pressurized and tested with procedures similar to those used in the evaporative system pressure test. The entire process, both evaporative system and gas cap test, should take no longer than the designated 95 seconds plus the time needed to set-up and remove the test equipment.

The proposed Alternative Pressure Test A will go beyond the EPA's requirements of pressure testing all post-1982 vehicles by being conducted on all post-1970 vehicles. Only vehicles equipped with an evaporative emission control system will be subject to a pressure test. In addition, this test will be able to test more vehicles than EPA's test by pressurizing the system from the fuel tank rather than from the evaporative canister, thus including those vehicles which have a one-way valve which prevents vapor flow from the canister to the fuel tank. Thus, Alternative Pressure Test A is able to comprehensively test the evaporative system integrity of more vehicles than Alternative Pressure Test B.

The Alternative Purge Test A is conducted by introducing helium into the fuel tank while the vehicle is driven through the proposed exhaust emission driving cycle. The measurement of the helium concentration at the tailpipe will be used to determine if the engine is purging vapors properly from the gasoline storage system.

Alternative Purge Test A will be performed on all post-1970 vehicles that are subject to exhaust emission testing utilizing an exhaust emission test driving cycle. This goes beyond the EPA's requirement of testing post-1985 vehicles. Only vehicles equipped with an evaporative emission control system will be subject to a purge test. The Department believes that this test is faster and easier to perform than Alternative Purge Test B because access to the evaporative canister and associated vapor lines is not required. In some vehicles, the evaporative canister is completely inaccessible without engine or body disassembly. Alternative Purge Test A will alleviate such operational difficulties while possibly providing equivalent benefit to Alternative Purge Test B.

N.J.A.C. 7:27B-4.7 Gasoline-fueled motor vehicle exhaust lead determination procedure

The Department is proposing to delete N.J.A.C. 7:27B-4.7. Pursuant to N.J.A.C. 7:27B-4.7(f), this section expired on October 1, 1986.

N.J.A.C. 7:27-4.8 On-board diagnostics testing procedures for gasoline-fueled motor vehicles

The CAAA requires the EPA to promulgate regulations requiring new vehicles to be equipped with on-board diagnostic (OBD) systems beginning with the 1994 model year. These advanced OBD systems, known as OBD II, would monitor the performance of emission control equipment, the vehicle's fuel metering system and ignition system, and other equipment and operating parameters for the purpose of detecting malfunction or deterioration in performance that would be expected to cause a vehicle to fail emission standards. When such problems are detected, a malfunction indicator lamp located in the dashboard of the vehicle will be illuminated, instructing the vehicle driver to "Check Engine." A vehicle would not pass emission inspection until proper service was conducted to correct the problem.

The EPA will promulgate rules specifying when state I/M programs must begin testing for OBD failures and will also promulgate OBD test procedures. The Department, therefore, reserves this new section in the proposed amendments at N.J.A.C. 7:27-4.8.

N.J.A.C. 7:27-4.9 On-road exhaust emission testing procedures for gasoline-fueled motor vehicles subject to inspection by the State of New Jersey

The Department proposes adding a provision for on-road testing at new N.J.A.C. 7:27-4.9. Currently, an on-road testing program is conducted by the Division of Motor Vehicles, pursuant to N.J.S.A. 39:8-2. Under the current program, random roadside testing is conducted on one percent of the vehicles in the State for purposes of monitoring the effectiveness of the existing inspection and maintenance program. In the EPA's enhanced I/M rule, on-road testing of 0.5 percent of the subject fleet Statewide or 20,000 vehicles, whichever is less, is mandatory. For New Jersey, this requirement translates into the mandatory testing of at least 20,000 vehicles. On-road testing must include the measurement of NO_x, as well as HC, and CO and/or carbon dioxide (CO_2) emissions. On-road testing is intended to complement, rather than replace, the exhaust emission test under N.J.A.C. 7:27-4.5, and will be used by the Department to evaluate the emission performance of in-use vehicles.

The on-road testing program will provide information about the emission performance of in-use vehicles, by measuring on-road emission through the use of remote sensing devices or roadside pullovers. If on-road testing indicates that a vehicle is a high emitter, it will be required to be repaired and to pass an out-of-cycle follow-up inspection, even if it has previously been through the normal periodic inspection and passed the first test or final retest.

The Department is proposing two alternative test procedures for on-road inspections. Alternative On-road Test A, which would be implemented with Alternative Exhaust Emission Test A, is a two-speed idle test. Alternative On-road Test B, which would be implemented with Alternative Exhaust Emission Test B, is the ASM 5015/2500 rpm test. At this time, the Department is reserving the use of remote sensing as an additional screening tool.

N.J.A.C. 7:27B-4.10 Exhaust emission testing procedures for gasoline-fueled motor vehicles subject to evaluation testing

Regardless of which proposed exhaust emission test is adopted for the enhanced I/M program, 40 C.F.R. §51.353(c) requires that 0.1 percent of the vehicle population be evaluated using an IM240 exhaust test. The testing of this representative, randomly-selected set of vehicles will be used as an evaluation tool for the new enhanced I/M program. In order to evaluate New Jersey's enhanced I/M program, the Department proposes new N.J.A.C. 7:27B-4.10, providing that the IM240 test shall be performed in accordance with the procedures specified at 40 C.F.R. §51.357(11).

Social Impact

These proposed amendments and new rules will have a positive social impact on the State. They are designed to aid the State in attaining and maintaining the NAAQS for CO and ozone by reducing the emission of air contaminants from motor vehicles. Despite the fact that motor vehicles are subject to the strictest of the pollution control programs, they continue to produce 27 percent of the VOCs and 38 percent of the NO_x emissions that contribute to the formation of ozone and 66 percent of the carbon monoxide in New Jersey. They are also a major contributor to the air toxins present in the atmosphere.

According to the 1990 base emission inventory developed by the Department, highway sources contribute 37.7 percent of the 1,511 tons of NO_x added daily to the atmosphere in New Jersey. NO_x cause irritation to the lungs, lower resistance to respiratory infections, and contribute to the development of emphysema, bronchitis, and pneumonia. NO_x also react chemically in the air to form nitric acid, which contributes to acid rain formation.

The 1990 base emission inventory also shows that for VOCs in New Jersey, highway sources contribute 26.7 percent of the total VOC emissions of 1,776 tons/day. Some VOCs, including benzene, formaldehyde and 1,3-butadiene, are classified as air toxins. They have been associated with the onset of cancer and other adverse health effects.

VOCs participate in photochemical reactions with NO_x to create ozone and other oxidants. Ground level ozone is a major public health problem in New Jersey. Studies have proven that ozone has severe and debilitating effects on lung capacity and can have detrimental effects on respiration. EPA studies indicate that ozone exposures as low as 0.08 ppm, well below the NAAQS of 0.12 ppm, can impair lung function. Even at low levels, ozone can cause average humans to experience breathing difficulty, chest pains, coughing and irritation to nose, throat and eyes. For individuals who already experience respiratory problems or who are predisposed to respiratory ailments, these symptoms can become much more severe, forcing those individuals to alter their lifestyles to avoid unnecessary exposure.

In addition, chronic ozone exposure studies performed on laboratory animals indicate that long-term exposure to ozone affects lung physiology and morphology. These studies suggest that humans exposed to ozone over prolonged periods of time can experience chronic respiratory injuries resulting in premature or accelerated aging of human lung tissue.

The implications of these studies are quite serious considering the fact that in 1991, New Jersey's air was categorized as "unhealthy" on 36 days. Twenty-six of these days were categorized "unhealthy" due to excessive ozone levels, that is, where the State was out of compliance with the NAAQS of 0.12 ppm. In the 1992 summer season, there were only nine exceedances of the NAAQS for ozone, but that decrease from the prior year has been attributed not to a significant reduction in VOC and NO_x emissions, but rather to an unusually cold, cloudy season, which did not provide conditions conductive to the photochemical reaction which results in ozone production.

Furthermore, New Jersey's air quality exceeded the level of 0.08 ppm (the amount at which EPA's studies indicate that lung function may deteriorate) an average of 228.47 hours through the "ozone season" or summer months of 1991 and 1,140 hours in the summer months of 1992. It is clear, therefore, that the ozone levels in New Jersey must be reduced in order to protect the health and welfare of the residents of the State.

The 1990 base year inventory indicates that highway sources alone contribute 66.2 percent of the total CO in New Jersey of 4,459 tons/day. This poisonous gas interferes with the oxygen-carrying ability of the blood. Exposure to CO aggravates angina and other aspects of coronary heart disease and decreases exercise tolerance in persons with cardiovascular problems. In fetuses, infants, elderly persons, and individuals with respiratory diseases, elevated levels of CO are also a serious health risk.

All New Jersey residents will be affected by these proposed amendments and new rules in some fashion. Overall, these amendments and new rules will benefit the residents of New Jersey by providing them with cleaner air and thus a healthier environment.

At present, in excess of five million gasoline-fueled vehicles are registered to both individuals and businesses in New Jersey. Virtually all of these vehicles will be subject to the enhanced I/M program. As such, they will be maintained better, resulting in higher fuel economy and reduced emissions. The enhanced I/M program encompasses a more stringent exhaust emission test and additional evaporative emission control tests. Since vehicles will be subject to more advanced tests and more stringent standards, vehicle owners may be affected by certain aspects of the program.

Motorists may see an increase in repair costs, since the emission malfunctions identified by the enhanced I/M program may be in addition to and less obvious than those currently detected, requiring more sophisticated service and equipment to correct. Although the Department and the DMV are proposing measures to mitigate it, motorists may also be exposed to the "ping-pong" effect, that is, repeated visits

between repairs and inspection facilities, when attempting to have their automobiles repaired. For more information on repair costs and "ping-pong" effects, refer to the discussion of N.J.A.C. 7:27B-4.5 (exhaust emission testing procedures) contained in the proposal's Summary and Economic Impact sections.

The enhanced I/M program proposed by the Department in conjunction with the DMV calls for the separation of test and repair facilities. This will affect about 3900 licensed PICs in the State, currently performing test and repair activities. Under the proposed amendments and new rules, they will need to choose between performing inspections or only performing repair and repair-related activities. However, those facilities electing to remain in the emission repair business will see an increase in the number of vehicles in need of emission-related repairs as a result of the program. A more detailed discussion of the impacts on these facilities can be found in the Regulatory Flexibility Analysis below.

The Department anticipates that public reaction to this proposal will be generally favorable due to the anticipated improvements to air quality. However, the Department does expect some negative comments regarding motorist inconvenience and impacts on businesses. The Department has attempted and will continue to minimize those predicted burdens to the citizens of New Jersey.

Economic Impact

The proposed amendments and new rules will result in both positive and negative economic impacts for the State. While implementation of the proposed amendments and new rules will bring initial costs and associated costs, it will also result in improved air quality, thereby reducing the substantial cost to the State associated with air pollution. Compliance with Federal air quality standards will also avoid Federal sanctions, which would have adverse economic impacts on the State.

To evaluate the economic and environmental impacts of the proposed amendments, it would be inappropriate to evaluate each proposed program component singly rather than as part of a comprehensive program. As such, the Department, in conjunction with the DMV, has developed two program scenarios, Program A and Program B.

Program A design consists of Alternative Exhaust Test A, the short transient test, performed biennially on all 1986 and later model year vehicles. Program B design consists of Alternative Exhaust Test B, the ASM 5015/2500 RPM test, performed biennially for the first five years of the vehicle life and annually thereafter.

The other elements of the enhanced I/M program design that the Department used to evaluate economic and environmental impacts are as follows:

1. Network type: Hybrid, centralized/decentralized inspection system. All testing will be performed at State or contractor-run inspection lanes or decentralized private test-only facilities.

2. Enhanced inspections starting by January, 1995 of at least 30 percent of the subject vehicle fleet with full program implementation by January 1, 1996.

3. Test frequency:

Program A: Biennial

Program B: Biennial/annual. Inspection will be biennial for the first five years of the vehicle's life with annual inspections following the fifth year.

4. Model year coverage: Testing of all model year vehicles.

5. Vehicle type coverage: All gasoline-powered light-duty and heavy-duty motor vehicles.

6. Exhaust emission test type:

Program A:

a. A 140 second transient driving cycle (short transient) with mass emission sampling of all 1986 and later model year vehicles.

b. Two-speed idle test for pre-1986 vehicles and those vehicles not amenable to dynamometer testing.

Program B:

a. ASM 5015 and 2500 RPM test with concentration emission measurement of all model year vehicles.

b. Two-speed idle test for those vehicles not amenable to dynamometer testing.

7. Emission Standards: Refer to Tables 1A, 1B, 2A and 2B in the proposed amendments to N.J.A.C. 7:27-15.

8. Emission control device inspection: Visual inspection of the catalytic converter on all 1975 and later model year vehicles.

9. Evaporative system function checks:

a. Evaporative system integrity (pressure) test on 1971 and later model year vehicles to check for leaks in the hoses or connectors.

b. Evaporative system functional (purge) test to check for proper evaporative canister purging on 1971 and later model year vehicles that are subject to exhaust emission testing, utilizing either a short transient or steady state load driving cycle.

10. Stringency: 20 percent of pre-1981 model year vehicles are expected to fail the initial emissions test.

11. Waiver rate: Three percent of all vehicles failing inspection may be exempted from meeting the emission standards after spending at least $450.00 for repairs.

12. Compliance rate: 96 percent of all vehicles subject to inspection must be actually inspected. Those vehicles not receiving a waiver or that are uninspected will be denied vehicle registration renewal.

13. Evaluation date: Enhanced I/M programs must demonstrate that the projected emission reductions are obtained by 2000 for HC and NO_x and 2001 for CO.

14. On-road testing: The program will include on-road testing of at least 20,000 vehicles as a supplement to the periodic inspection. On-road testing will include random roadside pullovers.

15. On-board diagnostics (OBD): Testing of the vehicle OBD systems for vehicles certified to comply with such requirements. The OBD test procedures reference federal regulations which are currently reserved.

The enhanced I/M programs proposed by the Department depart from the current one in a number of ways. For one, the enhanced I/M programs provide for the continued participation of PICs as inspection centers, but only if they eliminate all repair- and service-related activities. Based on past performance, the EPA has determined that a decentralized test-and-repair program will not achieve emission reductions equal to that of a similarly designed, enhanced, centralized test-only program, and has strongly discouraged states from including test-and-repair facilities in their programs.

Operators of fleets of 10 or more vehicles will no longer be permitted to self-inspect. They will, however, have the option of engaging test-only contractors to perform inspections at their site (contracted on-site inspections). Otherwise, fleets will have to be inspected at State-run or licensed inspection lanes. Fleet vehicles will be subject to the same test procedures using the same quality control standards as non-fleet vehicles.

In an attempt to mitigate driver inconvenience, the Department is proposing to change the frequency with which inspections will have to be performed. Program A provides for a biennial (every other year) inspection frequency beginning with the second year of the vehicle's life. Under Program B, the inspection schedule will be biennial for the first five years of the vehicle's life with annual inspections following the fifth year. EPA modeling demonstrates that biennial programs would have minimal adverse effects on the benefit gained from the enhanced I/M program and will help to diminish costs and encourage consumer acceptance.

The proposed programs will affect all gasoline-fueled motor vehicles with the exception of motorcycles. In anticipation of the integration of alternatively-fueled motor vehicles into the fleet, the rules indicate the inspection procedure to be followed in testing a vehicle in a non-certified configuration or one that has been converted to a different fuel type.

The Department is proposing two comprehenisve enhanced I/M programs for reasons discussed earlier in this notice. A detailed description of both proposed exhaust emissions tests can be found in the discussion of N.J.A.C. 7:27B-4.5 (exhaust emission testing procedures) contained in the Summary to this proposal.

In conjunction with the exhaust emission test, vehicles of model year 1971 and later will be subjected to an evaporative system integrity test ("pressure test"). An evaporative performance test ("purge test") will also be performed on 1971 and later vehicles that are subject to exhaust emission testing utilizing an exhaust emission driving cycle. These tests were designed to check whether there are leaks in the evaporative system and whether fuel vapors are being properly removed from the canister and delivered to the engine during vehicle operation.

The Department is proposing to allow the issuance of waivers in accordance with 40 C.F.R. §51.360. In order to qualify for a waiver, the motorist will have to spend at least $450.00 on emission-related repairs. A more detailed explanation of the waiver program is contained in the discussion of N.J.A.C. 7:27-15.9 (Waivers) contained in the Summary to this proposal.

The Department will continue to collect the data necessary to evaluate the performance of the enhanced I/M program and to quantify the air quality benefits. The evaluation tool that the Department will use to insure the effectiveness of the enhanced I/M program is to test 0.1

percent of the vehicle population on the EPA-recommended IM240 test. This random set of tests will be performed in accordance with procedures specified in 40 C.F.R. §51.357(11).

Other operational aspects of the proposed enhanced I/M program are outlined in the DMV's pre-proposed new rules at N.J.A.C. 13:20-43. The reader is directed to the DMV's pre-proposal draft of N.J.A.C. 13:20-43 that is published elsewhere in this issue of the New Jersey Register.

The DMV has estimated that implementation of the IM240 emission test would require $242 million in capital expenditures. Although Program A (short transient) would require the same equipment as the IM240, the capital costs for this program would be lower because the higher throughput rate expected using the short transient test will reduce the number of new inspection lanes required. The Department, therefore, estimates the capital costs of Program A to be $99 million. The DMV has estimated that Program B (ASM 5015) will entail a capital investment of $95 million. These costs do not reflect annual operating expenses for either program, which are likely to be significant.

Incorporated into the program's capital costs are the costs of each component of the proposed enhanced I/M program. These components include the evaporative pressure and purge testing equipment. The Department has estimated that the equipment costs of Alternative Pressure Test A and B are both approximately $500.00. However, the equipment costs of the alternative purge tests vary significantly. Alternative Purge Test A, which requires an inert gas measuring device, will cost about $20,000. Alternative Purge Test B will cost about $500.00.

Another component of the enhanced I/M program that has been incorporated into the program's capital costs is on-road testing. Currently, the State performs an idle test utilizing BAR90 equipment during roadside inspections. Under Alternative Exhaust Test A, the on-road test will be a two-speed idle test that uses the same equipment in use today. Under Alternative Exhaust Test B, the on-road test will duplicate the ASM 5015/2500 RPM test that will be performed in the inspections lanes. This will require a portable dynamometer in addition to the BAR90 equipment, costing between $40,000 and $50,000.

The Department has modeled the environmental benefits for Program A using the EPA's MOBILE5a. The EPA has modeled the environmental benefits of the proposed ASM 5015 test used in a "maximum" enhanced I/M program design. Maximum design means an annual enhanced I/M program covering all vehicle types and model years as prescribed under the EPA's enhanced I/M performance standard. The results of modeling conducted by the Department and EPA yield the following mobile source emission reductions relative to a "no-I/M" scenario for the Alternative Programs: 31 to 48 percent for VOCs in the year 2000, 15 to 16 percent for NO_x in the year 2000 and, in the year 2001, 32 to 47 percent for CO.

It is anticipated that mobile source emission reductions from the existing New Jersey I/M program will be the following for the Alternative Programs: 29 to 46 percent for VOC, 12 to 13 percent for NO_x, and 24 to 41 percent for CO.

These percentages, applied to the estimated emission inventories for the year 2000, yield the following reductions in tons/day for the Alternative Programs: 171 to 266 for VOC, 66 to 72 for NO_x and 1,409 to 2,021 for CO.

The modeled emission reductions relative to the estimated capital and operating costs yield the following cost-effectiveness ratios:

Alternatives A & B
$491.00/ton to $711.00/ton VOC
$1,819/ton to $1,840/ton NO_x
$65.00/ton to $86.00/ton CO

Based on its experience, the Department has determined that average stationary source reduction measures for VOCs are currently in the range of $3,000 to $6,000 per ton. The proposed enhanced I/M program is, therefore, significantly more cost-effective. Cost-effectiveness ratios for stationary source controls for NO_x and CO are comparable to those calculated for the enhanced I/M program.

Because the enhanced I/M test procedures that the Department is proposing are more advanced than the current I/M test procedures, the proposed new I/M tests can more accurately and selectively determine which vehicles are in need of repair. Under the present I/M program in New Jersey, the failure rate for emissions is 11 to 15 percent. It is anticipated by the EPA that the enhanced I/M program will increase the failure rate to approximately 30 percent. The emission failures under the enhanced I/M program may be more difficult to diagnose given the greater sensitivity and tighter cutpoints of the proposed tests. Defects resulting in enhanced I/M emission test failures will require a higher level of mechanic skill to locate and correct the problem, resulting in increased parts and labor costs.

The EPA has estimated the costs of repairing vehicles which fail the IM240 test. (See 57 Fed. Reg. 52963 to 64, Nov. 5, 1993.) The estimated cost to fix a transient test failure that would also fail the test currently employed in New Jersey is $75.00. The average cost to repair vehicles failing the transient test that would not have failed the current test is estimated to be $150.00. The overall average repair cost for transient failures is estimated to be $120.00. Average repair costs for evaporative system pressure and purge test failures are estimated to be $38.00 and $70.00, respectively. Although NO_x repairs cannot be accurately estimated, EPA has projected that repairs for NO_x failures are estimated to cost approximately $100.00 per vehicle. Although the Department is proposing tests different from EPA's, it expects the repair costs from vehicles failing the proposed tests to be similar to the EPA's estimates. Even though these costs are significant increases over those required by the present test, it is highly unlikely that one vehicle will require all three types of repairs. Also, some newer vehicles may be repaired at no charge to the owner, due to emission control warranty coverage provided by the manufacturer.

In an attempt to alleviate some of the increased costs to the consumer resulting from the proposed enhanced I/M program, the Department is proposing a waiver program, as discussed in the Summary to this proposal addressing amendments to N.J.A.C. 7:27-15.9 (Waivers). The implementation of this program should make for a smoother transition to the proposed new enhanced I/M program without having significant effects on the air quality benefits expected from the program.

As previously mentioned in the discussion of N.J.A.C. 7:27-4.5 (exhaust emission testing procedures), EPA identifies the "ping-pong" effect as one of the possible problems resulting from repair facilities not having adequate diagnostic feedback. Although the Department believes that the likelihood of this happening would be limited to elusive emission system malfunctions, it agrees that it is a potential problem and has considered mitigating tactics.

To help prepare the motor vehicle repair industry for the proposed new emission tests, the New Jersey Department of Education (DOEd) is proposing to expand its technician training curriculum to include the new inspection procedures being proposed by the Department. DOEd plans to update its existing programs to meet the new requirements facing the auto service industry in the following stages: curriculum development, instructor training, training facility upgrading, and program offerings. The DOEd plans to fund these activities through moneys obtained from the Sears Settlement Fund and the Carl D. Perkins Vocational and Applied Technology Education Act of 1990. The Department believes that by providing a more comprehensive, advanced education program, technicians will have a broader understanding of the emission-related malfunctions that could occur and this will further limit the occurrence of "ping-pong" scenarios.

To better monitor and control the repair industry, the DMV is proposing to license repair facilities. This proposed program will include monitoring the performance of each repair facility. Such performance monitoring is mandatory under EPA's enhanced I/M rules, 40 C.F.R. §51.369, and will help to ensure that motorists are being provided with objective and effective repairs. Since this portion of the I/M program will be administered by the DMV, the reader should refer to DMV's pre-proposal of N.J.A.C. 13:20-43, published elsewhere in this issue of the New Jersey Register for more information concerning the licensing and monitoring of repair facilities.

Implementation of the enhanced I/M program will have an impact on State government resources. Most of this impact will fall on the DMV since it is the primary operational agency for the enhanced I/M program. The reader is directed to DMV's pre-proposal of N.J.A.C. 13:20-43, published elsewhere in this issue of the New Jersey Register.

The Department will also experience an impact on resources from the enhanced I/M program. Currently, the Department has three staff members working on regulatory development and program oversight. In addition, there are five Department employees conducting quality assurance auditing.

In the future, in addition to this staff, the Department anticipates that enhanced I/M will require two additional staff members for program oversight and one to two more employees for quality assurance auditing.

Salaries for the Department staff are funded in part by a grant under Section 105 of the CAA. This grant is intended to assist states in

implementing the provisions of CAA. Additional funds are obtained from permitting fees and fines from violations of the Department's air pollution regulations.

A positive economic impact of the proposed enhanced I/M tests will occur through repairs made to vehicles that have failed and are effectively repaired. The resultant fuel economy benefits will, at least partially, offset the cost of repairs. Fuel economy improvements of 6.1 percent for repair of pressure test failures and 5.7 percent for repair of purge test failures have been observed by the EPA. The EPA also reports that vehicles that failed the IM240 test at the established cutpoints were found to exhibit a fuel economy improvement of 12.6 percent as a result of repairs. It should also be noted that these fuel economy improvements generally continue beyond the year of the test.

The proposed amendments and new rules will have positive economic effects on the repair industry through increased business generated by the higher failure rate expected from the enhanced I/M program. An attendant expansion of the service industry will result in increased employment and will help to offset potential financial loss to the repair industry from the separation of test and repair at a single facility.

The amendments and new rules will also have an indirect benefit by decreasing health costs to the general public. Health care costs for air pollution related illnesses in the United States are estimated to be on the order of $50 billion per year. In addition, the American Lung Association estimates that, nationally, 182 million people face health threats from ground-level ozone alone. By decreasing the public's exposure to ozone, CO, and air toxins, these amendments and new rules will lessen these health care costs.

Air pollutants also have a direct effect on vegetation, livestock, and certain materials, such as rubber, glass, etc. Although economic losses due to air-pollution damage in these areas are difficult to quantify since one cannot easily distinguish what is due to the natural deterioration and what is caused by air pollutants, past estimates have indicated that losses from material damage alone have exceeded $4 billion annually nationwide. (See Reference #2) This proposal, by reducing air pollutants, should substantially reduce the adverse economic effects on vegetation, livestock, and other property.

Environmental Impact

The implementation of these amendments to N.J.A.C. 7:27-15 and 7:27B-4 will have a positive impact on the environment, by reducing the emissions of VOCs, CO, CO_2, and NO_x, thereby reducing the formation of ground-level ozone. Ground-level ozone's primary impact is upon human health and well-being. These effects are discussed at length in the Social Impact section of this proposal.

In addition to human health effects, studies have shown that increasing ozone levels damage foliage. One of the earliest and most obvious manifestations of ozone impact on the environment is this impact on sensitive plants. Subsequent effects include reduced plant growth and decreased crop yield. A reduction in ambient ozone concentrations will mitigate damage to foliage, fruits, vegetables and grain.

In addition, decreased ozone levels will result in less degradation of various man-made materials, such as rubber, plastics, dyes and paints. This degradation is caused by the oxidizing properties of ozone and will be diminished if the photochemical production of ground-level ozone is limited. The implementation of the proposed amendments will contribute to a reduction in ground level ozone.

Although ozone is well-known for its damaging effects on the environment, NO_x, one of the reactants in the production of ozone, can also independently cause significant environmental degradation. The oxides of nitrogen are the primary constituents involved in the deposition of toxins, commonly referred to as acid rain, into lakes and coastal waters. Acid rain damages plants and trees, and injures aquatic life by acidifying lakes and streams. The proposed new emissions tests will result in a decrease of emissions of NO_x into the atmosphere and benefit the environment of New Jersey. As discussed previously under the Economic Impact section, the Department and the EPA have modeled the emission reduction benefits of the proposed emission tests under two separate program design scenarios. Program A utilizes the proposed short transient emission test with a biennial inspection frequency. Program B utilizes the ASM 5015/2500 RPM test and a biennial inspection frequency for the first five years of a vehicle's life and annual thereafter.

The EPA has modeled the emission reductions expected under an enhanced I/M program design utilizing a test similar to the Department's proposed Alternative Exhaust Test B. The Department has calculated the emission reductions expected from Program A. The results of these calculations are listed in Tables 2 through 5 below.

TABLE 2
MOBILE5a Emission Factors and Emission Reductions for Program Designs A and B in the Year 2000

	VOC g/mile	VOC reduction	NO_x g/mile	NO_x reduction
No I/M	2.88	–	2.27	–
Current I/M	2.82	2.08%	2.19	3.52%
Enhanced Performance Standard	1.96	32.0%	1.97	13.5%
Programs A & B	1.5 to 2	47.6% to 30.5%	1.9 to 1.92	16.3% to 15.0%

TABLE 3
MOBILE5a Emission Factors and Emission Reductions for Program Designs A and B in the Year 2001

	CO g/mile	CO reduction
No I/M	22.23	–
Current I/M	19.97	10.2%
Enhanced Performance Standard	13.98	37.1%
Programs A & B	12 to 15	47% to 32%

TABLE 4
Estimated Reductions in tons/day for VOC and NO_x in the Year 2000

	VOC reduction (tons/day)	NO_x reduction (tons/day)
Current I/M	11.63	15.50
Enhanced Performance Standard	178.3	58.14
Programs A & B	266 to 171	72 to 66

TABLE 5
Estimated Reductions in tons/day for CO in the Year 2001

	CO reduction (tons/day)
Current I/M	438
Enhanced Performance Standard	1626
Programs A & B	1409 to 2021

Tables 2 through 5 represent the results of modeling using the EPA's MOBILE5a. Tables 2 and 3 compare pollutant reductions realized under an annual ASM 5015 test procedure (Program B) to that of Program A (short transient) and the EPA's model program performance standard. All of the estimated reductions are calculated from a no-I/M scenario. The current I/M scenario gives a perspective on the necessity of an enhanced I/M program.

Volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) are precursors to ozone formation. For this reason, efforts to attain and maintain the NAAQS for ozone have focused on reducing VOC and NO_x emissions. In 1990, VOC emissions in New Jersey totalled 1,776 tons per summer weekday with 474 tons attributed to emissions from all mobile sources, not just exhaust emissions. The alternative program designs proposed by the State are expected to reduce VOC emissions by 171 to 266 tons per day in the year 2000. In 1990, NO_x emissions in New Jersey totalled 1,511 tons per summer weekday with 570 tons per summer weekday attributed to emissions from all mobile sources. Programs A and B are expected to reduce NO_x emissions by 66 to 72 tons per day.

Carbon monoxide (CO) is generally a localized wintertime pollutant, elevated levels of which are related to colder temperatures and congested traffic. In 1990, CO emissions in New Jersey totalled 4,450 tons per winter weekday, with 2,952 tons per winter weekday attributed to all mobile sources. Programs A and B are expected to reduce CO emissions by 1,409 to 2,021 tons per day in the year 2001.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendments and new rules will not impose additional reporting or recordkeeping requirements on small business (as defined in the Regulatory Flexibility Act). It will, however, impose compliance requirements on small business, in that such businesses will be required (much

as they are currently required under the existing rule) to undertake the inspection and maintenance of motor vehicles that they own. The difference in compliance, of course, is that the amendments and new rules provide for the application of stricter emissions standards and the use of more sophisticated equipment and test procedures designed to identify and fail high emitters, some of which are currently not being identified and repaired. The Department believes that, due to their reliance on gasoline-fueled motor vehicles, the majority of small businesses (fewer than 100 employees) in the State will be affected by the amendments and new rules due to the fact that most own vehicles.

The anticipated adverse economic impact that this requirement would have on such businesses relates directly to the increased cost of motor vehicle inspection and the additional and more costly repairs to those vehicles which might have otherwise passed inspection and not have been required to have such repairs. As is discussed in the Economic Impact section of this notice, the overall average repair cost for these motor vehicles failing enhanced I/M, predicted to be 30 percent of those tested, would be unlikely to exceed $300.00 per vehicle.

In developing the proposal, the Department has balanced the need to protect human health and the environment against the economic impact of the rules as proposed. As a result, no allowances nor exceptions have been made for small businesses. To do so would have defeated the purpose of the proposal, as it would permit unrepaired high emitters to remain on New Jersey's roads.

In addition, there may be a significant impact on a substantial number of small businesses that own and operate private inspection centers (PICs) in New Jersey. While the amendments and new rules are not directly responsible for this impact, it is discussed here briefly, as it results from implementation of the proposed enhanced I/M program of which these proposed rule amendments are a significant component. New Jersey's existing hybrid I/M system includes approximately 3,900 PICs, all of which perform both testing and repair services and most of which are small businesses. Regulatory authority regarding the administration of PICs is vested with the DMV. For more information concerning the enhanced I/M program's impacts on PICs, refer to the DMV's pre-proposal draft of N.J.A.C. 13:20-43 that appears elsewhere in this issue of the New Jersey Register.

As discussed in the Economic Impact section above, the proposed enhanced I/M program, to be consistent with EPA guidance, will allow for test-only PIC's. PICs, therefore, will be required to choose to either provide inspection-only services or repair-only services. Either choice may significantly impact PICs, particularly the smaller ones.

Should a PIC decide to discontinue the inspection portion of its business, it can expect a certain loss in revenue. PICs are permitted to charge up to one half of their hourly labor rate for an inspection. Typically, a PIC in New Jersey charges an average of $17.00 to inspect a vehicle under the current I/M program.

In contrast, should a PIC decide to continue to perform inspections in lieu of repair services, increased equipment costs must be considered, as well as the loss of revenues from repair work previously performed. The equipment required for inspections under the proposed enhanced I/M program is more expensive than that currently in use. The Department estimates the cost of the enhanced I/M equipment to be approximately $40,000 to $50,000 per facility for Alternative Exhaust Test B per lane and approximately $140,000 for Alternative Exhaust Test A. Some smaller facilities may be unable to generate the capital needed to obtain this equipment and, therefore, will lose the option to be licensed as a test only facility. Their only option will be to forgo testing and be a repair-only facility.

EPA predicts that car dealerships and repair shops, especially those that specialize in engine repair, will probably opt out of the inspection business. However, the likelihood of closure due to loss of inspection services is dependent on the fraction of total income derived from inspections. Since most facilities have other lines of business, such as gasoline sales, auto part sales, or various types of vehicle repair and servicing, the loss of inspection business will not necessarily mean closure.

EPA projects that any losses to the small business community would be offset by an increase in employment from the enhanced I/M program. The repair industry would see a marked increase in employment, since the greater sophistication of the new test will result in the detection of marginal polluters that would currently pass inspection and not require repairs. These vehicles will now have to be repaired, resulting in an increased volume of repair business and a need for additional mechanics. Also, the greater sophistication and complexity of the new enhanced I/M testing procedure would require more inspectors per lane than are currently needed. On a national basis, EPA estimated that three or four inspectors will be needed in each lane to perform emission testing compared to the one or two inspectors that are currently employed per lane in today's high volume systems.

Costs of compliance will be incurred regardless of whether a PIC chooses to become repair-only or test-only. These costs will result from increased recordkeeping and reporting requirements imposed by DMV's licensing and quality assurance regulations. For more information on these requirements, see DMV's pre-proposal draft of N.J.A.C. 13:20-43 which appears elsewhere in this issue of the New Jersey Register.

In addition to the direct increases in employment that the new enhanced I/M program will provide, other employment opportunities will arise as an indirect result of the implementation of the proposed enhanced I/M program. This State will have to upgrade existing State inspection centers and construct new inspection centers to accommodate the new test equipment and to alleviate the anticipated increased throughput time. This will provide work for both the construction and manufacturing industries, many of which are small businesses. Overall, EPA estimates that an enhanced I/M program will result in between 3,600 and 11,600 additional jobs nationwide, directly or indirectly related to testing and repair of motor vehicles as a result of the improved program.

This does not mean, however, that the implementation of this proposed enhanced I/M program will result in an overall net increase in employment in New Jersey. Resources allocated to testing and repair services may have otherwise been spent on other goods and services in the economy. Thus, it may be that other sectors of the economy may incur employment losses. This shift in business opportunities should result in an equilibrium which will allow small businesses to continue operations in slightly different capacities.

In developing these rule amendments, the Department has balanced the need to protect human health and the environment against the economic impact of the amendments as proposed. As a result, allowances have been made to provide a smooth transition to this new program for the PICs. EPA's rule permits the states to phase out the decentralized test-and-repair facilities. Accordingly, the DMV will allow test-and-repair centers to continue operation until January 1, 1996. After that date, all vehicles will be inspected in a test-only station. This transition will afford the test-and-repair facilities the opportunity to decide whether to continue their testing services or to abandon testing in favor of repair services. In addition, this transition period will also allow them to experiment with other aspects of the repair business to make up for loss in inspection revenue should they opt for repair-only.

The Department also recognizes that several of the provisions in the proposal addressing emission control device tampering and other enforcement related topics may cause difficulties for some small businesses in the State. Particularly, the prohibition against the sale of emission control defeat devices will likely impact many dealers and installers of high performance aftermarket components in New Jersey. Clearly, to make exceptions for any such small businesses would defeat the purposes of the rules.

References

(1) United States Environmental Protection Agency, "Evaluation of a Four-Mode Steady-State Test with Acceleration Simulation Modes as an Alternative Inspection and Maintenance Test for Enhanced I/M Programs", May 11, 1993.

(2) Godish, Thad. *Air Quality* (Chelsea, Michigan: Lewis Publishers, Inc., 1991), p.207.

(3) 40 C.F.R. Part 51. Inspection/Maintenance Program Requirements; Final Rule.

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

7:27-15.1 Definitions

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

"Approved exhaust gas analytical system" means a device for sensing the amount of air contaminants in the exhaust emissions of a motor vehicle. [For purposes of this subchapter, this shall mean analyzing devices of the nondispersive infrared type sensitized to measure carbon monoxide at the 4.74 micron band expressed as percent carbon monoxide in air and to measure hydrocarbons as hexane at the 3.41 micron band expressed as parts per million of

hydrocarbons (hexane) in air. The device shall be approved by the Department as one which is in accordance with specifications contained in "Specifications For Exhaust Gas Analytical System For Use by New Jersey Division of Motor Vehicles Private Inspection Centers (PIC)" or "Specifications For Exhaust Gas Analytical System For Use by New Jersey Division of Motor Vehicles Operated Official Inspection Stations" and shall be used in accordance with the manufacturer's recommended procedures for calibration and maintenance.]

"Carbon monoxide (CO)" means **a** colorless, odorless, tasteless gas at standard conditions having a molecular composition of one carbon atom and one oxygen atom.

"Certified configuration" means an engine or engine-chassis design which has been approved by the United States Federal Environmental Protection Agency or the California Air Resources Board prior to production of vehicles for a given model year, including, but not limited to, emission related parts, engine design parameters, engine calibrations, inertia weights, drag coefficients, and final drive ratios.

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

...

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

"Element of design" means any automotive part or system relating to a vehicle's certified configuration that affects any regulated emissions from a motor vehicle which is subject to Federal or California emission standards.

...

"GVWR" or "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single or combination vehicle.

"Heavy-duty motor vehicle" means any motor vehicle designed primarily for transportation of persons or property [and registered as exceeding 6,000 pounds gross weight] **that has a GVWR of 8,500 pounds or more.**

...

"LDGV" or "light-duty gasoline vehicle" means a passenger car or passenger car derivative rated at less than 8,500 pounds GVWR.

"LDGT or light-duty gasoline truck" means any motor vehicle rated at less than 8,500 pounds GVWR which has a vehicle curb weight of 6,000 pounds or less and which has a basic frontal area of 45 square feet or less, which is:

1. Designed primarily for purposes of transportation of property or is a derivative of such a vehicle;

2. Designed primarily for transportation of persons and has a capacity of more than 12 persons; or

3. Available with special features enabling off-street or off-highway operation and use.

["Light-duty motor vehicle" means any motor vehicle designed primarily for transportation of persons or property and registered at 6,000 pounds gross weight or less.]

"Model year of vehicle" means the [production period of new motor vehicles or new motor vehicle engines designated by the calendar year in which such period ends. If the manufacturer does not designate a production period, the model year with respect to such vehicles or engines shall mean the 12 month period beginning January of the year in which production begins.] **manufacturer's annual production period for each motor vehicle which includes January 1 of such calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any motor vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.**

...

"New motor vehicle" means a newly manufactured motor vehicle [registered in New Jersey,] prior to delivery to the ultimate purchaser.

...

"NMHC" means non-methane hydrocarbons.

"Person" means **any individual or entity and shall include, without limitation,** corporations, companies, associations, societies, firms, partnerships, [and] joint stock companies [as well as individuals], and [shall also include] all political subdivisions of this State or any agencies or instrumentalities thereof.

...

"Quasi-public" means any property that is essentially public in nature, although under private ownership or control, to which the public has access.

...

7:27-15.2 Public highway standard

(a) No person shall cause, suffer, allow or permit the operation of any gasoline-fueled motor vehicle upon the public **roads, streets or** highways of the State **or any public or quasi-public property in the State** if the vehicle emits visible smoke in the exhaust emissions or in the crankcase emissions for a period in excess of three consecutive seconds.

(b) No person shall cause, suffer, allow or permit the operation of any gasoline-fueled motor vehicle upon the public **roads, streets or** highways of the State **or any public or quasi-public property in the State** if the vehicle emits hydrocarbons (HC) or carbon monoxide (CO) **or oxides of nitrogen (NO_x)** in the exhaust emissions in excess of standards as set forth in Tables**, 1A, 1B, 2A and 2B** when measured using an approved exhaust gas analytical system and the inspection test procedure established at N.J.A.C. 7:27B-4.5.

7:27-15.4 Motor vehicle inspection standards

(a) (No change.)

(b) Any light-duty or heavy-duty, gasoline fueled motor vehicle which is subject to inspection by the State of New Jersey in accordance with the provisions of N.J.S.A. 39:8, as a condition of compliance with said inspection, shall not emit carbon monoxide (CO) or hydrocarbons (HC) **or oxides of nitrogen (NO_x)** in the exhaust emissions in excess of standards set forth in Tables **1A, 1B, 2A and 2B** when measured using an approved exhaust gas analytical system and the inspection test procedure established at N.J.A.C. 7:27B-4.5.

(c) Any [post-1974 model year] gasoline-fueled motor vehicle [weighing less than 8501 pounds] which is subject to inspection by the State of New Jersey in accordance with the provisions of N.J.S.A. 39:8, as a condition of compliance with said inspection, shall have properly functioning and properly maintained emission control apparatus as determined according to the inspection test procedure established at N.J.A.C. 7:27B-4.6.

(d) Vehicles with engines other than the engine originally installed by the manufacturer or an identical replacement of such engine shall be subject to the test procedures and standards for the chassis type and model year including visual equipment inspections for all parts that are part of the original or now-applicable certified configuration and part of the normal inspection.

(e) Vehicles that have been switched from an engine of one fuel type to another fuel type that is subject to the program (for example, from a diesel engine to a gasoline engine) shall be subject to the test procedures and standards for the current fuel type, and to the requirements of (d) above.

(f) Vehicles that are switched to a fuel type for which there is no certified configuration shall be tested according to the most stringent emission standards established for that vehicle type and model year.

(g) Vehicles that are modified to operate on more than one fuel type shall receive a separate exhaust emissions test for each fuel type for which the vehicle is equipped. While operating on a fuel type for which there is no certified configuration, (f) above shall apply.

TABLE 1A
EXHAUST EMISSION STANDARDS FOR
[GASOLINE-FUELED MOTOR VEHICLES SUBJECT TO INSPECTION BY THE STATE OF NEW JERSEY] **THE IDLE MODE TEST**

Light-Duty, Gasoline-Fueled Motor Vehicles

Model Year	Idle CO (%)	Idle HC (ppm as hexane)
Pre-1968	8.5	1400
1968-1970	7.0	700
1971-1974	5.0	500
1975-1980	3.0	300
1981 & Later	1.2	220

Heavy-Duty, Gasoline-Fueled Motor Vehicles

Model Year	Idle CO (%)	Idle HC (ppm as hexane)
Pre-1968	8.5	1400
1968-1970	8.5	1200
1971-1974	6.0	700
1975-1978	4.0	500
1979 & Later	3.0	300

TABLE 1B
EXHAUST EMISSION STANDARDS FOR THE 2500 RPM TEST

Light-Duty, Gasoline-Fueled Motor Vehicles

Model Year	CO (%)	HC (ppm as hexane)
Pre-1968	**8.5**	**1400**
1968-1970	**7.0**	**700**
1971-1974	**5.0**	**500**
1975 & Later	**0.5**	**100**

Heavy-Duty, Gasoline-Fueled Motor Vehicles

Model Year	CO (%)	HC (ppm as hexane)
Pre-1968	**8.5**	**1400**
1968-1970	**8.5**	**1200**
1971-1974	**6.0**	**700**
1975-1978	**4.0**	**500**
1979 & Later	**3.0**	**300**
1979 & Later Catalyst-Equipped Only	**1.2**	**220**

TABLE 2A
EXHAUST EMISSION STANDARDS FOR THE TRANSIENT EMISSION TEST
Alternative Exhaust Test A (Short Transient)

Light-Duty, Gasoline-Fueled Motor Vehicles (Effective until December 31, 1997)

Model Year	Vehicle Type	GVWR (lbs)	HC (g/mi)	CO (g/mi)	NO_x (g/mi)
1986 & Later	**LDGV & LDGT**	**all**	**1.2**	**20.0**	**3.5**

Light-Duty, Non-Tier 1, Gasoline-Fueled Motor Vehicles (Effective on January 1, 1998)

Model Year	Vehicle Type	GVWR (lbs)	NMHC (g/mi)	CO (g/mi)	NO_x (g/mi)
1986-1995	**LDGV**	**all**	**0.8**	**20.0**	**2.0**
1986-1995	**LDGT**	**all**	**1.2**	**20.0**	**3.5**

Light-Duty, Tier 1, Gasoline-Fueled Motor Vehicles (Effective on January 1, 1998)

Model Year	Vehicle Type	GVWR (lbs)	HC (g/mi)	CO (g/mi)	NO_x (g/mi)
1994 & Later	**LDGV**	**all**	**0.7**	**15.0**	**1.4**
1994 & Later	**LDGT**	**<6001**	**0.7**	**15.0**	**2.0**
1994 & Later	**LDGT**	**>6000**	**0.8**	**15.0**	**2.5**

TABLE 2B
EXHAUST EMISSION STANDARDS FOR THE LOADED-MODE TEST
Alternative Exhaust Test B (ASM 5015)

Light-Duty, Gasoline-Fueled Motor Vehicles

Model Year	Vehicle Type	GVWR (lbs)	HC (g/mi)	CO (g/mi)	NO_x (g/mi)
Pre-1981	**LDGV & LDGT**	**all**	**2.0**	**15.0**	**2.0**
1981 & Later	**LDGV & LDGT**	**all**	**1.0**	**8.0**	**1.0**

7:27-15.5 Operation of emission control apparatus

(a) No person shall cause, suffer, allow or permit any emission control apparatus **or element of design** installed on any motor vehicle to be disconnected, detached, deactivated, or in any other way rendered inoperable or less effective than designed by the original equipment manufacturer (except temporarily for the purpose of diagnosis, maintenance, repair or replacement).

(b) No person shall cause, suffer, allow or permit the operation on the public **roads, streets or** highways **of the State or any public or quasi-public property in the State** of any motor vehicle **which, when applicable, is not of a certified configuration or** in which emission control apparatus **or element of design** installed on such vehicle has been disconnected, detached, deactivated, or in any other way rendered inoperable or less effective than designed by the original equipment manufacturer.

(c) No person shall cause, suffer, allow or permit the sale, **lease or offer for sale or lease,** of any motor vehicle in which emission control apparatus **or element of design** installed on such vehicle has been disconnected, detached, deactivated, or in any other way rendered inoperable or less effective than designed by the original equipment manufacturer.

(d) No person shall cause, suffer, allow or permit the sale or offering for sale of any device or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where use of such device or component is to bypass, defeat, render inoperable or less effective any emission control apparatus or element of design as installed by the original equipment manufacturer.

7:27-15.6 Idle standard

(a) No person shall cause, suffer, allow, or permit the engine of a gasoline-fueled motor vehicle to idle more than three consecutive minutes if the vehicle is not in motion[, except:

1. A motor vehicle at the vehicle operator's place of business where the motor vehicle is permanently assigned may idle for 30 consecutive minutes, or

2. A motor vehicle may idle for 15 consecutive minutes when the vehicle engine has been stopped for three or more hours].

(b) The provisions of (a) above shall not apply to:

1.-5. (No change.)

6. Motor vehicles while being repaired; **or**

7. Motor vehicles while engaged in the process of connection, detachment or exchange of trailers[; or

8. Motor vehicles manufactured with a sleeper berth while being used, in a non-residentially zoned area, by the vehicle's operator for sleeping or resting].

7:27-15.7 Exceptions

(a) This subchapter shall not apply to motorcycles [or to motor vehicles with an engine displacement of less than 50 cubic inches (819 cubic centimeters)].

(b) (No change.)

7:27-15.8 [Variances] **(Reserved)**

[Whenever either the Commissioner or the Director, Division of Motor Vehicles, has reason to believe that any vehicle or any vehicle class cannot comply with the provisions of N.J.A.C. 7:27-15.4(b), the Director, with the concurrence of the Commissioner, may prescribe alternative emission inspection standards for such vehicle or vehicle class.]

7:27-15.9 Waivers

(a) A waiver is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards. In order to qualify for a waiver, the criteria in either (b) below must be met.

(b) The following apply to cost waivers:

1. Inspection compliance waivers shall be issued only after a vehicle has failed a retest performed after all qualifying repairs have been completed. The waiver shall be valid until the vehicle is next due for inspection.

2. Any available warranty coverage shall be used to obtain needed repairs before expenditures can be counted towards the cost limits in (b)6 below. The owner of a vehicle within the statutory age and mileage coverage under 42 U.S.C.A. §7541 shall present a written denial of warranty coverage for needed repairs from the manufacturer or authorized dealer for this provision to be waived.

3. Waivers shall not be issued to vehicles for tampering-related repairs. The cost of tampering-related repairs shall not be applicable to the minimum expenditure in (b)6 below. Tampering-related repairs are those repairs needed to correct any acts prohibited at N.J.A.C. 7:27-15.5(a).

4. Repairs shall be appropriate to the cause of the test failure, and a visual check shall be made to determine if repairs were actually made if, given the nature of the repairs, they can be visually confirmed. Receipts shall be submitted for review to further verify that qualifying repairs were performed.

5. Repairs shall be performed by a licensed repair technician (that is, one professional engaged in vehicle repair, employed by a business whose purpose is vehicle repair, or possessing nationally recognized certification for emission-related diagnosis and repair) in order to qualify for a waiver. The cost of parts and components for repairs performed by non-technicians (for example, owners) may only be applied toward the waiver limit for pre-1980 model year vehicles.

6. The motorist shall first make an expenditure of at least $450.00 in repairs to qualify for a waiver. This $450.00 minimum expenditure shall be adjusted in January of each year by the percentage, if any, by which the Consumer Price Index for the preceding calendar year differs from the Consumer Price Index for 1989.

i. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

ii. The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

7. (Reserved.)

7:27-15.10 Compliance with recall notices

Vehicles that are included in either a "Voluntary Emissions Recall" as defined at 40 C.F.R. §85.1902(d), or in a remedial plan determination made pursuant to 42 U.S.C.A. §7541(c), shall have the necessary recall repairs completed in order to comply with the inspection provisions of N.J.S.A. 39:8-1 et seq. All recalls for which owner notification occurs after January 1, 1995 shall be included in this requirement.

7:27B-4.1 Definitions

The following words and terms, when used in this [Subchapter] **subchapter**, [shall] have the following meanings, unles the context clearly indicates otherwise.

. . .

"Chassis dynamometer" means a device constructed in such manner as [a] **to** simulate highway driving conditions on a stationary motor vehicle.

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

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

["Diesel-powered motor vehicle" means a vehicle which is self-propelled by a compression ignition type of internal combustion engine and which is designed primarily for transporting persons or properly on public streets or highways; for purposes of this Subchapter, passenger automobiles and motorcycles are excluded.]

. . .

"GVWR" or "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single or combination vehicle.

"Heavy-duty diesel-powered motor vehicle" means a vehicle with a GVWR exceeding 10,000 pounds which is self-propelled by a compression ignition type of internal combustion engine and which is designed primarily for transporting persons or property.

"Heavy-duty motor vehicle" means any motor vehicle designed primarily for transportation of persons or property [and registered as exceeding 6,000 pounds gross weight] **that has a GVWR of 8,500 pounds or more.**

. . .

"Inertia weight" means the vehicle curb weight plus 300 pounds.

. . .

"LDGV" or "light-duty gasoline vehicle" means a passenger car or passenger car derivative rated at less than 8,500 pounds GVWR.

"LDGT" or "light-duty gasoline truck" means any motor vehicle rated at less than 8,500 pounds GVWR which has a vehicle curb weight of 6,000 pounds or less and which has a basic frontal area of 45 square feet or less, which is:

1. Designed primarily for purposes of transportation of property or is a derivative of such a vehicle;

2. Designed primarily for transportation of persons and has a capacity of more than 12 persons; pr

3. Available with special features enabling off-street and off-highway operation and use.

["Light-duty motor vehicle" means any motor vehicle designed primarily for transportation of persons or property and registered at 6,000 pounds gross weight or less.]

. . .

"Two-speed idle" means an exhaust emission test performed in accordance with the procedures specified at 40 C.F.R. Part 51, Appendix B to Subpart S-Test Procedures (II) Two Speed Idle Test and incorporating all subsequent revisions thereto.

"Vehicle curb weight" means the actual or the manufacturer's estimated weight of the vehicle in operational status with all standard equipment, and weight of fuel at nominal tank capacity, and the weight of optional equipment computed in accordance with 40 C.F.R. §86.082-24; incomplete light-duty gasoline trucks shall have the curb weight specified by the manufacturer.

7:27B-4.4 Smoke opacity testing procedure for diesel-powered autobuses subject to the inspection rules and regulations of the New Jersey Department of Transportation

(a) The smoke opacity testing procedure for diesel-powered autobuses subject to the inspection rules and regulations of the **New Jersey** Department of Transportation to determine compliance with N.J.A.C. 7:27-14.2(b) shall be the following:

1.-6. (No change.)

7:27B-4.5 Exhaust emission testing procedure for gasoline-fueled motor vehicles subject to inspection by the State of New Jersey

(a) The exhaust emission testing procedure for gasoline-fueled motor vehicles to determine compliance with N.J.A.C. 7:27-15.2(b)[,] and 15.4(a) and (b) shall be the following:

1. (No change.)

2. The emission test at idle mode shall be performed as follows:

i.-iii. (No change.)

iv. These exhaust concentrations shall be the inspection test results[.]; **and**

v. The emission test at idle mode shall expire on January 1, 1996.

AGENCY NOTE: The Department is proposing two different exhaust emission test procedures. They are referred to herein as ALTERNATIVE EXHAUST TEST A and ALTERNATIVE EXHAUST TEST B.

ALTERNATIVE EXHAUST TEST A

3. The transient emission test shall be conducted as follows:

i. A transient emission test shall be performed on all post-1985 model year vehicles in accordance with the test procedures specified for a transient emission test at 40 C.F.R. §51.357(11), and incorporating all subsequent revisions thereto, incorporated herein by reference, except the transient test driving cycle shall be as shown in Table 1 in this section. The cutpoints applied shall be those specified at N.J.A.C. 7:27-15.4 Table 2A for the transient emission test.

ii. (Reserved).

Table 1
Transient Test Driving Cycle

Time (Seconds)	Speed (MPH)	Time (Seconds)	Speed (MPH)	Time (Seconds)	Speed (MPH)
0	0.0	51	25.7	102	56.6
1	3.3	52	25.4	103	56.7
2	6.6	53	24.9	104	56.7
3	9.9	54	25.0	105	56.3
4	13.2	55	25.4	106	56.0
5	16.5	56	26.0	107	55.0
6	19.8	57	26.0	108	53.4
7	22.2	58	25.7	109	51.6
8	24.3	59	26.1	110	51.8
9	25.8	60	26.7	111	52.1
10	26.4	61	27.3	112	52.5
11	25.7	62	30.5	113	53.0
12	25.1	63	33.5	114	53.5
13	24.7	64	36.2	115	54.0
14	25.2	65	37.3	116	54.9
15	25.4	66	39.3	117	55.4
16	27.2	67	40.5	118	55.6
17	26.5	68	42.1	119	56.0
18	24.0	69	43.5	120	56.0
19	22.7	70	45.1	121	55.8
20	19.4	71	46.0	122	55.2
21	17.7	72	46.8	123	54.5
22	17.2	73	47.5	124	53.6
23	18.1	74	47.5	125	52.5
24	18.6	75	47.3	126	51.5
25	20.0	76	47.2	127	50.5
26	20.7	77	47.2	128	48.0
27	21.7	78	47.4	129	44.5
28	22.4	79	47.9	130	41.0
29	22.5	80	48.5	131	37.5
30	22.1	81	49.1	132	34.0
31	21.5	82	49.5	133	30.5
32	20.9	83	50.0	134	27.0
33	20.4	84	50.6	135	23.5
34	19.8	85	51.0	136	20.0
35	17.0	86	51.5	137	16.5
36	17.1	87	52.2	138	13.0
37	15.8	88	53.2	139	9.5
38	15.8	89	54.1	140	6.0
39	17.7	90	54.6	141	2.5
40	19.8	91	54.9	142	0.0
41	21.6	92	55.0		
42	22.2	93	54.9		
43	24.5	94	54.6		
44	24.7	95	54.6		
45	24.8	96	54.8		
46	24.7	97	55.1		
47	24.6	98	55.5		
48	24.6	99	55.7		
49	25.1	100	56.1		
50	25.6	101	56.3		

iii. If the vehicle does not meet the cutpoints specified at N.J.A.C. 7:27-15.4 Table 2A upon initial testing, the transient emission test may be immediately repeated as in (a)3i above. The vehicle shall be rejected only if it fails the initial transient emission test and also fails the second chance transient emission test.

4. If the vehicle presented for testing employs full-time four-wheel drive or, has a GVWR in excess of 8,500 pounds, or is of a model year prior to 1986, a two speed idle test shall be performed in accordance with the procedures specified at 40 C.F.R. Part 51, Appendix B to Subpart S—Test Procedures (II) Two Speed Idle Test and incorporating all subsequent revisions thereto, incorporated herein by reference. The cutpoints applied shall be those specified at N.J.A.C. 7:27-15.4 Table 1A for the idle mode and N.J.A.C. 7:27-15.4 Table 1B for the 2500 RPM mode.

ALTERNATIVE EXHAUST TEST B

3. The exhaust emission test for all gasoline-fueled motor vehicles consists of a loaded-mode test followed by a 2500 RPM test. The loaded-mode test incorporates a fast pass that permits termination of the test at 30 seconds rather than running the full 90 seconds, assuming that the emissions meet the specified criteria. In order to pass the exhaust emission test, the subject vehicle must successfully complete both the loaded-mode test and the 2500 RPM test. Successful completion of the loaded-mode fast pass does not exempt the vehicle from the 2500 RPM test. The exhaust emission test shall be performed as follows:

i. The vehicle shall be tested in as-received condition with all accessories off. Engines shall be at normal operating temperature and not overheating (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating).

ii. The dynamometer shall be warmed up, in stabilized operating condition, adjusted, and calibrated in accordance with the procedures recommended by dynamometer manufacturer.

iii. The vehicle shall be positioned on the dynamometer and, if necessary, secured according to protocol reecommended by the dynamometer manufacturer.

iv. The evaporative purge test apparatus shall be connected as specified in N.J.A.C. 7:27B-4.6(c).

v. For those vehicles identified by the vehicle manufacturer as requiring a specific procedure (other than the loaded-mode test) to activate their evaporative system purge, such procedure shall be run at this time in the manner and duration specified by the vehicle manufacturer.

vi. The dynamometer load setting shall be determined by the following equation: load (in horsepower) = IW/250, where IW is the vehicle inertia weight in pounds.

vii. The sample probe from the approved exhaust gas analytical system shall be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension shall be used. Exhaust mass measurements from vehicle engines equipped with mulitple exhaust pipes shall be sampled simultaneously.

viii. The tachometer or other means determined by the Director of the Division of Motor Vehicles (DMV) for use by DMV or its contractors shall be used to measure engine speed. When a tachometer or other device is used it shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

ix. The vehicle shall be operated during the loaded-mode test with the gear selector in drive for automatic transmissions and in first (or second, if more appropriate) for manual transmissions.

x. At the beginning of the loaded-mode test, the vehicle shall be accelerated to a speed of 15 miles per hour (mph) as indicated on the dynamometer speed indicator. This speed shall be maintained, ±1 mph, for the test duration of 30 to 90 seconds as specified in (a)3xi and xii below.

xi. If, after 30 seconds, the hydrocarbon and carbon monoxide measurements are less than or equal to 60 percent of the applicable cutpoints and the oxides of nitrogen measurement is less than or equal to 100 percent of the applicable cutpoint established at N.J.A.C. 7:27-15.4 Table 2B and the evaporative purge test was successfully passed, the loaded-mode test shall be terminated and the vehicle shall pass the loaded-mode test.

xii. If, after 90 seconds, the hydrocarbon, carbon monoxide and oxides of nitrogen measurements are less than or equal to 100 percent of the applicable cutpoints established at N.J.A.C. 7:27-15.4 Table 2B and the evaporative purge test was successfully passed, the loaded-mode test shall be terminated and the vehicle shall pass the loaded-mode test.

xiii. At the conclusion of the loaded-mode test, the vehicle shall be driven off the dynamometer and the transmission placed in park or neutral.

xiv. The vehicle engine speed shall be increased from idle to between 2200 and 2800 RPM. If the engine speed falls and remains below 2200 RPM or exceeds and remains above 2800 RPM for more than two consecutive seconds during the test period, the measured value shall be invalidated for that sampling period and the test duration extended accordingly. If any excursion outside of the allowable RPM range lasts for more than 10 seconds, the test shall be invalidated and resumed from the beginning. The test duration shall not exceed 30 seconds except for conditions noted above. No concentration readings measured during the 2500 RPM mode test shall exceed the applicable standards specified at N.J.A.C. 7:27-15.4 Table 1B.

4. If the vehicle presented for testing employs full-time four-wheel drive or, as a result of size or weight limitations, cannot be tested on the dynamometer, a two speed idle test shall be performed in accordance with the procedures specified at 40 C.F.R. Part 51, Appendix B to Subpart S-Test Procedures (II) Two Speed Idle Test and incorporating all subsequent revisions thereto, incorporated herein by reference. The cutpoints applied shall be those specified at N.J.A.C. 7:27-15.4 Table 1A for the idle mode and N.J.A.C. 7:27-15.4 Table 1B for the 2500 RPM mode.

7:27B-4.6 Gasoline-fueled motor vehicle emission control apparatus compliance examination procedure

(a) The examination of the motor vehicle emission control apparatus of all post-1974 model year gasoline-fueled motor vehicles [under 8501 pounds] to determine compliance with N.J.A.C. 7:27-15.4(c), when conducted during periodic scheduled inspection and random roadside inspection, shall consist of the following [three examinations]:

1.-2. (No change.)

[3. An examination consisting of a visual inspection for the presence of, or malfunction of the fuel filler neck inlet restrictor on motor vehicles designed and marketed by the vehicle manufacturer for operation with unleaded fuel only. Rejected vehicles shall be required to be properly equipped with new or used replacement catalytic converters certified according to U.S. Environmental Protection Agency procedures and a new fuel filler neck inlet restrictor. Reexamination shall consist of a visual check to document proper installation of a replacement catalytic converter and fuel filler neck inlet restrictor.

i. The fuel filler neck inlet restrictor examination shall be conducted in the following manner:

(1) Attempt to insert a dowel, with a diameter equivalent to that of a standard leaded fuel rump nozzle, into the fuel filler neck.

(2) The absence of the fuel filler neck inlet restrictor is verified if the dowel can be inserted and shall be cause for vehicle rejection.]

(b) An evaporative pressure test shall be conducted as follows:

AGENCY NOTE: The Department is proposing two different evaporative pressure test procedures. They are referred to herein as ALTERNATIVE PRESSURE TEST A and ALTERNATIVE PRESSURE TEST B.

ALTERNATIVE PRESSURE TEST A

1. The evaporative pressure test procedure shall be conducted on all post-1970 vehicles equipped with an evaporative emission control system as follows:

i. The gas cap shall be removed and the appropriate modified gas cap or universal filler adapter connected;

ii. The hood shall be opened and the vapor hose connecting the evaporative canister to the gas tank clamped;

iii. The gas tank shall be pressurized with nitrogen to a pressure of 28 inches of water for a maximum of 60 seconds; the flow shut off when the pressure exceeds 28 inches for three seconds; the pressure allowed to stabilize for 15 seconds; and the pressure decay monitored for 20 seconds;

iv. If the evaporative system pressure has dropped below 27 inches of water, the vehicle shall be rejected;

v. The clamp shall be removed from the vapor line and monitored for a pressure drop indicating no blockage in the vapor line; and

vi. If the pressure drop does not exceed two inches of water, the vehicle shall be rejected.

2. The gas cap test procedure is as follows:

i. During the pressure test, the gas cap shall be connected to the gas cap test rig;

ii. The gas cap shall be pressurized with nitrogen to a pressure of 28 inches of water for a maximum of 10 seconds; the flow shut off; and the pressure decay monitored for five seconds;

iii. If the gas cap pressure has dropped below 27.75 inches of water, the vehicle shall be rejected; and

iv. The gas cap shall be removed from the gas cap test rig and replaced on filler neck.

ALTERNATIVE PRESSURE TEST B

(b) The evaporative pressure test shall be performed on all post-1970 vehicles equipped with an evaporative emission control system. The evaporative pressure test procedure shall be in accordance with 40 C.F.R. §51.357(10) and incorporating all subsequent revisions thereto, incorporated herein by reference.

END OF ALTERNATIVE PRESSURE TEST B

(c) An evaporative purge test shall be conducted as follows:

AGENCY NOTE: The Department is proposing two different evaporative purge test procedures. They are referred to herein as ALTERNATIVE PURGE TEST A and ALTERNATIVE PURGE TEST B.

ALTERNATIVE PURGE TEST A

1. The evaporative purge test procedure shall be conducted on all post-1970 vehicles equipped with an evaporative emissions control system that are subject to exhaust emission testing utilizing a dynamometer driving cycle. The test procedure is as follows:

i. The gas cap shall be removed, the appropriate filler adapter connected and the helium flow started;

ii. The exhaust emissions test as specified in N.J.A.C. 7:27B-4.5(a)3 shall be conducted;

iii. The helium concentration in the exhaust during the exhaust emissions test as specified in N.J.A.C. 7:27B-4.5(a)3 shall be measured; and

iv. If the measured helium concentration is less than 20 ppm, the vehicle shall be rejected.

ALTERNATIVE PURGE TEST B

1. The evaporative purge test shall be performed on all post-1970 vehicles equipped with an evaporative emissions control system that are subject to exhaust emission testing utilizing a dynamometer driving cycle. The evaporative purge test procedure shall be in accordance with 40 C.F.R. §51.357(9) and incorporating all subsequent revisions thereto, incorporated herein by reference.

END OF ALTERNATIVE PURGE TEST B

[(b) Inspection of gasoline-fueled motor vehicles for (a) above shall be implemented by model year and registered weight in accordance with the following schedule:

DATE	MODEL YEAR	REGISTERED WEIGHT
December 1, 1985	1985 and later	Under 6001 pounds
May 1, 1986	1982 and later	Under 6001 pounds
July 1, 1986	1982 and later	Under 8501 pounds
January 1, 1987	1979 and later	Under 8501 pounds
May 1, 1987	1975 and later	Under 8501 pounds]

7:27B-4.7 [Gasoline-fueled motor vehicle exhaust lead determination procedure] **(Reserved)**

[(a) An examination using lead test paper to determine the presence of lead in the vehicle exhaust shall be performed on the following vehicles:

1. All post-1974 model year gasoline-fueled motor vehicles weighing less than 8501 pounds which are designed and marketed by the vehicle manufacturer for operation with unleaded fuel only and which are determined during annual inspection and random roadside inspection to have improperly functioning or improperly maintained emission control apparatus as determined according to the inspection test procedure established at N.J.A.C. 7:27B-4.6.

2. One percent of all post-1974 model year gasoline-fueled motor vehicles weighing less than 8501 pounds which are designed and marketed by the vehicle manufacturer for operation with unleaded fuel only and which are determined during annual inspection and random roadside inspection to have properly functioning and properly maintained emission control apparatus as determined according to the inspection test procedure established at N.J.A.C. 7:27B-4.6.

(b) The lead test paper examination shall be conducted in the following manner:

1. Remove test paper from package and moisten with distilled water;

2. Wipe a small section of the tailpipe with a cloth;

3. Attach moistened paper onto the cleaned surface of the tailpipe with a clip; and

4. Remove paper.

5. The presence of lead in the vehicle exhaust is indicated by the lead paper changing to a pink or red color.

(c) The test result for vehicles examined according to the inspection test procedures established at (b) above shall be recorded by the New Jersey Division of Motor Vehicles and forwarded monthly to the Department of Environmental Protection.

(d) The presence of lead in the vehicle exhaust, if determined solely according to the inspection test procedure established at (b) above shall not be cause for vehicle rejection.

(e) This section shall not apply to vehicle examinations performed by private inspection centers licensed by the Division of Motor Vehicles.

(f) This section shall expire on October 1, 1986.]

7:27B-4.8 On-board diagnostics testing procedure for gasoline-fueled motor vehicles (Reserved)

7:27B-4.9 On-road exhaust emission testing procedures for gasoline-fueled motor vehicles subject to inspection by the State of New Jersey

AGENCY NOTE: The Department is proposing two different on-road exhaust emission test procedures. They are referred to herein as ALTERNATIVE ON-ROAD TEST A and ALTERNATIVE ON-ROAD TEST B. ALTERNATIVE ON-ROAD TEST A will only be used in conjunction with ALTERNATIVE EXHAUST TEST A. ALTERNATIVE ON-ROAD TEST B will only be used in conjunction with ALTERNATIVE EXHAUST TEST B.

ALTERNATIVE ON-ROAD TEST A

(a) The on-road test shall consist of a two speed idle test performed in accordance with the procedures specified at 40 C.F.R. Part 51, Appendix B to Subpart S-Test Procedures (II) Two Speed Idle Test and incorporating all subsequent revisions thereto. The cutpoints applied shall be those specified at N.J.A.C. 7:27-15.4 Table 1A for the idle mode and N.J.A.C. 7:27-15.4 Table 1B for the 2500 RPM mode.

ALTERNATIVE ON-ROAD TEST B

(a) The on-road test shall consist of a loaded-mode test followed by a 2500 RPM mode test. The procedures used shall be those specified at N.J.A.C. 7:27B-4.5(a)3 (Alternative Exhaust Test B). The cutpoints applied shall be those specified at N.J.A.C. 7:27-15.4 Table 2B for the loaded-mode test and N.J.A.C. 7:27-15.4 Table 1B for the 2500 RPM mode.

END OF ALTERNATIVE ON-ROAD TEST B

(b) Remote sensing (Reserved)

7:27B-4.10 Exhaust emission testing procedures for gasoline-fueled motor vehicles subject to evaluation testing

The transient emission test shall be performed on 0.1 percent of those vehicles subject to inspection, in accordance with the procedures specified at 40 C.F.R. §51.357(11) and incorporating all subsequent revisions thereto, incorporated herein by reference.

(a)

POLICY AND PLANNING/AIR QUALITY MANAGEMENT

Control and Prohibition of Air Pollution by Volatile Organic Compounds

Proposed New Rules: N.J.A.C. 7:27-16.8 through 16.11, 16.13, 16.17 and 16.21

Proposed Amendments: N.J.A.C. 7:27-1.4, 2.1, 8.1, 8.2, 16.1 through 16.3, 17.1, 17.3, 17.4, 23.1 through 23.7, 25.1 and 25.7; 7:27A-3.2 and 3.10; 7:27B-3.1 and 3.10

Proposed Recodifications with Amendments: N.J.A.C. 7:27-16.1A, 16.4, 16.5, 16.6, 16.16, 16.18, 16.19, 16.20, 16.22, 16.26 and 16.27

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

Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., in particular 26:2C-8.

DEPE Docket Number: 41-93-07.

Proposal Number: PRN 1993-419.

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

Thursday, September 9, 1993 at 10:00 A.M.
Department of Environmental Protection and Energy
401 East State Street
Hearing Room—First Floor, East Wing
Trenton, New Jersey

Submit written comments, identified by the Docket Number given above, by September 17, 1993, to:

Janis E. Hoagland, Esq.
Department of Environmental Protection and Energy
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625-0402

These proposed new rules and amendments will become operative 60 days after adoption by the Commissioner (see N.J.S.A. 26:2C-8).

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy (Department) is proposing new rules and amendments to existing rules at N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Compounds (subchapter 16). Subchapter 16 establishes standards and requirements for specified types of equipment and source operations capable of emitting volatile organic compounds (VOC) into the atmosphere, and for apparatus used to control VOC emissions. The

Department is also proposing to modify the regulatory definition of "VOC," and to make minor related modifications to several other provisions of the Department's air pollution control rules.

The fundamental purpose of the proposed new rules and amendments is to reduce the formation of ground-level ozone. In the presence of sunlight, VOCs, oxides of nitrogen (NO_x) and other compounds in the ambient air react to form ozone. Ozone is a known respiratory irritant and may significantly reduce the yield of important food crops. Ozone also causes degradation of paints, plastics, textiles and rubber. A detailed description of the public health problems and damage to natural resources and property associated with increased levels of ozone is set forth in the Summary and Social Impact statement for the proposed new rules establishing a low emission vehicle program. 24 N.J.R. 1315, 1316, 1320 (April 6, 1992).

The proposed new rules and amendments are in response to the requirements of the Federal Clean Air Act, 42 U.S.C. §7401 et seq. (Act), as amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990 (1990 CAAA). Pursuant to the Act, the United States Environmental Protection Agency (EPA) has established a National Ambient Air Quality Standard (NAAQS) for ozone. 42 U.S.C. §7409(a)(1). The Act required any state in which the ambient air quality failed to achieve the NAAQS to submit a State Implementation Plan (SIP) to EPA. 42 U.S.C. §7410. The SIP provides for the state to establish enforceable emission limitations and other control measures that would enable the state to achieve the standard.

New Jersey is subject to this requirement because it has not attained the NAAQS for ozone. EPA has designated 18 of the State's 21 counties as being in "severe" nonattainment for ozone, based upon ozone levels in those areas more than 50 percent above the NAAQS.

The 1990 CAAA further directed states in which severe nonattainment areas were located to revise their SIPs to require certain sources of VOC to implement reasonably available control technology (RACT) to reduce emissions. P.L. 101-549, amending §182(b)(2) of the Act. The 1990 CAAA requires this implementation as expeditiously as practicable, but no later than May 31, 1995. P.L. 101-549, amending §182(b)(2) of the Act.

EPA has previously defined RACT to mean the lowest emission limitation that a particular source is capable of meeting by the application of air pollution control technology that is reasonably available considering technological and economic feasibility. 44 Fed. Reg. 53762 (September 17, 1979). The Department recently proposed new rules that expand upon that definition in establishing RACT requirements for the control of air pollution from oxides of nitrogen (NO_x). N.J.A.C. 7:27-19; 25 N.J.R. 631(a) (February 16, 1993). The proposed amendments and new rules for subchapter 16 reflect that same understanding of RACT.

The Department's general approach to RACT is to provide definitive RACT standards to the extent possible for each category of major source that is present in New Jersey; the Department would make separate determinations of RACT for particular facilities only in the absence of an applicable general standard or if a particular facility establishes that the general standard should not apply to it. Other states have taken a different approach. For example, Pennsylvania's proposed rule provides for a separate facility-specific RACT determination for every source subject to the rule, rather than establishing RACT standards for categories of sources.

The Department believes that its categorical approach will result in a lesser burden upon the regulated community and upon State resources, while the option to pursue a facility-specific RACT determination avoids sacrificing the flexibility offered by a facility-specific approach. If the owner or operator of each subject facility were required to obtain a RACT determination tailored to the particular facility, each owner or operator would bear a significant burden in researching and documenting support for that determination. The case-by-case review would also require substantially greater Department resources and substantially more time. In addition to avoiding these burdens, the approach in the proposed amendments and new rules will also assist the regulated community in its efforts to comply; the generally applicable RACT standards will give the regulated community better notice of what will constitute compliance, and will guide the Department's efforts to make consistent, predictable regulatory decisions.

In developing RACT standards for both rule proposals, the Department has declined to establish a bright-line test to determine whether a particular control technology is economically feasible based upon a specific cost for a given amount of VOC emission reductions. Such a rigid test for RACT is inappropriate for several reasons. First, a minor difference in the costs of using the same technology in two different facilities or in the costs of two different technologies could be the basis for completely different results when the test is applied to the two facilities or two technologies. There would be no rational basis for the difference in these results. Second, the test would be applied to cost estimates; the inevitable variation in estimates could again bring results with no rational basis. Third, the use of the word "reasonably" in the term means that it is intended to yield fair and appropriate results tailored to specific circumstances and the results to be achieved. A rigid test would not serve this purpose.

Instead, both rule proposals apply the concept of RACT in a more flexible manner that considers at least the following factors in determining whether a given control technology represents RACT: the cost of the technology; the cost of less expensive technology that offers lesser emission reductions; the size of the improved emission reduction that can be attained using more expensive technology; the nature and extent of the environmental benefits of that improved emission reduction and the costs that members of a particular industry generally are incurring for emission control. If the added cost of a more expensive control technology is disproportionate to the improvement in emissions that will result from its use, the more expensive technology is unlikely to be considered RACT. If the cost of VOC control technology for equipment or source operations at a particular facility is disproportionate to the VOC emission control costs incurred for similar equipment or source operations at competing facilities, the technology again is unlikely to be considered RACT.

The RACT requirements of the 1990 CAAA concern three different types of VOC sources: sources covered by a control techniques guideline (CTG) document issued by EPA before November 15, 1990; sources covered by subsequent CTG documents; and all other "major stationary sources" of VOCs. A "major stationary source" is any stationary source or group of sources, located within a contiguous area and under common control, with the potential to emit at least 25 tons of VOCs per year. P.L. 101-549, amending §182(d) of the Act.

The proposed amendments and new rules establish RACT requirements only for major stationary sources of VOCs that are not expected to be covered by CTG documents. The Department has previously promulgated rules for all sources operating in New Jersey that are covered by pre-1990 CTGs. The Department will promulgate rules for sources operating in New Jersey that are to be covered by post-1990 CTGs after EPA issues them. Sections 183(a) and 183(b)(3) and (4) of the Act require the EPA Administrator to issue CTGs for 13 additional categories of stationary sources by November 15, 1993. However, the 1990 CAAA mandates that New Jersey require these categories of sources to implement RACT, even if no CTG document for such a source has been issued by November 15, 1993. If no CTG has been issued for such a source by that date, the Department will repeal the exemption before November 1994 and review these sources case-by-case, in order to comply with the mandate of the 1990 CAAA.

To identify the categories of major stationary sources of VOC emissions, the Department reviewed historical data concerning VOC emissions, obtained information from its field personnel and from members of the public who participated in workshops the Department held, and obtained assistance from EPA. The Department identified the following categories of major stationary sources of VOC emissions for which no post-1990 CAAA CTGs are expected to be issued:

1. Transfers of VOC other than gasoline to or from delivery vessels;
2. Pipe coating operations;
3. Certain graphic arts source operations, including screen presses and ovens, sheet-fed presses and ovens;
4. Fugitive emissions from chemical plants not covered by current N.J.A.C. 7:27-16.6; and
5. Marine tank vessel operations transferring VOCs other than gasoline.

The proposed amendments and new rules establish requirements for control of VOC emissions from each of these categories of sources. The proposed amendments and new rules also establish requirements intended to control VOC emissions from combustion sources regulated under the recently proposed new rules governing control and prohibition of air pollution from oxides of nitrogen (NO_x). N.J.A.C. 7:27-19; 25 N.J.R. 631(a) (February 16, 1993). Emissions of VOC from combustion sources tend to increase as NO_x emissions decrease. It is therefore necessary to regulate these combustion sources under subchapter 16 to ensure that NO_x emission reductions do not unacceptably increase VOC emissions. The combustion sources regulated under the proposed new

rules include steam generating units, such as boilers and furnaces; stationary gas turbines; incinerators; and asphalt plants. The proposed new rules also regulate flares, a combustion source that is not specifically regulated under the NO_x rules.

Under subchapter 16, all equipment and source operations emitting VOCs will either be covered by or exempted from the RACT standards in subchapter 16. The proposed amendments and new rules establish RACT standards for specific categories of equipment and source operations; establish a method of determining RACT standards for equipment and source operations that do not fall within any of those specific categories; and exempt specific categories of equipment and source operations. This outline of the proposed amendments and new rules is summarized below.

N.J.A.C. 16.2 through 16.15 and 16.18 through 16.20 establish RACT standards for specific categories of equipment and source operations. For most categories of sources (other than surface coating and graphic arts operations), the proposed amendments and new rules establish operating thresholds such as volume, throughput or emission levels. Sources operating above the thresholds are required to comply with the standards. The Department has determined that for sources operating below the thresholds, no additional VOC control measures represent RACT.

N.J.A.C. 7:27-16.27 exempts certain categories of equipment and source operations from RACT standards. EPA has indicated that it will make draft CTGs for the exempted categories of sources available for public comment during the summer of 1993. After EPA adopts those CTGs, the Department will determine whether it should amend subchapter 16 to include them. The Department will include those CTGs in subchapter 16 if they concern equipment or source operations operating in New Jersey.

Some categories of VOC sources are neither specifically listed in N.J.A.C. 7:27-16.2 through 16.15 or 16.18 through 16.20, nor specifically exempted under N.J.A.C. 7:27-16.27. For those types of sources, N.J.A.C. 7:27-16.16 (recodified from N.J.A.C. 7:27-16.6 in the existing rules) establishes the procedure for determining the maximum allowable emission rates. If such a source is located at a major VOC facility, N.J.A.C. 7:27-16.17 will govern the determination of RACT for that source.

The Department has actively involved the public in the development of the proposed amendments and new rules. The Department made a conceptual draft of the proposal publicly available, and held a public workshop on December 4, 1991 in Trenton to provide interested persons with an opportunity to comment on that draft. This workshop was one of a series of workshops that the Department widely advertised and opened to all interested persons. Attendees of the workshop formed two working groups: one that analyzed VOC emissions from leak detection and repair (LDAR) and transfer operations met three times, and one that analyzed VOC emissions from marine vessel operations met twice.

The Department provided the opportunity for any interested persons to join the working groups. In response to that initial opportunity, no representatives of the environmental community joined the working groups; the Department then contacted several environmental organizations directly to invite their participation. Nonetheless, the participants consisted primarily of representatives of the regulated community and of government. In addition, the United States Coast Guard participated in the marine vessel working group.

The Department also met with representatives of the pipe coating industry, the printing industry and the natural gas pipeline industry. In addition, the Department circulated the conceptual draft of the proposed amendments and new rules to individual companies, trade associations such as the Screen Printing Association International (Fairfax, VA), Graphics Arts Association (Philadelphia), Gravure Association of America (Rochester) and the Graphic Arts Technical Foundation (Pittsburgh), and solicited comments from those interested parties. The New Jersey Clean Air Council (which includes representatives of the general public, labor unions, the State Department of Community Affairs and local health officers) also regularly discussed the progress of the rule proposal at its monthly public meetings.

In developing the NO_x rules regulating the combustion sources described above, the Department obtained input from the public that was also helpful in developing the VOC standards for those combustion sources. Before drafting the NO_x rules, the Department held a public workshop, formed working groups with the workshop attendees and met with industry representatives. The Department also worked closely with the regional air pollution control associations to which it belongs, including the Northeast States for Coordinated Air Use Management (NESCAUM), the Mid-Atlantic Region Air Management Association (MARAMA) and the Ozone Transport Commission (OTC). New Jersey has also worked with the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) in formulating a national strategy regarding NO_x emission control for utility boilers.

In these discussions of the NO_x rules, the participants also discussed control of VOC emissions from the same categories of sources. These proposed amendments and new rules reflect those discussions from the development of the NO_x rules.

The specific provisions of the proposed amendments and new rules are discussed in more detail below:

Definition of VOC

The Department is revising the definition of the term "volatile organic compound" or "VOC" throughout N.J.A.C. 7:27. The purpose of the revision is to make New Jersey's definition of VOC completely consistent with the definition promulgated by EPA; accordingly, all substances included in EPA's definition will be included within New Jersey's definition, and no substances outside the scope of EPA's definition will be included within New Jersey's definition. The majority of jurisdictions throughout the country use the same definition.

To make the definitions consistent, the proposed amendments exclude the following compounds and classes of perfluorocarbons, in addition to those that are excluded under the existing rules, from New Jersey's definition:

Compounds:

Ethane
Methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
Chlorodifluoromethane (HCFC-22)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
2-chloro-1,1,1,2-tetrafluoroethane
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
Pentafluoroethane (HCFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)
1,1,1-trifluoroethane (HFC-143a)
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

EPA has excluded those compounds from its definition of VOC because they are negligibly photochemically reactive; that is, they do not have a significant tendency to react to form ozone in the presence of sunlight.

In proposing the amendments to the definition of VOC, the Department is granting petitions for rulemaking filed by the Alliance for a Responsible CFC Policy (Alliance). The Alliance requested that the Department exclude nine of the compounds listed above and all of the classes of perfluorocarbons listed above from the definition of VOC.

The Alliance had stated that these exclusions would remove regulatory and economic impediments to the use of the excluded chemicals as substitutes for fully halogenated CFCs, which contribute to the depletion of the stratospheric ozone layer. The Department agrees with this reasoning.

The proposed amendments incorporate by reference EPA's list of substances excluded from the definition of VOC, 40 CFR 51.100(s)(1). The proposed amendments also set forth that list in the definition itself, for the reader's convenience. Any future amendments or supplements to EPA's list will automatically be incorporated into New Jersey's definition of VOC; the Department will revise the list in response to EPA changes through a notice of administrative change pursuant to N.J.A.C. 1:30-2.7.

As noted above, methylene chloride (dichloromethane) and 1,1,1-trichloroethane (methyl chloroform) are to be excluded from the defini-

tion of VOC. The Department recognizes that these compounds are not VOCs, because their photochemical reactivity is negligible. However, as discussed in detail below in the summary of changes to N.J.A.C. 7:27-17, these compounds pose significant risks to public health that make it unwise to deregulate their use entirely. Accordingly, the proposed amendments regulate the two compounds under N.J.A.C. 7:27-17, Control and Prohibition of Air Pollution by Toxic Substances.

The existing rules at N.J.A.C. 7:27-17 require persons storing, transferring and using toxic substances to control emissions using measures representing advances in the art of control. However, the Department does not believe that it currently has a sufficient basis to subject methylene chloride and methyl chloroform to regulation under that same standard. Instead, the proposed amendments require emissions of these compounds to be controlled through the use of control apparatus and other emission control strategies that represent RACT, rather than advances in the art. The Department is currently evaluating whether methylene chloride and methyl chloroform should be subject to more stringent regulation as toxic substances. As part of that evaluation, the Department requests that interested persons submit comments stating their recommended changes and the basis for those recommended changes, or the basis for a belief that the manner of regulating these compounds should remain unchanged. The Department expects to reach a decision on the issue by the fall of 1994.

In a notice published in the Federal Register, EPA correctly referred to chlorodifluoromethane as "HCFC-22." 56 Fed. Reg. 2423 (January 22, 1991). The Department's existing rules incorrectly designate this compound as "CFC-22." The proposed amendments correct this reference. The proposed amendments also simplify the definition of VOC, in several ways.

First, the existing definition uses the term "organic substance," which is separately defined. The amended definition deletes the term "organic substance" from the definition and substitutes language that explains what that term means. The proposed amendments also delete the definition of "organic substance" because there is no longer any need for a separate definition. In addition to making it simpler to understand the definition of VOC, this change conforms New Jersey's definition of VOC more closely to EPA's definition.

Second, the proposed amendments delete the reference to mixtures of organic substances. This reference is unnecessary and misleading, because the classification of a compound as a VOC is unaffected whether or not it is part of a mixture.

Third, the existing definition lists several examples of types of substances that are included in the definition of VOC. As indicated by the use of the phrase "includes, but is not limited to," this list is not exhaustive; the wide variety of substances that can be considered VOCs makes it impossible to have a list that is usefully illustrative. Accordingly, the proposed amendments delete the list from the definition. In deleting the list, the Department intends only to avoid a possible source of confusion and does not intend to change the substance of the definition.

N.J.A.C. 7:27-16.2, 16.4, 16.5 and 16.18 contain requirements applicable to VOCs with a vapor pressure or sum of partial pressures of organic substances of at least 0.02 pounds per square inch (one millimeter of mercury) absolute at standard conditions. The proposed amendments define the term "applicable VOC" as any VOC that meets those criteria, and use the term in each of the above-referenced sections to avoid the need to restate the criteria in each of those sections.

Other definitions

The proposed amendments add definitions of several terms used throughout subchapter 16.

As noted above, the RACT requirements of the 1990 CAAA apply to major stationary sources of VOC. The 1990 CAAA defines a major stationary source of VOC to include any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons of VOC per year. See §§182(d) and (f) of the Act, as amended by the 1990 CAAA. The definition of "major VOC facility" in N.J.A.C. 7:27-16.1 is consistent with the statutory definition.

The proposed amendments add a definition of the term "potential to emit." The definition in the proposed amendments reflect informal direction that EPA has provided to the Department, and makes it clear that fugitive emissions are included in the calculation of a source's potential to emit. "Fugitive emissions" include any releases (for example, leaks) of air contaminants into the outdoor atmosphere that do not pass through a stack or chimney. The definitions of "potential to emit" and "fugitive emissions" in subchapter 16 are consistent with the definitions at N.J.A.C. 7:27-18.1; however, the definition of "potential to emit" differs from the definitions of that term elsewhere in N.J.A.C. 7:27. The Department is also proposing to revise the definitions of "potential to emit" throughout N.J.A.C. 7:27 to make them consistent.

The definitions of the following terms in the proposed amendments are the same as definitions of the terms codified elsewhere in N.J.A.C. 7:27, or proposed in the NO_x rules: "actual emissions," "asphalt," "ASTM," "batch type asphalt plant," "British thermal unit," "carbon monoxide (CO)," "combined cycle gas turbine," "combustion source," "complete," "drum mix asphalt plant," "federally enforceable," "incinerator," "laboratory operations," "maximum gross heat input rate," "non-utility boiler," "open burning," "person," "ppmv," "ppmvd," "regenerative cycle gas turbine," "simple cycle gas turbine," "Standard Industrial Classification code," "stationary gas turbine," "stationary internal combustion engine," "steam generating unit" and "utility boiler."

N.J.A.C. 7:27-1.4 defines terms used throughout N.J.A.C. 7:27. The proposed amendments to this section add a definition of "ASTM" (the American Society for Testing and Materials) and clarify the definition of "open burning." The existing definition of "open burning" includes any fire from which combustion products are emitted directly into the open air rather than through a stack or chimney. Under the amended definition, a fire would not be considered "open burning" if the combustion products are designed to be emitted through a stack or chimney but are instead emitted directly into the open air. This type of emission is not the type that the Department intended to regulate when it established requirements for open burning, and will continue to be regulated under other provisions of N.J.A.C. 7:27 that are designed to address it. The proposed amendments make the same change to the definition of this term at N.J.A.C. 7:27-2.1.

Other definitions in N.J.A.C. 7:27-16.1 are described below in the discussion of the substantive rule provisions that use the defined term in question.

N.J.A.C. 7:27-16.1A Purpose, scope, applicability and severability

N.J.A.C. 7:27-16.1A outlines the purpose and scope of subchapter 16, and contains other general provisions.

As noted above, the purpose of subchapter 16 is to establish requirements and procedures concerning the control and prohibition of air pollution by volatile organic compounds, and to require certain stationary sources to implement reasonably available control technology (RACT). N.J.A.C. 7:27-16.1A(a) states this purpose, and sets forth the EPA definition of RACT described above.

N.J.A.C. 7:27-16.1A(b) concerns methylene chloride (dichloromethane) and 1,1,1-trichloroethane (methyl chloroform), which the proposed amendments exclude from the definition of VOC and instead propose to regulate under N.J.A.C. 7:27-17, Control and Prohibition of Air Pollution by Toxic Substances. As previously indicated, under the proposed amendments the Department will regulate these compounds as toxic substances, but will continue to require the use of RACT to control emissions of these compounds rather than requiring the use of advances in the art of control.

The proposed amendments also recodify general provisions set forth at N.J.A.C. 7:27-16.11 in the existing rules, without change, at N.J.A.C. 7:27-16.1A(c) and (d).

The emissions from a source operation may make it subject to subchapter 16, or may constitute a violation of subchapter 16. Conceivably, the use of some equipment or process or other method could conceal those emissions; other methods might include using gaseous diluents to reduce the concentration of an air contaminant in gases from a source, or carrying out a single operation in several smaller parts to avoid making the operation large enough to trigger applicability of the rule. N.J.A.C. 7:27-16.1A(e) prohibits such concealment.

N.J.A.C. 7:27-16.1A(f) expressly states that all "bubble" permits, which provide for compliance through mathematical combination of sources, expire on March 28, 1994. This provision addresses questions raised by some members of the regulated community, regarding whether this phase-out applied to all "bubbles" or only to certain types.

N.J.A.C. 7:27-16.1A(g) is a severability clause that would apply if any provision of subchapter 16 or its application to any person or circumstance is adjudicated to be invalid or unenforceable. The severability clause states that the remainder of subchapter 16 and its application in other circumstances would remain in effect following such an adjudication.

N.J.A.C. 7:27-16.2 Storage of volatile organic compounds

The proposed amendments delete N.J.A.C. 7:27-16.2(h)1, Table 1A, 16.2(i) and 16.2(k) because those provisions ceased to be operative on June 15, 1990.

The proposed amendments also delete N.J.A.C. 7:27-16.2(j), which had established a compliance schedule requiring that certain actions be completed by 1986. Any person who was subject to that compliance schedule and who had failed to meet one or more of the milestones would also have failed to satisfy more substantive requirements of subchapter 16. If the Department were to take enforcement action against that person, the action would be based upon the violation of the substantive requirements rather than upon the failure to meet the now obsolete compliance schedule. Accordingly, deleting this provision will not affect the substance of subchapter 16.

N.J.A.C. 7:27-16.3 Gasoline transfer operations

In the existing rules, N.J.A.C. 7:27-16.3 governs transfers of VOCs. A "transfer operation" is the moving of any substance from any storage tank, manufacturing process vessel or delivery vessel into any receiving vessel.

N.J.A.C. 7:27-16.3 currently regulates three types of transfer operations: transfers of VOCs into marine vessels; transfers of gasoline into receiving vessels other than marine vessels; and transfers of other types of VOCs into receiving vessels other than marine vessels. Though some concerns are common to all three types of transfer operations, each type raises its own particular concerns. For this reason, the proposed amendments recodify N.J.A.C. 7:27-16.3 into three separate sections. As amended, N.J.A.C. 7:27-16.3 applies only to gasoline transfer operations; a new section, N.J.A.C. 7:27-16.4, applies to VOC transfer operations other than gasoline; and another new section, N.J.A.C. 7:27-16.5, applies to marine tank vessel loading and ballasting operations.

The proposed amendments to N.J.A.C. 7:27-16.1 make one minor clarification to the definition of "gasoline." The definition in the existing rule states that gasoline is "used as an automotive fuel." The proposed amendment deletes that language, because operations involving gasoline become subject to subchapter 16 before the gasoline is actually used as a fuel or for any other purpose. The amended definition substitutes "commonly or commercially known or sold as gasoline" for the deleted language.

In the existing rules, N.J.A.C. 7:27-16.3(c) prohibits the transfer of gasoline from delivery vessels into stationary storage tanks with a maximum capacity of 2,000 gallons or more unless the storage tank is equipped with one of several types of emission controls. One of the permissible controls is a vapor control apparatus that reduces by at least 90 percent the concentration of applicable VOC in the air-vapor mixture displaced during the transfer of gasoline. As the existing rule is drafted, it could be interpreted to require the owner or operator to demonstrate this control efficiency to the Department before transferring gasoline into the tank. The proposed amendments to N.J.A.C. 7:27-16.3(c)4 clarify that the owner or operator is not required to make this demonstration except upon the Department's request. The existing rule also erroneously states that the vapor control system must reduce the volume of the air-vapor mixture displaced during the transfer operation; the proposed amendments correct this provision so that it is the concentration of VOC in the air-vapor mixture displaced, and not the volume of the mixture itself, that must be reduced. The proposed amendments also clarify N.J.A.C. 7:27-16.3(c)3, without affecting the substance of that provision.

The proposed amendments also eliminate a potential ambiguity in the 2,000-gallon applicability threshold. EPA has advised the Department that a question has arisen in applying this threshold to storge tanks and other receiving vessels such as delivery vessels. If a vessel with a 2,000-gallon capacity is partitioned into multiple sections, each with a capacity less than 2,000 gallons, the Department has always taken the position that the vessel still meets the applicability threshold. The Department believes that partitioning of the vessel into smaller sections does not materially affect either the cost of implementing control measures or the potential environmental impact of transfers of VOCs into the vessel. The proposed amendments make that position more explicit. The proposed amendments have the same effect upon the 2,000-gallon thresholds in N.J.A.C 7:27-16.4(f), (j), (m) and (n).

N.J.A.C. 7:27-16.3(d) and (e) establish requirements for the transfer of any substance into a delivery vessel laden with gasoline vapors. In the existing rules, subsection (e) uses the phrase "gasoline loading facility"; the proposed amendments use the defined term "facility" instead. This change does not affect the substance of the rule because there were no substantive requirements imposed upon "gasoline loading facilities." The proposed amendments also delete the definition of "gasoline loading facility" from the existing rules for that reason and because the definition adds nothing to the understanding of the rules.

The existing rule at N.J.A.C. 7:27-16.3(e)1 contains a reference to open "operating" vents. The proposed amendments delete the word "operating" because it is confusing and unnecessary in this context; a vent is a passive device that is operating whenever it is open. The deletion does not change the meaning of this provision.

The proposed amendment to N.J.A.C. 7:27-16.3(f) makes minor corrections to that subsection. The existing rule states that certain gasoline transfers must be in compliance with N.J.A.C. 7:27-16.3(g), a provision that contains an exemption but no compliance requirements; the proposed amendment corrects that reference. The proposed amendment also makes minor revisions to N.J.A.C. 7:27-16.3(f)1 that are not intended to change its meaning. The proposed amendment also deletes cross-references to provisions that are being deleted, and corrects cross-references to provisions that are being recodified.

N.J.A.C. 7:27-16.3(i) currently requires pressure and vacuum testing for all delivery vessels with a total capacity of at least 2,000 gallons that contain gasoline. The term "delivery vessel" includes railroad tank cars. The United States Department of Transportation regulates the integrity of rail cars. The Department does not intend that subchapter 16 duplicate or conflict with that Federal regulation. The term "delivery vessel" also includes marine vessels, which are regulated elsewhere in subchapter 16. Accordingly, the proposed amendments exclude rail cars and marine vessels from this provision.

N.J.A.C. 7:27-16.3(k) concerns VOC emissions resulting from leaking vapor control apparatus or delivery vessels. The existing rules prohibit gasoline transfers when a leak results in a given concentration of VOC or when liquid leaks (defined to include any drop, drip, accumulation, pool or other visible evidence of a liquid VOC) are occurring; the proposed amendments continue those prohibitions. In addition, the proposed amendments prohibit transfers when any component of the delivery vessel designed to prevent the release of gasoline vapors is not installed and operating as designed, or when liquid gasoline will spill if the transfer continues. Transfers under any of the above circumstances are almost certain to result in concentrations of VOC greater than that which N.J.A.C. 7:27-16.3(k)1i allows.

In the existing rules, N.J.A.C. 7:27-16.3(m) regulates the transport of any VOC that falls within the definition of "applicable VOC" discussed above. The proposed amendments limit the scope of this provision to transport of gasoline, and correct grammatical errors. Transport of applicable VOCs other than gasoline are regulated under N.J.A.C. 7:27-16.4, discussed below.

The proposed amendments delete N.J.A.C. 7:27-16.3(p), (r) and (s), which established compliance schedules requiring that certain actions be completed by 1988 and 1989. Any person who was subject to one of those compliance schedules and who had failed to meet one or more of the milestones would also have failed to satisfy more substantive requirements of subchapter 16. If the Department were to take enforcement action against that person, the action would be based upon the violation of the substantive requirements rather than upon the failure to meet the now obsolete compliance schedule. Accordingly, deleting this provision will not affect the substance of subchapter 16.

N.J.A.C. 7:27-16.3(q) in the existing rules requires the owner or operator of a marine terminal to submit to the Department yearly documentation of the annual throughput of gasoline at the terminal. The proposed amendments delete that requirement because it would duplicate requirements of the recently adopted emission statements rule, N.J.A.C. 7:27-21.5.

N.J.A.C. 7:27-16.4 VOC transfer operations, other than gasoline

N.J.A.C. 7:27-16.4 applies to any transfer of an applicable VOC, other than transfers of gasoline and the loading of VOCs as cargo into a marine tank vessel. These two types of transfers are regulated under N.J.A.C. 7:27-16.3 and 16.5, respectively. N.J.A.C. 7:27-16.4(a) explains this scope.

The existing rules already contain several requirements applicable to transfers of gasoline, which the proposed amendments and new rules extend to transfers of other applicable VOCs. The existing rules had applied only to gasoline transfers primarily because VOC emissions from gasoline transfers had represented the major portion of New Jersey's VOC inventory at the time the existing rules were developed; EPA had exerted substantial efforts to guide the states in regulating gasoline transfers. However, changes made under the 1990 CAAA (for example,

the reduction of the "major VOC facility" threshold from potential emissions of 100 tons per year to 25 tons per year, which resulted in many more non-gasoline transfer facilities becoming major VOC facilities) have fosuced much more attention upon transfers of non-gasoline VOCs. In extending the requirements of the existing rules to transfers of non-gasoline VOCs, the Department has determined that those requirements will be comparably effective in controlling non-gasoline VOC emissions and comparably feasible to implement.

Transfers into receiving vessels generally:

In the existing rules, N.J.A.C. 7:27-16.3(a) and (b) govern the transfer of applicable VOCs into any receiving vessel with a maximum capacity of at least 2,000 gallons. "Receiving vessel" is a broad term that includes any vessel into which an applicable VOC is introduced; examples of receiving vessels include storage tanks, delivery vessels and manufacturing process vessels. The existing rules require all transfers of applicable VOCs into receiving vessels to be made through a submerged fill pipe or by other means that the Department has approved as being at least as effective in preventing VOC emissions. The proposed amendments recodify those provisions at N.J.A.C. 7:27-16.4(b). The substance of the recodification and the existing provisions is identical.

N.J.A.C. 7:27-16.4(c) through (n) concerns the following specific types of VOC transfer operations:

- Transfer of an applicable VOC from a delivery vessel into a stationary storage tank (N.J.A.C. 7:27-16.4(c), (d) and (e));
- Transfer of an applicable VOC into a delivery vessel other than a marine vessel (N.J.A.C. 7:27-16.4(f), (g) and (h));
- Transfer of an applicable VOC into a tank truck (N.J.A.C. 7:27-16.4(i) and (j)); and
- Any of the three categories of transfers listed above, when a leak is present.

Transfers from delivery vessels into stationary storage tanks:

Beginning May 31, 1995 N.J.A.C. 7:27-16.4(c) will require the use of any one of three types of control apparatus in transferring an applicable VOC from a delivery vessel into stationary storage tanks meeting certain criteria discussed below. This operative date complies with the requirements of the 1990 CAAA.

The types of control apparatus required under the proposed new rules are the same as those that the existing rules already require for gasoline transfer operations. Specifically, the proposed new rule requires that the storage tank be equipped with one of the following types of control apparatus:

1. A vapor control apparatus that reduces by at least 90 percent the concentration of applicable VOC in the air-vapor mixture displaced during the transfer of the applicable VOC. Under N.J.A.C. 7:27-16.4(p), the Department may require a person using such apparatus to establish through testing that it reduces by 90 percent the concentration of applicable VOC in the air-vapor mixture displaced during the transfer operation. The testing must be performed when the ambient air temperature is at least 80 degrees Fahrenheit, because tests at lower temperatures tend to under-report VOC emissions; as the temperature decreases, the rate at which VOCs evaporate decreases as well;

2. A floating roof that rests on the surface of the liquid contents of the tank. The floating roof is equipped with one or more tight seals in the space between the rim of the roof and the wall of the tank, throughout the entire vertical distance the roof can travel in the tank; or

3. A vapor balance system that controls vapor losses during transfers of liquid from one vessel to another by taking the vapors displaced from the vessel receiving the liquid and transferring those vapors into the vessel supplying the liquid.

A transfer of applicable VOC into a stationary storage tank is subject to these requirements if (i) the storage tank has a maximum capacity of at least 2,000 gallons (7,570 liters), and (ii) annual VOC emissions from transfers into the tank are estimated (pursuant to N.J.A.C. 7:27-16.4(d)) to be at least 1,000 pounds. The proposed amendments establish the 2,000-gallon threshold because the cost of retrofitting a smaller tank to comply with these requirements is too high for such retrofitting to be considered RACT. The Department arrived at the 1,000-pound annual emission threshold based upon its experience and upon discussions with the working group; that background indicated that at the 1,000-pound threshold, the cost of complying with the proposed amendments would range from $5,000 to $10,000 per ton of VOC removed. The Department believes that costs in this range are consistent with RACT. At a threshold lower than 1,000 pounds, the cost per ton of VOC removed would be higher; the Department believes that setting the threshold lower by any significant amount would drive the cost above what would be consistent with RACT.

The calculation of estimated annual emissions under N.J.A.C. 7:27-16.4(d) is based upon the quantity of applicable VOCs transferred annually into the tank, and certain properties of each VOC that is transferred. The properties of an applicable VOC that are relevant to N.J.A.C. 7:27-16.4(d) are its vapor pressure and its molecular weight. These factors determine the total quantity, by weight, of a VOC that will be emitted under a given set of conditions. Vapor pressure is a measure of a VOC's volatility; the higher a VOC's vapor pressure, the larger the number of molecules that will evaporate under a given set of conditions. The total weight of that number of molecules emitted depends upon the molecular weight of the VOC; if two VOC's have the same vapor pressure and the molecular weight of one is twice that of the other, the weight of emissions of the heavier VOC will be twice the weight of emissions of the lighter one.

A VOC's "emission factor" is determined by (i) multiplying the molecular weight of the VOC by its vapor pressure, and (ii) multiplying the product of those two numbers by a constant (0.000024). The purpose of the constant is to express the emission factor as the weight of VOC emissions (in pounds) estimated to result from a transfer of one gallon of the VOC. The higher the emission factor, the greater the emissions from a given quantity of VOC. Accordingly, the higher the emission factor, the lower the quantity of the VOC that the rule allows to be transferred without controls.

The following examples illustrate how to determine whether a stationary storage tank receiving transfers of applicable VOC from delivery vessels must be equipped with VOC emission control apparatus:

1. Annual throughput of 950,000 gallons if isopropyl alcohol (C_3H_8O) and 50,000 gallons of methanol (CH_4O): The vapor pressure of isopropyl alcohol under standard conditions (defined in the existing rule as 70 degrees Fahrenheit and one atmosphere pressure) is 0.66 pounds per square inch. The molecular weight of this compound is 60.096. The vapor pressure of methanol is 1.97 pounds per square inch under standard conditions. The molecular weight of this compound is 32.042.

a. The emission factor for isopropyl alcohol is 0.000952, determined as follows:

$$0.66 \times 60.096 = 39.663$$
$$39.663 \times 0.000024 = 0.000952$$

b. The emission factor for methanol is 0.00151, determined as follows:

$$1.97 \times 32.042 = 63.123$$
$$63.123 \times 0.000024 = 0.00151$$

c. The estimated quantity of annual VOC emissions from transfers into the storage tank is 979.9 pounds, calculated by multiplying the emission factor of each of the two VOCs by its annual throughput, and adding the totals:

$$950{,}000 \times 0.000952 = 904.4 \text{ (isopropyl alcohol)}$$
$$50{,}000 \times 0.00151 = 75.5 \text{ (methanol)}$$
$$904.4 + 75.5 = 979.9 \text{ (total estimated emissions)}$$

d. The estimated annual emissions are less than 1,000 pounds. Therefore, the proposed new rule does not require that the tank be equipped with VOC emission controls under N.J.A.C. 7:27-16.4(c).

2. Annual throughput of 200,000 gallons of isopropyl alcohol and 800,000 gallons of methanol: As noted above, the emission factor for isopropyl alcohol is 0.000952, and the emission factor for methanol is 0.00151.

a. The estimated quantity of annual VOC emissions from transfers into the storage tank is 1,398.4 pounds, calculated by multiplying the emission factor of each of the two VOCs by its annual throughput, and adding the totals:

$$200{,}000 \times 0.000952 = 190.4 \text{ (isopropyl alcohol)}$$
$$800{,}000 \times 0.00151 = 1{,}208 \text{ (methanol)}$$
$$190.4 + 1{,}208 = 1{,}398.4 \text{ (total estimated emissions)}$$

b. The estimated annual emissions are more than 1,000 pounds. Therefore, the proposed new rule requires that the tank be equipped with VOC emission controls under N.J.A.C. 7:27-16.4(c).

Regardless of the annual throughput of a stationary storage tank, it is not subject to the VOC emission control requirements of N.J.A.C. 7:27-16.4(c) during "construction ballast." Construction ballast is the filling of an underground storage tank with gasoline or any other VOC to provide stability during construction. It would not be practicable to require that control apparatus be installed on the tank at this stage of construction. The Department believes that excluding construction

ballasting from the VOC emission control requirements will have no significant effect upon air quality because the ballasting occurs only during construction and is not repeated over the life of the tank.

As noted above, the owner or operator of a storage tank subject to the above requirements must comply with them by May 31, 1995, pursuant to the 1990 CAAA. N.J.A.C. 7:27-16.4(o) also requires that within 90 days after the proposed new rules become operative, the owner or operator of the facility at which the transfer operation is conducted must submit a complete application for pre-construction permits for all equipment and/or control apparatus necessary to achieve compliance, pursuant to N.J.A.C. 7:27-8.

The Department believes that this compliance schedule allows sufficient time in advance of the 1990 CAAA deadline to ensure that the permitting process and construction or installation can be completed without jeopardizing compliance with the deadline. The Department discussed the schedule with representatives of the regulated community participating in the work groups to confirm that the milestones are reasonable.

The Department expects to issue the necessary pre-construction permits within three months after receiving a complete application. If the Department fails to meet this schedule, and that delay alone prevents a person from achieving compliance by May 31, 1995, the Department would refrain from taking enforcement action for the violation. However, if the Department were a few weeks late in issuing the necessary permits but the person was several months late in achieving compliance, the Department would most likely conclude that its own delay was not the sole cause of the delay in achieving compliance and would not necessarily refrain from taking enforcement action. If the delay is only a contributing factor toward a person's inability to meet the 1990 CAAA deadline, the Department would consider that factor in taking enforcement action.

Transfers into delivery vessels:

As noted above, N.J.A.C. 7:27-16.4(c), (d) and (e) concern transfers of applicable VOCs other than gasoline from delivery vessels into stationary storage tanks. N.J.A.C. 7:27-16.4(f), (g) and (h) concern transfers of applicable VOCs other than gasoline into delivery vessels.

Beginning May 31, 1995, N.J.A.C. 7:27-16.4(f) and (g) will prohibit the transfer of any applicable VOC into delivery vessels unless the tank from which the transfer occurs is equipped with a floating roof, or one of two types of control apparatus is used during the transfer process. The alternative types of control apparatus are (i) a vapor control apparatus that reduces the weight of the total VOC emissions by at least 90 percent, and (ii) a vapor balance system with all atmospheric vents positively closed during transfer. These requirements are essentially identical to the requirements of the existing rules governing the transfer of gasoline into delivery vessels. If a person complies with this requirement by using vapor control apparatus, upon the Department's request that person will be required to establish through testing that the control apparatus reduces the weight of VOC emissions by 90 percent. The testing must be performed when the ambient air temperature is at least 80 degrees Fahrenheit, because tests at lower temperatures tend to under-report VOC emissions; as the temperature decreases, the rate at which VOCs evaporate decreases as well.

These requirements apply to delivery vessels that have a total capacity of at least 2,000 gallons (7,570 liters), when the transfer of applicable VOC into such a delivery vessel occurs at a facility that has annual VOC emissions from transfer operations that are estimated to be at least 2,000 pounds. The proposed amendments establish the 2,000-gallon threshold because the cost of retrofitting a smaller delivery vessel to comply with these requirements is too high for such retrofitting to be considered RACT. The Department arrived at the 2,000-pound annual emission threshold based on its experience in administering permits and its discussions with the working group indicating that at this threshold, the cost of complying with the proposed amendments would range from $2,000 to $10,000 per ton of VOC removed. As more VOC is removed, the marginal cost of removing each additional ton decreases until it reaches the lower end of that range.

These requirements do not apply to transfers of VOC into rail cars. In excluding those transfers, the Department has recognized that the Federal government already regulates the transportation of many VOC's via rail cars for safety purposes; many requirements that serve safety purposes also operate to reduce VOC emissions. In addition, the Department notes that the cost of retrofitting rail cars to comply with the proposed amendments would be significant, and that no other states appear to be requiring such retrofitting. Accordingly, the Department is not subjecting these transfers to the proposed amendments at this time.

Pursuant to N.J.A.C. 7:27-16.4(h), these requirements also do not apply to transfers of VOC into a delivery vessel that will hold VOC from a storage tank while the tank undergoes repair or maintenance. Under this exclusion, the delivery vessel cannot hold the VOC for more than 30 days. The exclusion is necessary because it is not practicable either to build a new tank or to always have a properly fitted tank truck available to hold the VOC during the temporary repair. In light of the limited nature of the exclusion, the Department does not expect it to have any material effect upon air quality.

The Department believes that costs in this range are consistent with RACT. At a threshold lower than 2,000 pounds, the cost per ton of VOC removed would be higher; the Department believes that setting the threshold lower by any significant amount would drive the cost above what would be consistent with RACT. This threshold is higher than the 1,000-pound annual threshold for transfers into stationary storage tanks, because the cost of controlling VOC emissions from loading racks is higher than the cost of equipping a stationary storage tank to achieve the same level of control.

The calculation of estimated annual emissions from transfers into delivery vessels is the same as the calculation for transfers of VOC into stationary storage tanks under N.J.A.C. 7:27-16.4(d), discussed above. For both types of transfers, the calculation is based upon the emission factor (vapor pressure times molecular weight times 0.000024) of the VOC being transferred, and the quantity of the VOC transferred annually.

Pursuant to N.J.A.C. 7:27-16.4(n), the compliance schedule for transfers into delivery vessels is the same as the schedule for transfers from delivery vessels into stationary storage tanks, discussed above. The owner or operator of the facility at which the transfer takes place must apply for the necessary pre-construction permits under N.J.A.C. 7:27-8 within ninety days after the proposed new rules become operative and achieve compliance by the May 31, 1995 deadline imposed pursuant to the 1990 CAAA.

Transfers to tank trucks:

Beginning on May 31, 1995, N.J.A.C. 7:27-16.4(i) establishes RACT requirements that will apply to all tank trucks having a maximum total capacity of at least 2,000 gallons (7,570 liters) and containing an applicable VOC. These requirements are the same as those that the existing rules already apply to gasoline tank trucks with at least that same capacity. The requirements are in addition to those governing transfers to delivery vessels generally.

Specifically, under the proposed new rules no tank truck with a capacity of at least 2,000 gallons may contain an applicable VOC unless the truck undergoes annual pressure and vacuum tests to establish its integrity, and carries records of those tests. N.J.A.C. 7:27-16.4(i). The proposed new rules also prohibit transfers of applicable VOC to an excessively pressurized tank truck, and transfers from a tank truck that is subject to an excessive vacuum. N.J.A.C. 7:27-16.4(j).

Leaks:

N.J.A.C. 7:27-16.4(k)1 concerns leaks occurring during transfer of applicable VOCs from delivery vessels to stationary storage tanks, and into delivery vessels other than marine vessels. This subsection applies to those transfers that are subject to N.J.A.C. 7:27-16.4(c) and (d) or (f) and (g) due to the maximum capacity of the storage tank or delivery vessel and the results of applying Table 4A or 4B (discussed above), as applicable.

Beginning on May 31, 1995, N.J.A.C. 7:27-16.4(k)1 will prohibit transfers of applicable VOCs under the same circumstances in which N.J.A.C. 7:27-16.3 prohibits the transfer of gasoline: specifically, (i) if a leak results in a concentration of VOC (measured at one inch from the source) of at least the lower explosive limit of propane; or (ii) if the leak is liquid.

N.J.A.C. 7:27-16.4(k) also includes restrictions on transfers of applicable VOCs corresponding to the restrictions on transfers of gasoline that the proposed amendments add to N.J.A.C. 7:27-16.3(k). Specifically, the proposed new rule prohibits transfers of applicable VOCs when any component of the delivery vessel designed to prevent the release of gasoline vapors is not installed or operating as designed, or when liquid gasoline will spill if the transfer continues. Transfers under any of the above circumstances are almost certain to result in concentrations of VOC greater than that which N.J.A.C. 7:27-16.4(k)1i allows. These prohibitions will take effect immediately upon the operative date of the proposed amendments.

N.J.A.C. 7:27-16.4(l) recodifies a provision of the existing rules that currently appears at N.J.A.C. 7:27-16.3(m), without changing the

substance of the provision. That provision requires that any delivery vessel (with a capacity of at least 2,000 gallons) carrying an applicable VOC must be vapor-tight, except in emergency conditions, during gauging, or while venting through a vapor control apparatus approved by the Department.

N.J.A.C. 7:27-16.4(m) requires that if a delivery vessel with a capacity of at least 2,000 gallons is not vapor-tight, or is excessively pressurized or subject to an excessive vacuum, the owner or operator of the tank truck must repair it within 15 days after the date on which the leak was discovered. The 15-day period for repair is identical to the provision in the corresponding existing rules governing delivery vessels carrying gasoline. Since the type of delivery vessel used to carry non-gasoline VOC is the same as the type normally used to carry gasoline, and the risk of emissions from the delivery vessel is essentially the same in both circumstances, the Department believes that it is reasonable to apply the requirement in both circumstances. Representatives of the regulated community participating in the work group agreed that the 15-day period was reasonable.

Recordkeeping requirements:

N.J.A.C. 7:27-16.4(o) establishes the recordkeeping requirements for facilities regulated under N.J.A.C. 7:27-16(f) for their transfers of non-gasoline VOCs into delivery vessels. The recordkeeping requirements represent the minimum amount of information necessary to enable the Department to monitor compliance with the proposed new rules. The information to be recorded includes the name and total quantity of each applicable VOC transferred into delivery vessels at the facility each day, and other information that depends upon whether VOC emissions are controlled by a thermal oxidizer or control apparatus using carbon or other adsorptive material.

For each thermal oxidizer used to control VOC emissions, the required information includes the operating temperature at the exit of the combustion chamber and the carbon monoxide concentration in the flue gas emitted to the outdoor atmosphere. Information concerning these two parameters will show whether the thermal oxidizer is providing effective combustion, which is necessary if the oxidizer is to reduce VOC emissions in accordance with its design.

For each control apparatus using carbon or some other adsorptive material to collect VOC emissions, the required information normally includes the total concentration of VOC in the flue gas emitted to the outdoor atmosphere. Alternatively, the owner or operator can comply with the recordkeeping requirement by recording the dates on which the adsorptive material is replaced; to be eligible for that reduced recordkeeping requirement, the owner or operator must confirm daily that the automatic switching between beds of adsorptive material is functioning properly. The permit for the control apparatus specifies the intervals at which the material must be regenerated or replaced in order to prevent VOC emissions from exceeding limits. Accordingly, if the automatic switching is functioning properly, the Department will be able to ascertain the frequency with which the adsorptive material is regenerated; that data, combined with knowledge of the throughput at the facility, can substitute for the actual emissions data in enabling the Department to verify compliance.

If the owner or operator of the facility is complying with this requirement by recording the total VOC concentration in the flue gas, the proposed new rules require the owner or operator to record the data described above continuously, unless the Department approves a particular frequency for recording the data. The Department will normally evaluate the need for continuous recording or recording at a particular frequency in the process of reviewing the permit application. As the quantity of a pollutant that a source operation has the potential to emit increases, the need for continuous or more frequent monitoring and recording of emissions increases as well. In addition, if a source operation uses equipment or control apparatus that has not been widely used and therefore has no clear history of satisfactory operation, it is more likely that the permit will require continuous or more frequent monitoring and recording. The cost of such monitoring and recording is discussed in the Economic Impact statement below.

Circumstances specific to a particular facility may make it necessary for the facility to record data regarding other operating parameters in order for the Department to monitor the prevention or control of emissions. Accordingly, the proposed new rules provide for the Department to require records of such data to be maintained at particular facilities.

N.J.A.C. 7:27-16.5 Marine tank vessel loading and ballasting operations

N.J.A.C. 7:27-16.5 governs loading and ballasting operations for marine tank vessels. A "marine tank vessel" is any watercraft (such as a tugboat, tanker or freighter) equipped with one or more tanks constructed or converted to be capable of carrying liquid cargo.

N.J.A.C. 7:27-16.5(a) outlines the scope of this section. This section applies to the transfer of gasoline and any other applicable VOC as cargo into a marine tank vessel. Accordingly, this section does not govern the fueling of a marine tank vessel. In addition, this section governs ballasting of a marine tank vesel. "Ballasting" is defined to mean the loading of liquid into a marine tank vessel's cargo tank to provide sufficient weight for proper immersion of the vessel's propeller, rudder and hull.

This section governs two types of transfers at marine terminals:

(i) Transfers of gasoline at any marine terminal with (a) an annual throughput of at least six million gallons or (b) a daily throughput of 60,000 gallons between May 1 and September 15. These thresholds are the same as the thresholds in the existing rules at N.J.A.C. 7:27-16.3(e)4. The threshold for daily throughput during this period is necessary because ozone levels are more likely to be elevated at that time; as a result, a given level of VOC emissions is substantially more likely to contribute to an exceedance of the NAAQS for ozone. The Department's existing rules controlling VOC emissions from vehicular fuels apply during the same period. See N.J.A.C. 7:27-25.3. However, the Department notes that the corresponding period in the proposed new NO_x rules begins on May 15 rather than May 1. The NO_x rules will be revised to correct this discrepancy; and

(ii) Transfers of applicable VOCs other than gasoline at any marine terminal that (a) is a major VOC facility, having the potential to emit at least 25 tons of VOC annually, and (b) has at least one source operation that individually has the potential to emit at least 10 tons of VOC annually.

A "marine terminal" is defined as any facility (or any part of a facility) at which liquid cargo is loaded into or unloaded out of marine tank vessels. The Department believes that there are 17 marine terminals loading or unloading gasoline in New Jersey that meet the thresholds listed in (i) or (ii) above, and fewer than 10 terminals that load or unload only non-gasoline applicable VOC and meet the thresholds.

Transfers of gasoline at marine terminals:

N.J.A.C. 7:27-16.5(b) requires the owner or operator of a marine terminal with an annual throughput of at least six million gallons of gasoline or a daily throughout between May 1 and September 15 of at least 60,000 gallons of gasoline to install and operate a VOC control apparatus. The control apparatus must reduce the total weight of VOC emissions resulting from gasoline transfers at the terminal by at least 95 percent. This requirement is identical to the requirement in the existing rules at N.J.A.C. 7:27-16.3(e)4.

Transfers of other applicable VOCs at marine terminals:

N.J.A.C. 7:27-16.5(c) concerns marine terminals at which any non-gasoline applicable VOC is transferred, if the terminal (i) has the potential to emit at least 25 tons of VOC per year and (ii) has one or more source operations with the potential to emit at least 10 tons of VOC per year. The 10 ton per year limitation is consistent with the approach taken in the proposed NO_x rules, which apply RACT requirements to only those items of equipment or source operations at major NO_x facilities that have the potential to emit at least 10 tons of NO_x annually. Without that 10 ton per year (tpy) threshold, VOC emission control efforts would have to address every source of VOC emissions at the terminal, no matter how small. The cost of analyzing the control technology for all such sources would far outweigh the reduction in emissions that would result, given the small size of the contribution of the smaller sources to Statewide VOC emissions and the slim likelihood that control technology representing RACT for larger sources would be economically feasible for smaller sources. Based on its experience in regulating VOC emissions, the Department believes that the 10 tpy threshold strikes an appropriate balance among the cost of analyzing control technologies for a given source, the emissions reductions which the control technologies are likely to produce, and the likelihood that the control technology will be considered RACT for the source in question.

This provision does not establish uniform RACT requirements for these marine terminals. Instead, it requires the owner or operator of

such a marine terminal to obtain the Department's approval of a VOC emission control plan tailored to the facility, and to implement the plan.

Conceivably, a marine terminal that handles both gasoline and non-gasoline applicable VOC could have gasoline throughput sufficient to subject it to N.J.A.C. 7:27-16.5(b) discussed above, and potential VOC emissions sufficient to subject it to the facility-specific RACT requirements of N.J.A.C. 7:27-16.5(c). Both provisions would apply to such a terminal; applying N.J.A.C. 7:27-16.5(b) alone would be inadequate because it would not address the emissions from transfers of non-gasoline VOCs, and applying N.J.A.C. 7:27-16.5(c) would be problematic because it would require a case-by-case RACT determination for the gasoline transfer operations even though the proposed amendments establish a single uniformly applicable RACT requirement for those operations. Requiring compliance with both provisions is consistent with the approach that California's South Coast Air Quality Management District (South Coast) has taken in its rules.

The contents of the plan and the criteria for its approval are described in the summary of N.J.A.C. 7:27-16.17 below. The owner or operator will be required to submit the plan within 90 days after these proposed amendments and new rules become operative.

The Department's decision to apply a facility-specific approach to RACT for transfers of non-gasoline VOCs, instead of a uniform approach, reflects the Department's discussions with representatives of the marine terminal industry. Those discussions made it clear that each marine terminal to be affected by these rules has a unique operational configuration.

For example, some terminals transfer non-gasoline VOCs to marine vessels at the same location at which gasoline is transferred; other terminals use completely separate loading areas for gasoline and for non-gasoline VOCs and would incur a substantially greater total cost to control VOC emissions. Some facilities have dedicated vessels for loading and transfer of VOCs while other facilities do not; inasmuch as the vessels must be retrofitted to work with VOC control measures at the terminal, this factor substantially influences the cost of compliance. Finally, some terminals have installed thermal oxidation air pollution control equipment for gasoline vapors, while other facilities use carbon adsorbers for this purpose. Carbon adsorbers are more susceptible to contamination and less likely to be suitable to control emissions from transfers of multiple VOCs.

These types of differences are just two of several variables that can substantially affect the cost of implementing a control technology at a given terminal. As a result, the Department does not believe that a single uniform emission standard would accurately reflect what any given terminal could achieve using RACT. RACT for a particular terminal could be anything from the installation of one or more new control measures, to the use of existing gasoline vapor control measures to control emissions from the transfer of non-gasoline VOCs, to the installation of no additional controls at all. The Department has therefore concluded that a facility-specific RACT determination is necessary for each marine terminal meeting the threshold criteria described above for transfers of non-gasoline VOCs.

The Department has reached this conclusion after consulting with EPA and with other states. EPA is developing regulations governing the transfer of VOCs to and from marine tank vessels, but has not yet proposed those regulations. EPA has informally advised the Department that those regulations will focus primarily upon transfers of gasoline and crude oil.

Other states that have established uniform RACT standards for marine transfers generally have averaged the cost of controlling emissions from gasoline transfers with the cost of controlling emissions from non-gasoline VOC transfers. South Coast has taken this approach in its regulations governing marine tank vessel operations. Those regulations require that VOC emissions from both gasoline and non-gasoline transfers be reduced by at least 95% by weight from uncontrolled levels, or that VOC emissions be no more than two pounds for every 1,000 barrels of liquid cargo transferred. Louisiana has adopted regulations requiring a 90 percent reduction in VOC emissions from uncontrolled levels, again without distinguishing between gasoline and non-gasoline transfers.

The Department does not agree with this approach. As discussed above, the cost of controlling emissions from gasoline transfers can vary greatly from the cost of controlling emissions from transfers of other VOCs. For this reason, the Department believes that an approach to RACT that averages these costs will require some facilities to implement control measures that are too costly to be considered RACT.

Pennsylvania has adopted regulations under which RACT determinations for marine vapor recovery will be made on a case-by-case basis. This approach is consistent with the approach in the proposed new rules.

Ballasting:

Compliance with the emission control requirements in N.J.A.C. 7:27-16.5(b) and (c) may require the owner or operator of the marine terminal to obtain one or more permits to construct, install or alter equipment or control apparatus. N.J.A.C. 7:27-16.5(d) restricts the Department from issuing such a permit unless the equipment or control apparatus is designed to collect and control VOC emissions resulting from ballasting as well as from other loading operations. This restriction does not apply if the potential emissions from the ballasting operation are less than two pounds of VOC per 1,000 barrels of applicable VOC transferred. The small quantity of emissions that could occur if the ballasting operation is uncontrolled makes it unlikely that the use of control apparatus to collect and control VOC emissions would be considered RACT. South Coast's marine transfer regulations contain a similar exclusion.

If a marine terminal or marine tank vessel is equipped with control apparatus to control emissions of applicable VOC during ballasting, N.J.A.C. 7:27-16.5(e) requires that the control apparatus be used during all ballasting of that marine tank vessel. This requirement applies to any ballasting of a marine tank vessel equipped with VOC control apparatus, whether or not the ballasting operation is taking place at a terminal that is subject to N.J.A.C. 7:27-16.5(b) or (c). Unlike most other requirements of the proposed amendments and new rules, the Department has not postponed the date on which compliance with N.J.A.C. 7:27-16.5(e) becomes mandatory. Inasmuch as this provision does not require the installation of any new control apparatus but applies only if control apparatus already has been installed, the Department believes that compliance is feasible immediately upon the operative date of this proposal.

Leaks:

N.J.A.C. 7:27-16.5(f) prohibits the transfer or ballasting of an applicable VOC into a marine tank vessel under the same circumstances in which N.J.A.C. 7:27-16.3 prohibits the transfer of gasoline and N.J.A.C. 7:27-16.4(l)1 will prohibit other transfers of non-gasoline applicable VOCs: specifically, (i) if a leak results in a concentration of VOC (measured at one inch from the source) of at least the lower explosive limit of propane; or (ii) if the leak is liquid. The existing rules at N.J.A.C. 7:27-16.3 already apply essentially the same prohibitions to marine transfers of gasoline; those transfers will be subject to N.J.A.C. 7:27-16.5(f) immediately. The proposed amendments and new rules extend those prohibitions to marine transfers of non-gasoline VOC for the same reasons discussed in the summary of N.J.A.C. 7:27-16.4 above; that extension of the prohibition will not become operative until May 31, 1995.

N.J.A.C. 7:27-16.5(f) also includes restrictions on transfers of applicable VOCs into marine tank vessels corresponding to the restrictions on transfers of gasoline and non-marine transfers of other applicable VOCs that the proposed amendments add to N.J.A.C. 7:27-16.3(k) and 16.4(l). Specifically, the proposed new rule prohibits transfers of applicable VOCs into marine tank vessels when any component of the marine tank vessel designed to prevent the release of gasoline vapors or any control apparatus serving the source operation is not installed or operating as designed, or when liquid VOC will spill if the transfer continues. Transfers under any of the above circumstances are almost certain to result in concentrations of VOC greater than that which N.J.A.C. 7:27-16.5(f)1i allows.

Test methods:

N.J.A.C. 7:27-16.5(g) and (i) require the use of specified test methods in monitoring for gaseous VOC leaks and in determining VOC emissions in connection with marine transfer operations. EPA's Reference Method 21 (40 CFR Part 60, Appendix A) is to be used in monitoring for gaseous VOC leaks, and either EPA's Reference Method 25 or 25(a) (40 CFR Part 60, Appendix A) or New Jersey's Air Test Method 3 (N.J.A.C. 7:27B-3) is to be used in determining VOC emissions. An alternative to these methods may be used if EPA and the Department determine that the alternative is equivalent to the test method listed in the regulation, and approve the alternative in advance.

Under N.J.A.C. 7:27-16.5(h), any testing to determine whether VOC emissions from marine transfer operations comply with N.J.A.C. 7:27-16.5 must be performed for at least 60 minutes during the transfer of the last 50 percent of the total liquid cargo; if the transfer of the last 50 percent takes less than 60 minutes, the testing must be performed

throughout the entire transfer of the last 50 percent. Inasmuch as the highest concentration of VOC emissions normally occur during the last part of the loading operation, these requirements are necessary for an accurate determination of compliance. The requirements are identical to those developed by California's South Coast Air Quality Management District.

Recordkeeping:

N.J.A.C. 7:27-16.5(j) requires the owner or operator of a marine terminal to maintain records of information concerning transfers of applicable VOCs to marine tank vessels and concerning ballasting of marine tank vessels. This information is necessary to enable the owner or operator to demonstrate that the terminal's operations comply with N.J.A.C. 7:27-16.

The records must identify each marine tank vessel arriving at the terminal and state the date and time that the vessel arrived and departed. The records must also document each transfer operation and each ballasting operation performed at the facility. For transfer operations, the records would list the type and quantity of VOC transferred and, if the cargo tanks had not been cleaned before the transfer, the type of cargo that the marine vessel had last carried. The vessel's previous cargo is relevant to compliance because the previous cargo may have left vapors that could be displaced by the transfer operation. For ballasting operations, the records must also state the amount of liquid added to unsegregated ballast tanks and the procedures followed to prevent venting while ballasting into unsegregated tanks; if the terminal has a standard written procedure to prevent venting, this requirement can be satisfied simply by referring to the written procedure. A ballast tank is "unsegregated" if it is also used as a cargo tank.

N.J.A.C. 7:27-16.3(q) in the existing rules requires the owner or operator of a marine terminal to submit to the Department yearly documentation of the annual throughput of gasoline at the terminal. The proposed amendments delete that requirement because it would duplicate requirements of the recently adopted emission statements rule, N.J.A.C. 7:27-21.5.

Affirmative defenses:

The Department recognizes the possibility that a statute or regulation administered by the United States Coast Guard may require an action that conflicts with N.J.A.C. 7:27-16.5. The proposed new rule therefore provides for an affirmative defense to a violation in that circumstance. It is also possible that the safety of a vessel or its passengers or crew may make a particular action necessary, even though it conflicts with N.J.A.C. 7:27-16.5. The affirmative defense would be available in this circumstance as well. These affirmative defenses are set forth at N.J.A.C. 7:27-16.5(k).

N.J.A.C. 7:27-16.6 Open top tanks and surface cleaners

The proposed amendments recodify N.J.A.C. 7:27-16.4, Open top tanks and surface cleaners, as N.J.A.C. 7:27-16.6. There is no change to the text of this section.

N.J.A.C. 7:27-16.7 Surface coating and graphic arts operations

Introduction:

In the existing rules, N.J.A.C. 7:27-16.5 governs surface coating and graphic arts operations. The proposed amendments recodify that section as N.J.A.C. 7:27-16.7, revise it to include additional types of source operations, and make minor changes for purposes of clarity.

A surface coating operation involves the application of a surface coating formulation such as paint, varnish, ink or adhesive to form a protective, functional or decorative film across an entire surface. The operation includes additional steps such as drying or curing of the surface coating. In contrast, a graphic arts operation involves the application of one or more surface coating formulations on particular areas of a surface, as well as the drying or curing of the surface coating.

Examples of graphic arts operations include the following, all of which are defined at N.J.A.C. 7:27-16.1:

- Rotogravure and flexographic printing to produce published material and packaging for commercial and industrial purposes;
- Rotogravure and flexographic printing on coated fabric or sheets;
- Sheet-fed gravure;
- Screen printing; and
- Fabric printing.

In a "rotogravure printing operation," ink is applied to a cylinder into which an image or pattern has been engraved or etched; the substrate is fed over the cylinder from a continuous roll and the ink is transferred to the substrate to form the image or pattern. As the term is defined in N.J.A.C. 7:27-16.1, it does not include proof presses used to check the quality of the image formation from newly engraved or etched cylinders. The proposed amendments to the definition make minor clarifications that do not materially affect its substance.

In "flexographic printing," ink is applied first to a smooth roller, which in turn rolls the ink onto the raised pattern of a pad fastened around a second roller; the second roller then rolls the ink onto the substrate to form the image. This definition is unchanged from the existing rules.

The proposed amendments add a definition of "gravure printing operation (sheet-fed)." This type of operation is similar to a rotogravure printing operation, except that the substrate is fed over the cylinder in single sheets rather than from a continuous roll.

The proposed amendments also add a definition of "screen printing operation," in which printing ink passes through fabric to which a stencil has been applied in order to transfer an image onto a substrate. The proposed amendments do not change the existing definition of "fabric printing operation"; in that type of operation, knit or woven cloth is decoratively enhanced by applying a pattern or design with inks, dyes or print pastes. There is some overlap between "screen printing operations" and "fabric printing operations," because a screen printing operation that uses a textile substrate is also fabric printing operation. However, the proposed amendments regulate such an operation in the same manner regardless of whether it is classified as screen printing or fabric printing.

Applicability:

N.J.A.C. 7:27-16.7(a) and (b) describe the types of surface coating operations and graphic arts operations that are subject to subchapter 16. Subchapter 16 applies to a surface coating operation or graphic arts operation only if the operation uses a surface coating formulation that contains VOC. If such an operation is of a type listed in any of the tables (discussed below) establishing maximum allowable VOC contents for surface coatings, the operation is regulated under N.J.A.C. 7:27-16.7. If the operation is not one of those listed types, but it takes place at a major VOC facility and has the potential to emit at least three pounds of VOC per hour (a threshold that EPA has recomended to the Department), it is regulated case-by-case pursuant to N.J.A.C. 7:27-16.17, discussed below.

Methods of compliance:

The proposed amendments make several minor revisions to N.J.A.C. 7:27-16.5(a), and recodify it as N.J.A.C. 7:27-16.7(c). This provision sets forth four alternative means by which a surface coating operation or graphic arts operation can comply with the rule.

First, the operation can comply by using no surface coating formulations that contain amounts of VOC in excess of the maximums listed in the rule (described in more detail below). Second, an operation can comply even though it uses one or more formulations with VOC contents exceeding the applicable maximum listed in the rule; the operation will be in compliance if the average VOC contents of all of the formulations used, weighted to reflect the volume of each formulation used, is no greater than the applicable maximum. Third, if the operation is included in a plan that the Department approved before March 28, 1992 for the mathematical combination of VOC emissions from multiple source operations, the operation can continue to comply with the rule pursuant to that plan until March 28, 1994; all such "bubble" approvals are being phased out to eliminate differences between State requirements and EPA policies, pursuant to amendments to subchapter 16 adopted in 1992. See 24 N.J.R. 792(a) (March 2, 1992), 23 N.J.R. 1858(b) (June 17, 1991). Fourth, the operation can be served by control apparatus that satisfies criteria discussed below.

All of these alternatives are contained in the existing rules. The proposed amendments primarily make minor clarifications that do not affect the substance of the alternatives, such as replacing undefined terms with defined terms and recodifying certain provisions so that the rule is better organized.

As noted above, one method of compliance is to use coatings that have a weighted average VOC content that complies with the rules. EPA has recommended to the Department that the calculation of the weighted average should exclude the formulations that contain no VOCs at all. The Department has not made this change in the proposed amendments; accordingly, persons with surface coating and graphic arts operations can continue to include non-VOC coatings in their calculations. The Department recognizes EPA's concern that the inclusion of non-VOC coatings in their calculations would allow the use of larger quantities of high VOC

coatings, but the Department believes that the approach in the existing rules encourages the use of non-VOC coatings. The Department requests comment from any interested persons in support of or in opposition to the approach under the existing rules.

The proposed amendments also make minor clarifying changes to the wording of N.J.A.C. 7:27-16.5(c) (recodifed as N.J.A.C. 7:27-16.7(e)), to N.J.A.C. 7:27-16.5(e) (recodifed as N.J.A.C. 7:27-16.7(g)), and to N.J.A.C. 7:27-16.5(f) (recodified as N.J.A.C. 7:27-16.7(h)), all of which are similar to the clarifications discussed above.

Surface coating operation requirements:

In the existing rules, Tables 3A and 3B in N.J.A.C. 7:27-16.5 establish maximum allowable VOC contents for automobile and light-duty truck surface coating operations and other miscellaneous surface coating operations. Table 3C establishes alternative maximum allowable VOC contents for certain spray coating operations. The proposed amendments revise these tables and recodify them as Tables 7A, 7B and 7C in N.J.A.C. 7:27-16.7.

The existing rules address pipe coating operations for metal pipe, pursuant to Table 3B which establishes maximum VOC contents for coatings used on "miscellaneous metal parts and products." This category includes metal pipe. The proposed amendments add maximum VOC contents for coatings used on concrete pipes.

The 1990 CAAA require the Department to expand the scope of the rule in this manner because at least one concrete pipe coater in the State uses asphaltic or coal tar coatings similar to those used to coat metal pipes, and has the potential to emit more than 25 tons of VOC per year. Because the coatings are so similar to those used to coat metal pipes, the maximum allowable VOC content for non-metal pipe coatings under the proposed amendments is the same as that which the existing rules had established for metal pipe.

The proposed amendments also add to Table 7B a list of dates by which each type of operation must be in compliance with the rule. As required by the 1990 CAAA, pipe coating operations for non-metal pipes must be in compliance by May 31, 1995. The compliance dates listed in the table for the other types of operations are already set forth in the existing rules, but are added to the table for ease of reference.

In the existing rules, Table 3E sets forth the maximum allowable VOC content in coatings for wood furniture surface coating operations. The proposed amendments consolidate this table into Table 7B, again for ease of reference.

Graphic arts operation requirements:

Table 3D in the existing rules establishes maximum allowable VOC contents in coatings for grahic arts operations. The proposed amendments to Table 3D recodify it as Table 7D, reorganize it, and add the two additional types of graphic arts operations (sheet-fed gravure printing operations and screen printing operations) discussed below.

Under the proposed amendments, Table 7D is reorganized into three parts. Part A lists the types of graphic arts operations regulated under N.J.A.C. 7:27-16.7, and the dates on which each type of operation must be conducted in compliance with the rules. The dates added to the table are already set forth in the existing rules, except for the compliance dates for the two newly added types of operations. For those two types of operations, the compliance date is May 31, 1995, as required by the 1990 CAAA.

Part B lists the maximum VOC content allowed in surface coating formulations used in graphic arts operations, other than screen printing operations. Part C lists the maximum VOC content allowed in surface coating formulations used in screen printing operations.

As in Table 3D of the existing rules, Part B lists the maximum VOC content for surface coating formulations that contain water and formulations that do not contain water. These maximums are unchanged from the existing rules. However, Part B also adds to the existing rules by establishing maximum allowable VOC contents for fountain solutions. A fountain solution is an aqueous solution used in graphic arts operations. The fountain solution dampens the plate and prevents the parts of the plate without an image from accepting ink.

The fountain solution contains a "dampening aid" to enhance the spreadability of the solution across the plate. Isopropyl alcohol, a VOC, has traditionally served as the dampening aid, in concentrations ranging from 0 to 35 percent by volume. The past several years have seen the development of non-alcohol additives that are less volatile than isopropyl alcohol, and can be used to produce fountain solutions that are less than three percent VOC. The non-alcohol additives can also be more cost-effective than alcohol, because they are used in such small quantities. However, the Department also recognizes that switching to alcohol substitutes will add costs in the short term as employees are retrained to use the reformulated fountain solutions.

VOC emissions from fountain solutions can also be controlled by refrigerating the solution. Refrigeration lowers the evaporation rate of the isopropyl alcohol.

The proposed amendments therefore establish maximum allowable VOC contents for fountain solutions that reflect both the use of non-alcohol additives and the temperature of the fountain solution. If the temperature of the solution is 55 degrees Fahrenheit or less, the maximum allowable VOC content is five percent by volume. If the temperature of the solution is higher than 55 degrees Fahrenheit, the maximum allowable VOC content is three percent by volume. These limits are consistent with those that EPA has proposed in a draft CTG. If EPA revises its limits in a final CTG and the Department agrees with the revisions, the Department would propose another amendment to revise the limits in subchapter 16 as well.

Part C lists the maximum allowable VOC content for surface coating formulations used with the majority of substrates employed in screen printing operations. These substrates include paper; glass and ceramic; metal; rigid and flexible plastic; reflective sheeting; presssure-sensitive decals; wood; and fabric. Based on consultations with the members of the working group, the Department believes that these categories of substrates can accept low-VOC formulations without a loss of quality.

The maximum allowable VOC content for the formulations used with most of the types of substrate is 3.3 pounds per gallon (0.40 kilograms per liter). The 3.3 pound per gallon maximum is consistent with the limitations established by New York State, and with the recommendations made by the representative of the screen printing industry involved in the working group. The Department agrees that the use of formulations with a VOC content no greater than 3.3 pounds per gallon represents RACT. The installation and use of control apparatus frequently will not represent RACT for these types of operations, because most of the individual source operations do not have large quantities of VOC emissions (and therefore the potential for reducing emissions from any one of those sources is relatively low), while the cost of the control apparatus is comparatively high. Therefore, the Department believes that the use of commercially available low-VOC formulations represents RACT for these types of operations. Those formulations generally have VOC contents that meet the 3.3 pound per gallon maximum; standard formulations currently in use contain beween 5.2 and 5.7 pounds of VOC per gallon as sold, and are sometimes blended with additional solvent to raise the VOC content by an additional pound per gallon. The standard formulations range in cost from approximately $30.00 to $50.00 per gallon; the cost of low-VOC formulations ranges from $50.00 to $100.00 per gallon.

One exception to the 3.3 pound per gallon maximum is the maximum for surface coating formulations used with fabric substrates. Table 3D in the existing rules already establishes a maximum allowable VOC content for such formulations of 2.9 pounds per gallon (0.35 kilograms per liter), and screen printing operations have been complying with this maximum for several years. Accordingly, the Department believes that this more stringent maximum still represents RACT.

Another exception concerns special purpose screen printing inks and coatings. These inks and coatings are used on signs that must resist constant exposure to the elements, extreme temperatures, and certain types of chemicals; the most commonly available low-VOC coatings normally cannot meet these needs. Though non-VOC substitutes for special purpose inks and coatings are available, the Department does not believe that the use of these substitutes currently represents RACT. These substitutes must be cured through exposure to ultraviolet rays. For that reason, the use of those substitutes requires specialized equipment (with a purchase price of approximately $24,000) and a substantial investment of time and money in employee training. The Department believes that the limited emission reductions that would be gained through the use of the substitute coatings would not justify the additional cost of using such coatings.

The proposed amendments therefore establish a maximum allowable VOC content of 6.7 pounds per gallon for special purpose screen printing inks and coatings. This maximum represents the lowest VOC content currently commercially available (other than in the non-VOC substitutes discussed above) for the special purposes discussed above. The cost of special purpose inks and coatings generally ranges from $30.00 to $50.00 per gallon, and the cost of the inks and coatings complying with the proposed amendments is at the upper end of this range.

Conductive inks contain high concentrations of metals to make them suitable for use in electronics applications. An ink that was water-based, rather than one using VOC as a solvent, would pose a substantial risk of explosion. The proposed amendments therefore establish a maximum allowable VOC content of 8.5 pounds per gallon for these inks. Again, this maximum represents the lowest VOC content currently commercially available for this type of printing, and the cost is at the upper end of the range of costs for this type of ink.

The proposed amendments include definitions of "special purpose screen printing inks and coatings," "conductive inks" and "ink transfer," for ease of interpretation of the rule. These definitions incorporate common industry usages of these terms.

Compliance through use of control apparatus:

In the existing rules, N.J.A.C. 7:27-16.5(f) establishes an alternative to complying with the maximum VOC content requirements for surface coating formulations described above. The alternative requires the installation and use of control apparatus that collects a given percentage of the source gas emitted and prevents the emission of a given percentage of VOC collected. The alternative is available for rotogravure, flexographic and fabric printing operations. The proposed amendments recodify this provision at N.J.A.C. 7:27-16.7(h), and expand it to make the same alternative available for sheet-fed gravure and screen printing operations.

Under the proposed amendments at N.J.A.C. 7:27-16.7(h)1, the percentage of source gas to be collected and VOC emissions to be controlled is the same for rotogravure and sheet-fed gravure printing operations. The Department's experience in issuing and enforcing permits for these types of operations, and its consultation with representatives of the regulated community, demonstrates that both types of operations can achieve essentially the same emission reductions using the same types of controls at essentially the same cost.

As in the existing rules, under the proposed amendments the control apparatus must collect at least 75 percent by volume of the source gas emitted from the operation. However, the proposed amendments revise the requirements for the percentage of VOC emissions that must be prevented from being discharged into the outdoor atmosphere, to reflect improvements in control technology. Specifically, the proposed amendments at N.J.A.C. 7:27-16.7(h)1 require a rotogravure or sheet-fed gravure printing operation that uses a thermal oxidizer to prevent emission to the outdoor atmosphere of 95 percent of the VOC collected. The existing rules require a removal efficiency of only 90 percent. In issuing permits for these types of control apparatus, the Department has found that they are normally capable of achieving a 95 percent removal efficiency and frequently can achieve a higher removal efficiency. The higher removal efficiency is important not only in controlling VOC emissions, but also in controlling emissions of other air contaminants that can be produced through incomplete combustion.

The Department recognizes that a rotogravure or sheet-fed gravure printing operation may already be using a thermal oxidizer required under its permit to achieve a 90 percent removal effciency. The Department also recognizes that the benefit to air quality from increasing removal efficiency to 95 percent could not justify the cost of replacing or retrofitting the existing thermal oxidizer. Accordingly, under N.J.A.C. 7:27-16.7(p) those existing systems need not be retrofitted to comply with the 95 percent requirement under the proposed amendments; the terms of the permit will continue to govern the removal efficiency required for VOC emissions.

The Department also recognizes that the 95 percent requirement could inhibit the use and development of other innovative types of control apparatus that are better suited to pollution prevention, such as carbon adsorption systems and condensation systems. Compared with thermal oxidizers, these types of systems better serve the goal of pollution prevention because they allow for the possibility that the captured VOCs can be recovered and recycled or reused rather than simply destroyed at the end of the process. N.J.A.C. 7:27-16.7(h)1ii is intended to prevent the proposed amendments from becoming a disincentive to pollution prevention. If the owner or operator elects to comply with this section by installing control apparatus but chooses a device other than a thermal oxidizer, the device will be subject to the 90 percent requirement contained in the existing rules.

N.J.A.C. 7:27-16.7(h)2 establishes requirements for control apparatus used with flexographic printing operations, that correspond to the requirements for rotogravure and sheet-fed gravure printing operations. As in the existing rules, the proposed amendments continue to require that the control apparatus collect at least 75 percent of the source gases. As with the rotogravure and sheet-fed gravure printing operations discussed above, the proposed amendments require a 95 percent removal efficiency for VOC emissions if a thermal oxidizer is used, but preserves the 90 percent requirement for other types of control apparatus. N.J.A.C. 7:27-16.7(h)3 and 4 establish the same requirements for control apparatus used with fabric printing operations and screen printing operations, respectively.

Again, under N.J.A.C. 7:27-16.7(p) if a flexographic printing operation, fabric printing operation or screen printing operation is using control apparatus installed to comply with the existing rules pursuant to a previously issued permit, and the permit requires a control efficiency of at least 90 percent, the terms of that permit will continue to govern the removal efficiency required for VOC emissions. The proposed amendments would not subject the operation to a 95 percent control efficiency requirement. The permits issued for control apparatus serving flexographic and fabric printing operations over the past several years have generally required a removal efficiency of 90 percent; the additional emissions reduction that would result from subjecting these operations to the new requirement is too small to justify the substantial cost of replacing the control apparatus.

Compliance schedules:

The proposed amendments delete N.J.A.C. 7:27-16.5(i) from the existing rules. This provision had established milestones for automobile and light-duty truck surface coating operations to attain compliance with the rule. All of those milestones are past; the only relevant date is the date for attaining final compliance, and that date is set forth in Table 7A.

The proposed amendments also delete the milestones that had been established for various types of surface coating operations under the existing rules at N.J.A.C. 7:27-16.5(j), because all of those milestones are past as well, and the final compliance dates for those operations are set forth in Tables 7B and 7D.

Those milestones are replaced by new milestones applicable to the pipe coating operations, sheet-fed gravure printing operations and screen printing operations that the proposed amendments have added to subchapter 16. Within 90 days after the operative date of the proposed amendments, the owner or operator of such an operation is required to submit complete applications under N.J.A.C. 7:27-8 for all permits required for equipment and control apparatus needed to achieve compliance with the rule. As required by the 1990 CAAA, compliance must be attained by May 31, 1995.

The Department believes that this compliance schedule allows sufficient time in advance of the 1990 CAAA deadline to ensure that the permitting process and construction or installation can be completed without jeopardizing compliance with the deadline. The Department discussed the schedule with representatives of the regulated community participating in the work groups to confirm that the milestones are reasonable.

The Department expects to issue the necessary pre-construction permits within three months after receiving a complete application. If the Department fails to meet this schedule, and that delay alone prevents a person from achieving compliance by May 31, 1995, the Department would refrain from taking enforcement action for the violation. However, if the Department were a few weeks late in issuing the necessary permits but the person was several months late in achieving compliance, the Department would most likely conclude that its own delay was not the sole cause of the delay in achieving compliance and would not necessarily refrain from taking enforcement action. If the delay is only a contributing factor toward a person's inability to meet the 1990 CAAA deadline, the Department would consider that factor in taking enforcement action.

Recordkeeping:

N.J.A.C. 7:27-16.7(n) recodifies the recordkeeping requirements at N.J.A.C. 7:27-16.5(m) in the existing rules. The existing rules required records to be kept for each surface coating formulation; the proposed amendments clarify that requirement by stating that each change either in the substance used to dilute the formulation or in the extent of the dilution essentially results in a different formulation for which records must be kept separately. The existing rules also require records regarding the number of hours that each formulation is applied; the proposed amendments add that the date and time that each application begins and ends must be recorded as well.

N.J.A.C. 7:27-16.8 through 16.11 Combustion sources

Several of the categories of sources regulated under the proposed amendments and new rules are combustion sources. The proposed new rules at N.J.A.C. 7:27-16.8 through 16.11 address the following types of combustion sources: boilers; stationary gas turbines; stationary internal combustion engines; and asphalt plants. NO_x emissions from several types of combustion sources are regulated under the proposed NO_x rules at N.J.A.C. 7:27-19.

Emissions of VOC and NO_x from combustion sources are related. As NO_x emissions decrease, VOC emissions tend to increase. The proposed VOC amendments and new rules are intended to minimize the possibility that combustion sources will reduce their NO_x emissions as required by N.J.A.C. 7:27-19 at the cost of environmentally harmful increases in VOC emissions.

Applicability:

The proposed NO_x rules list several specific types of equipment and source operations that are subject to the rules. The types of equipment and source operations include utility and non-utility boilers, stationary gas turbines, stationary internal combustion engines, asphalt plants and glass manufacturing furnaces. The applicability of the NO_x rules to these types of sources is based upon an operating parameter such as maximum heat input rate, production capacity or horsepower. However, the NO_x rules also provide that an owner or operator can obtain an exemption from the rules, if the annual or daily potential NO_x emissions from the source are less than a given quantity.

Any such source is also subject to the NO_x rules if it has the potential to emit at least 10 tons of NO_x per year and is part of a major NO_x facility (that is, a facility with the potential to emit at least 25 tons of NO_x annually). The source can thus become subject to the NO_x rules even if it does not meet the thresholds based on operating parameters.

If one of these combustion sources is subject to the NO_x rules based on the operating parameter thresholds, that source is also subject to the VOC rules (with the exception of glass manufacturing furnaces, which do not have the potential to emit substantial quantities of VOC). However, a smaller source that is subject to the NO_x rules solely because it is part of a major NO_x facility is not subject to the VOC rules. There is no need to subject such a source to the VOC rules, because the NO_x rules are sufficient to prevent NO_x control at the facility from having a major adverse impact on VOC emissions. Under the NO_x rules, the major NO_x facility would be required to obtain the Department's approval of a NO_x control plan tailored to the facility; that facility-specific plan could not materially contribute to "any other environmental impact inconsistent with the purposes of" N.J.A.C. 7:27, the Air Pollution Control Act or the Clean Air Act. N.J.A.C. 7:27-19.13(g)6 (25 N.J.R. 652, February 16, 1993). Accordingly, the Department would not approve a facility-specific NO_x control plan that would result in substantially increased VOC emissions.

A combustion source may be excluded from regulation under the NO_x rules because it is located at a facility that has the potential to emit less than 25 tons of NO_x per year, or because it is too small to qualify for regulation under the NO_x rules. Conceivably, such a source may be located at a facility that has the potential to emit 25 tons or more of VOC per year. Such a source would be subject to the proposed VOC rules, notwithstanding its exclusion from the NO_x rules, because the 1990 CAAA would require the Department to regulate the source as a major stationary source of VOC. The source would be regulated under N.J.A.C. 7:27-16.17, discussed below in the summary of that section.

Emission limits/use of CO as a surrogate for VOC:

The proposed new rules establish CO emission limits for most types of combustion sources, rather than establishing VOC limits. For the reasons discussed below, the Department believes that this approach will reduce the cost of demonstrating compliance with the proposed new rules, without materially affecting the control of VOC emissions.

It can be difficult to measure the concentration of VOC in emissions from combustion sources, because the concentration tends to be relatively small (even though the total quantity of VOC emissions from these sources is frequently substantial because they generate a large volume of stack gases). The Department recognizes that the small concentration can make it difficult to measure the VOC concentration accurately.

However, the concentration of VOC in emissions from combustion sources can be inferred relatively accurately from measurements of CO emissions. As VOC emissions from combustion sources increase, CO emissions tend to increase as well. The chemical reactions that take place during combustion tend to increase CO emissions more quickly than VOC emissions. In addition, it is generally less costly to measure CO concentrations in emissions from combustion sources than it is to measure VOC concentrations. Indeed, many facilities already are measuring CO emissions in the normal course of their operations. Accordingly, this approach can be expected to reduce the cost of demonstrating compliance with the proposed new rules, without materially affecting the control of VOC emissions.

One exception to this approach concerns types of combustion sources that are likely to qualify as major VOC facilities, with the potential to emit at least 25 tons of VOC annually: asphalt plants, utility boilers and the largest non-utility boilers (those having a maximum gross heat input rate of at least 50 million BTU per hour). The concentration of VOC in the emissions from these sources is generally high enough to make it practicable to monitor VOC concentrations directly rather than inferring them from CO concentrations.

The other exception to this approach concerns stationary gas turbines. Data that EPA has provided in its Alternative Control Techniques document shows that some techniques of controlling NO_x emissions from stationary gas turbines can significantly increase VOC emissions without having any substantial effect upon CO emissions. Accordingly, for this type of source CO will not be an accurate surrogate for VOC.

For both of these types of exceptions, the proposed new rules nonetheless establish CO emission limits. CO will still be necessary as a surrogate for VOC for sources required to install continuous emissions monitoring systems. The proposed new rules require continuous emissions monitoring for CO but not for VOC, which is substantially more expensive than CO to monitor continuously. In addition, even when continuous emissions monitoring is not required it is still necessary to prevent VOC or NO_x reductions from being achieved at the cost of substantial increases in CO emissions. The harmful environmental and health effects of CO are described in the Summary of the Department's most recent rule proposal governing control and prohibition of air pollution by vehicular fuels. 24 N.J.R. 2386(a), 2387 (July 6, 1992).

The proposed new rules establish emission limits for combustion sources that the Department believes can be achieved without the installation of any additional control technology (with the exception of flares, discussed in the summary of N.J.A.C. 7:27-16.13 below). The Department believes that improvements in operation and maintenance methods (including annual tune-ups of the combustion process, as required in the proposed NO_x rules) will enable the combustion sources to attain compliance with the emission limits in the proposed new VOC rules.

Compliance schedules:

The proposed new rules establish compliance schedules for owners and operators of combustion sources subject to the proposed new rules. Within three months after the proposed new rules become operative, the owner or operator of the combustion source will be required to submit applications for all permits needed for the source to attain compliance. As noted above, the Department expects that combustion sources (other than flares) will require no additional control apparatus to comply with the proposed new rules, and therefore will not need to be submitting permit applications. As required by the 1990 CAAA, the proposed new rules establish May 31, 1995 as the date by which the regulated combustion sources are required to attain compliance.

The Department believes that this compliance schedule allows sufficient time in advance of the 1990 CAAA deadline to ensure that when construction or installation of equipment or control apparatus is necessary for compliance, the permitting process and construction or installation can be completed without jeopardizing compliance with the deadline. The Department discussed the schedule with representatives of the regulated community participating in the work groups developing the NO_x rules to confirm that the milestones are reasonable.

The exception to the May 31, 1995 compliance deadline concerns annual adjustments of a source's combustion process which all of the combustion sources regulated under the proposed new rules are required to make under the proposed new rules. As in the NO_x rules, these annual adjustments must commence in 1994 rather than in 1995. The earlier compliance date reflects the 1990 CAAA requirement that RACT be implemented as expeditiously as practicable. The annual adjustment is practicable now; many owners and operators are already making such adjustments, though they may not currently be monitoring the adjustment

for its effect on CO emissions. Therefore, requiring the adjustment beginning in 1994 will give owners and operators of the affected sources sufficient time to implement the new requirement.

The proposed new rules require the owner or operator of the combustion source to demonstrate compliance by May 31, 1996. The Department set the deadline for the compliance demonstration one year after the deadline for actually achieving compliance. The deadline for the compliance demonstration therefore allows time for the owner or operator to develop protocols for the necessary continuous emissions monitoring systems or stack tests, to obtain the Department's approval of the protocols, to conduct the testing or monitoring, and to submit compliance reports.

Test methods:

The proposed new rules incorporate by reference CO testing procedures established in EPA rules at 40 CFR 60, Appendices B and F. The proposed new rules also cross-reference Air Test Method 3, N.J.A.C. 7:27B-3 for VOC testing. Alternatives to these test methods may be used if EPA and the Department determine that the alternative is equivalent to the test method listed in the regulation, and approve the alternative in advance.

Other combustion sources:

N.J.A.C. 7:27-16.12 is reserved. The proposed amendments and new rules do not establish numerical emission limits or other RACT requirements for incinerators. The Department understands that as required by the 1990 CAAA, EPA is about to release a revised new source performance standard (NSPS) for municipal waste combustors. Therefore, the Department will postpone specifying emissions limits for these sources until after EPA has released the NSPS. For ease of future codification of RACT requirements for incinerators, the proposed amendments and new rules reserve N.J.A.C. 7:27-16.12. As discussed in the summary of N.J.A.C. 7:27-16.27 below, until the Department promulgates emissions limits for incinerators, the owners and operators of incinerators at major VOC facilities will be required to submit a facility-specific VOC control plan under N.J.A.C. 7:27-16.17.

N.J.A.C. 7:27-16.13 establishes requirements for flares. A flare is a device used to destroy waste or by-product gases by passing them through a flame and then directly into the outdoor atmosphere. Though a flare is a combustion source, it differs from the combustion sources discussed above because VOC, rather than NO_x, is the air contaminant that is the primary concern.

A description of the requirements of the VOC rule applicable to specific types of combustion sources follows:

N.J.A.C. 7:27-16.8 Boilers

The proposed new rule at N.J.A.C. 7:27-16.8 applies to all utility boilers. A "utility boiler" is a device that combusts commercial fuel for the purpose of producing steam, at least part of which is used to generate electricity. N.J.A.C. 7:27-16.1 defines "utility boiler" and related terms by cross-reference to N.J.A.C. 7:27-19; accordingly, if the Department revises the definition of the term upon adoption of N.J.A.C. 7:27-19, it would revise the definition of N.J.A.C. 7:27-16.1 upon adoption of these proposed amendments and new rules.

The proposed new rule also applies to certain non-utility boilers. A "non-utility boiler" combusts commercial fuel for the purpose of producing steam, but is not used to generate electricity. A non-utility boiler is subject to the proposed new rule if it has a maximum gross heat input rate of 20 million BTUs per hour, unless the owner or operator demonstrates that the boiler is part of a facility having the potential to emit less than 25 tons of NO_x per year.

For all utility boilers and for non-utility boilers with a maximum gross heat input rate of at least 50 million BTUs per hour, N.J.A.C. 7:27-16.8(b) limits VOC emissions to a concentration of 50 parts per million by volume, dry basis (ppmvd) (that is, not including the number of parts contributed by water), at seven percent oxygen. N.J.A.C. 7:27-16.8(c) limits CO emissions from these sources to a concentration of 100 ppmvd at seven percent oxygen. In developing these limits, the Department has relied primarily upon its experience in issuing permits for new and modified boilers to conclude that these limits are the lowest that the boilers can reasonably achieve while still complying with the emission limits in the NO_x rules. In addition, a report published by EPA entitled "Evaluation and Costing of NO_x Controls for Existing Utility Boilers in the NESCAUM Region," includes data indicating that compliance with the NO_x rules will not drive VOC or CO emission concentrations above these limits.

For smaller non-utility boilers (less than 50 million BTUs per hour but at least 20 milion BTUs per hour), N.J.A.C. 7:27-16.8(d) establishes no numerical emission limits, but requires only that the owner or operator adjust the boiler's combustion process annually to minimize total emissions of NO_x and CO. This requirement is the same as the annual tune-up requirement in the NO_x rules at N.J.A.C. 7:27-19.16 (25 N.J.R. 654, February 16, 1993); therefore, boilers subject to the NO_x rules need not take any additional action to comply with the requirement.

To demonstrate compliance with this section, any utility boiler and any non-utility boiler with a maximum gross heat input rate of more than 250 million BTUs per hour must be equipped with a continuous emissions monitoring system (CEMS) for CO. Inasmuch as the NO_x rules will require CEMS for these boilers, the Department does not expect the compliance with the requirement in the VOC rules will require owners and operators to incur any material additional costs. The Department has refrained from requiring that these boilers be equipped with CEMS for VOC, because that requirement would add substantially to the expense of complying with the rule without providing emissions information that would be substantially more helpful than what is required under N.J.A.C. 7:27-16.23.

As noted above, non-utility boilers with a maximum gross heat input rate of at least 50 million BTU per hour and utility boilers may have the potential to emit enough VOC to qualify as "major VOC facilities." Such a boiler would be subject to the VOC rules at N.J.A.C. 7:27-16.17 even if it were excluded or exempted from regulation under the NO_x rules.

N.J.A.C. 7:27-16.9 Stationary gas turbines

The proposed new rule at N.J.A.C. 7:27-16.9 applies to stationary gas turbines with a maximum gross heat input rate of at least 30 million BTUs per hour. A gas turbine is fueled by liquid or gaseous fuel, and is used for generating mechanical energy in the form of a rotating shaft. The shaft then drives an electric generator or other industrial equipment. A "stationary gas turbine" is simply a gas turbine that is not self-propelled. A gas turbine mounted on an airplane as part of a jet engine is self propelled, and therefore would not be considered a "stationary gas turbine." In contrast, a gas turbine that is mounted on a vehicle for portability is not considered self-propelled, and therefore is included in the definition of "stationary gas turbine."

N.J.A.C. 7:27-16.9(b) limits CO emissions from stationary gas turbines to a concentration of 100 parts per million by volume, dry basis at 15 percent oxygen. N.J.A.C. 7:27-16.9(c) limits VOC emissions from these sources to 50 ppmvd at 15 percent oxygen. In developing these limits, the Department noted that tests conducted by Public Service Electric & Gas at its Edison Generating Station showed that its approach to compliance with the NO_x rules would not raise VOC or CO emissions above the limits. In addition, the data that EPA has presented in its Alternative Control Techniques (ACT) document for combustion turbines supports the conclusion that the use of other types of NO_x control measures does not jeopardize the ability of a turbine to meet these limits. Therefore, the Department believes that these limits are the lowest that the turbines can reasonably achieve while still complying with the emission limits in the NO_x rules.

A stationary gas turbine that is excluded or exempted from the NO_x rules could conceivably be subject to the proposed VOC rules, if the turbine is located at a major VOC facility and has the potential to emit at least three pounds of VOC per hour. However, such a turbine would not be subject to the requirements of N.J.A.C. 7:27-16.9; instead, the turbine would be included in a facility-specific VOC control plan under N.J.A.C. 7:27-16.17.

N.J.A.C. 7:27-16.10 Stationary internal combustion engines

The proposed new rule at N.J.A.C. 7:27-16.10 limits CO emissions from certain stationary internal combustion engines. The term includes any internal combustion engine that is not self-propelled; as is the case with stationary gas turbines, an engine mounted on a vehicle for portability is not "self-propelled," and therefore is within the scope of the term.

A stationary internal combustion engine is subject to the proposed new rules only if it is subject to the NO_x rules at N.J.A.C. 7:27-19. Generally, those rules apply to stationary internal combustion engines that are capable of producing an output of more than 500 horsepower, other than emergency generators.

The NO_x rules distinguish between "rich-burn" and "lean-burn" internal combustion engines. The concentration of oxygen in the exhaust from a rich-burn engine is lower than the oxygen concentration in the

exhaust from a lean-burn engine. The proposed VOC rules do not make such a distinction, but the CO emission limits in the rules serve different purposes for rich-burn and lean-burn engines.

A rich-burn engine will normally comply with the NO_x rules by using nonselective catalytic reduction, in which a catalyst causes NO_x to react with CO and unburned hydrocarbons to produce nitrogen, carbon dioxide and water. Complying with the NO_x rules therefore will also reduce emissions of CO and VOC, therefore generally enabling the engine to comply with the proposed VOC rules without the need for additional control measures.

A liquid-fueled lean-burn engine will normally comply with the NO_x rules by retarding the engine's ignition timing; the retardation reduces NO_x formation by lowering combustion temperatures and pressures. However, the reduction in combustion temperature tends to increase CO and VOC emissions because combustion is less complete. Excessively retarding ignition timing will increase CO and VOC emissions significantly and fuel efficiency will be reduced substantially. The CO emission limits in the proposed VOC rules are intended to prevent reductions in NO_x emissions that would occur at the cost of substantial CO and VOC emissions increases.

A gaseous-fueled lean-burn engine can control NO_x emissions with clean-burn combustion technology; this approach uses more air in combusting a given amount of fuel. The excess air lowers combustion temperatures, thereby reducing NO_x formation. Again, the reduction in combustion temperature tends to increase CO and VOC emissions, so that without the CO emission limits in the proposed VOC rules an engine could reduce NO_x emissions at the cost of substantial CO and VOC emissions increases.

To balance the need to reduce NO_x emissions against the need to avoid substantial CO and VOC emissions increases, the proposed VOC rules require that a stationary internal combustion engine that satisfies the applicability criteria listed above must emit CO in a concentration no greater than 100 parts per million by volume, dry basis (ppmvd) at 15 percent oxygen. This limit reflects data that EPA has provided in the ACT document it issued for this type of source, regarding the effect of NO_x control techniques upon CO and VOC emissions. That data indicates that if NO_x control techniques are properly employed, there will be no significant additional cost to prevent CO emissions from exceeding 100 ppmvd.

A stationary internal combustion engine that does not meet all of the applicability criteria listed above rules could conceivably be subject to the proposed VOC rules, if the engine is located at a major VOC facility and has the potential to emit at least three pounds of VOC per hour. However, such an engine would not be subject to the requirements of N.J.A.C. 7:27-16.10; instead, the turbine would be included in a facility-specific VOC control plan under N.J.A.C. 7:27-16.17.

N.J.A.C. 7:27-16.11 Asphalt plants

The proposed new rule at N.J.A.C. 7:27-16.11 applies to batch type asphalt plants that are located at major VOC facilities. In a batch type asphalt plant, the asphalt cement or other binder is added to the aggregate after it has left the rotary dryer (the cylindrical device that removes moisture as hot gases are passed through it), usually just before being put into the delivery truck.

The proposed new rules limit CO emissions from batch type asphalt plants to a concentration of 500 parts per million by volume, dry basis, at seven percent oxygen. The proposed new rules limit VOC emissions from these plants to a concentration of 250 ppmvd at seven percent oxygen. In arriving at these limits, the Department has evaluated test data supplied by the New Jersey Asphalt Paving Association, in light of the Department's own experience in issuing permits for this type of facility. Based upon this information, the Department has concluded that batch type asphalt plants can reasonably achieve the emissions limits established under the proposed new rules, but cannot achieve materially lower emissions through the use of any control technology suitable for use in such facilities. Essentially the only suitable control measure is periodic adjustments of the combustion process.

Based upon the same reasoning, the Department has concluded that a significant portion of the drum mix asphalt plants in the State cannot meet these emissions limits. In a drum mix asphalt plant, asphalt cement or another binder is added to the aggregate while the aggregate is in the rotary dryer. The heating of the binder during this process drives VOCs from the binder, thereby increasing emissions. The problem is exacerbated in plants that produce recycled asphalt paving, due to the higher VOC content of the recyclable materials used in the production process. The extent of the problem increases as a greater percentage of the plant's output is recycled asphalt paving.

Accordingly, the Department will establish emissions limits for drum mix asphalt plants through a facility-specific VOC control plan pursuant to N.J.A.C. 7:27-16.17. This approach will avoid creating a disincentive to the use of recycled asphalt paving. Such a disincentive would be contrary to the Department's efforts to encourage recycling, and could also inhibit efforts by the State Department of Transportation to encourage the use of recycled asphalt paving.

As noted above, the rotary dryers used in the processing of asphalt frequently emit significant quantities of VOC as well as NO_x. The proposed new VOC rules therefore apply to asphalt plants that have sufficient potential emissions of VOC to qualify as major VOC facilities, even if their potential emissions of NO_x are too low for them to be subject to the NO_x rules.

N.J.A.C. 7:27-16.13 Flares

N.J.A.C. 7:27-16.13 governs VOC emissions from flares located at major VOC facilities. A flare is a device that destroys waste or by-product gases by passing them through a flame and then directly into the outdoor atmosphere.

The proposed new rules require that any flare used at a major VOC facility must satisfy certain requirements beginning May 31, 1995, and prohibits the use of noncomplying flares after that date. To comply with the rule, the flare must have been designed to prevent emission to the outdoor atmosphere of 95 percent of the VOC entering the flare. The flare must also be installed and operated in accordance with the manufacturer's specifications.

In developing the proposed new rules, the Department refrained from establishing specific emissions limits for flares and from requiring testing to confirm the VOC destruction rate. This decision reflects the impracticability of testing the actual destruction efficiency of a flare once it is installed and operating. The flare's flame normally is not contained in any device but instead is in the open air, and there is no stack in which to measure emissions.

Accordingly, the proposed new rules require only that the flare be designed with a 95 percent VOC destruction efficiency. The manufacturer specifies the designed destruction efficiency, based upon testing performed by the manufacturer in a controlled environment. By requiring that the flare be installed and operated in accordance with the manufacturer's specifications, the proposed new rules will prohibit changes that could significantly alter the destruction efficiency of the device.

Based upon its experience in issuing permits for flares, the Department believes that 95 percent destruction efficiency is attainable through the use of RACT. Persons who have recently obtained permits for new or altered flares have been attaining destruction efficiency ranging from 95 percent to 99 percent, as required by the permits.

N.J.A.C. 7:27-16.13(b) requires the owner or operator of the flare to submit documentation to the Department to assist in verifying compliance with the rule. The required documentation identifies the owner and operator and the flare, and includes a copy of the manufacturer's specifications, a statement that the flare was installed and is being operated in accordance with the specifications, and a statement that the flare will continue to be so operated. The owner or operator is required to certify that the documentation is true, accurate and complete.

Compliance with the proposed new rule also requires that the owner or operator inspect the flare before May 31 of each year beginning in 1994. The purpose of the inspection is to verify that the flare is continuing to be operated in accordance with the manufacturer's specification. The owner or operator is required to keep a log of these inspections, describing any changes made to the flare as a result of the inspection and confirming that the flare is still being operated in accordance with the manufacturer's specifications.

N.J.A.C. 7:27-16.16 Other source operations

In the existing rules, N.J.A.C. 7:27-16.6(a) through (c) establish general requirements for sources of VOC emissions other than the sources specifically regulated in other sections of subchapter 16. The proposed amendments recodify those provisions at N.J.A.C. 7:27-16.16, and clarify and update them.

In the existing rules, N.J.A.C. 7:27-16.6(a) somewhat cryptically lists the types of source operations that are excluded from the scope of that section, by listing the citations of provisions regulating those excluded types of operations. In the proposed amendments, N.J.A.C. 7:27-16.16(a) names the types of source operations that are excluded. That list of

excluded source operations becomes somewhat longer because the proposed amendments contain provisions tailored to more types of source operations; those types of operations therefore need not be subject to the general provisions of N.J.A.C. 7:27-16.16.

In addition, the proposed amendments exclude from N.J.A.C. 7:27-16.16 any source operation that is located at a major VOC facility. If such a source operation is not within any of the categories specifically regulated under any of the other sections discussed above, and has the potential to emit at least three pounds of VOC per hour, it will be subject to facility-specific requirements developed pursuant to N.J.A.C. 7:27-16.17, discussed in the summary of that section below.

As noted below, the proposed amendments eliminate the exemptions that are set forth in N.J.A.C. 7:27-16.12(b) of the existing rules, because the 1990 CAAA requires the Department to regulate those types of sources if they are located at major VOC facilities. To avoid subjecting any more of those sources to subchapter 16 than is required under the 1990 CAAA, the Department has exempted them from regulation under N.J.A.C. 7:27-16.16. If such sources are located at major VOC facilities and have the potential to emit at least three pounds of VOC per hour, the owner or operator must include them in a facility-specific VOC control plan under N.J.A.C. 7:27-16.17, discussed below.

To further clarify the scope of N.J.A.C. 7:27-16.16, N.J.A.C. 7:27-16.16(b) lists examples of specific types of source operations that are subject to the section. The list is for purposes of illustration and clarity only, because no such list could be exhaustive.

N.J.A.C. 7:27-16.16(c) establishes the maximum allowable emission rates for source operations subject to the section. The maximum allowable emission rate depends upon the vapor pressure of the VOC emitted from the source (a measure of the volatility of the VOC), and the percentage of the total volume of the source gas emitted that consists of VOC. Under the proposed amendments, the substance of this provision is identical to that of N.J.A.C. 7:27-16.6(a) in the existing rules; the amendments delete information that ceased to be operative in 1990, and make minor clarifications.

The proposed amendments recodify N.J.A.C. 7:27-16.6(d) through (l) at N.J.A.C. 7:27-16.18, Leak detection and repair. The proposed amendments to those provisions are discussed in the summary of N.J.A.C. 7:27-16.18 below.

N.J.A.C. 7:27-16.17 Facility-specific VOC control requirements

Introduction:

N.J.A.C. 7:27-16.17 establishes the procedure to develop VOC emissions limits that are tailored to source operations at particular facilities. This procedure is necessary because the 1990 CAAA requires New Jersey to require major stationary sources of VOC to implement RACT to reduce emissions. The Department has worked to identify all categories of sources that have the potential to emit at least 25 tons of VOC annually, but recognizes that some categories of major sources other than those specifically regulated under other provisions of subchapter 16 may be present in New Jersey. Under N.J.A.C. 7:27-16.17, the Department will work with the owners and operators of these sources to determine what represents RACT for sources at particular facilities and establish facility-specific emissions limits.

In addition, the Department recognizes that a source operation that is specifically identified and regulated under another provision of subchapter 16 may be unable to achieve compliance with that other provision through the use of RACT. Accordingly, N.J.A.C. 7:27-16.17 establishes a procedure for the owner or operator of such a source to comply with subchapter 16 pursuant to a VOC control plan developed specifically for the facility at which the source is located.

Applicability:

The owner or operator of a major VOC facility is required to implement a VOC control plan approved under N.J.A.C. 7:27-16.17 for every source operation at the facility that has the potential to emit at least three pounds of VOC per hour. Without this three pounds per hour threshold, each facility's VOC control plan would have to address every source of VOC emissions at the facility, no matter how small. The costs of analyzing control technologies for all such sources would far outweigh the benefit resulting from reduced emissions from those sources, given the size of the contribution of these smaller sources to the facility's VOC emissions and the likelihood that control technology representing RACT for larger sources would be economically feasible for small sources.

The Department arrived at the three pound-per-hour threshold in consultation with EPA. Based on the Department's experience in applying N.J.A.C. 7:27-16 and in issuing permits under N.J.A.C. 7:27-8, the three pound-per-hour threshold strikes an appropriate balance among the cost of analyzing control technologies for a particular source, the emissions reductions that the control technologies are likely to produce, and the likelihood that any control technology will be considered RACT for the source in question.

The Department notes that in the corresponding provision of the NO_x rules, the threshold is 10 tons per year rather than three pounds per hour.

Assuming full-time operation of the source, the two thresholds are roughly similar (though the three pound-per-hour threshold is slightly more stringent). The reason for using an hourly threshold for VOC and an annual threshold for NO_x is that the combustion sources regulated under the NO_x rules tend to operate continuously, while VOC sources are more likely to operate intermittently in handling batches of VOC. For this reason, an hourly threshold is a better indicator of the size of the VOC source and its contribution to emissions.

As in the NO_x rules, a source operation for which subchapter 16 establishes specifically applicable emissions limits or other requirements can implement a facility-specific VOC control plan approved by the Department, in lieu of complying with those requirements. However, for the reasons discussed below, the Department expects that owners and operators of such source operations will rarely find it necessary or desirable to resort to the facility-specific approach to VOC control.

First, based upon its experience in implementing the existing rules under subchapter 16, the Department does not expect compliance with those existing requirements to become problematic. The bulk of the RACT requirements in subchapter 16 have been in place for several years, and the regulated community has been complying with them for several years. That history supports the conclusion that compliance will be achieved without the need for facility-specific regulation. In contrast, the NO_x rules are new, and there is no historical background that could show that the facility-specific option is unnecessary.

Second, the difference between control technologies for NO_x and for VOC makes it less likely that a particular source operation will be practicably unable to implement the standard control measures. Many of the control technologies needed to comply with the NO_x rules are complex, and may be impracticable to design or install for effective use in a particular facility. This type of problem is much less likely to arise in implementing VOC control measures.

The Department also notes that the existing rule at N.J.A.C. 7:27-16.10 already contains a variance provision that can provide some relief in particular cases. The proposed amendments recodify that provision at N.J.A.C. 7:27-16.26. Under that provision, an owner or operator can obtain a variance when advances in the art of control for the kind and amount of VOC emitted have not developed to a degree that would make compliance possible.

Alternative means of compliance:

Under N.J.A.C. 7:27-16.17(b), the owner or operator of a major VOC facility with a source operation meeting the applicability criteria described above has two alternative methods of compliance available. First, the owner or operator can install and use control apparatus or implement pollution prevention measures that achieve a specified reduction in VOC emissions. The control apparatus must (i) collect at least 90 percent by weight of the VOC emissions from the source operation, and (ii) prevent at least 90 percent by weight of the collected VOC emissions from being discharged into the outdoor atmosphere; pollution prevention measures must achieve at least the same level of emission reductions. Alternatively, the owner or operator can obtain the Department's and EPA's approval of a facility-specific alternative VOC control plan, and comply with that plan.

With respect to the first alternative, the Department's experience with VOC control equipment has shown that a 90 percent capture efficiency can most often be achieved at a reasonable cost with current technology. Similarly, a 90 percent control efficiency is typical for VOC control apparatus currently available for industrial sources. These requirements are also consistent with a regulation that EPA has drafted and circulated for review. The EPA regulation includes an overall capture and control efficiency of 81 percent; under the Department's proposed new rules, if control apparatus captures 90 percent of VOC emissions and then prevents 90 percent of that captured amount from being discharged, the overall capture and control efficiency is also 81 percent. Typical control techniques such as carbon adsorption and flares are currently able to achieve at least this overall efficiency.

The second alternative, a facility-specific alternative VOC control plan, is discussed below. The contents of the plan and the criteria for the Department's decision to approve or reject the plan are essentially identical to the corresponding provisions in the NO_x rules, N.J.A.C. 7:27-19.13 (25 N.J.R. 652, February 16, 1993), but provide greater flexibility by allowing for the implementation of pollution prevention measures in lieu of installing control apparatus. The Department will revise the NO_x rules to allow for this flexibility in that context as well.

Compliance schedule:

N.J.A.C. 7:27-16.17(b) also establishes the compliance schedule for source operations meeting the applicability criteria described above. Within three months after the operative date of the proposed new rules, the owner or operator must submit either the demonstration that the source operation is served (or will be served) by control apparatus meeting the capture efficiency and control efficiency requirements discussed above, or the proposed alternative VOC control plan. Either submission must be accompanied by complete permit applications for all permits that will be required for control apparatus that is the basis for the capture/control efficiency demonstration or that is to be installed and used under the alternative VOC control plan. By May 31, 1995, the owner or operator is required to achieve compliance through either the capture/control efficiency demonstration or through implementing the alternative VOC control plan.

These deadlines do not apply to an owner or operator who is seeking approval of an alternative VOC control plan for a source operation of a type that is regulated elsewhere in subchapter 16, or to an owner or operator who is seeking approval of a compliance plan to reduce a facility's potential to emit VOC to less than 25 tons per year. However, unless and until the Department approves the alternative VOC control plan or compliance plan, the source operation will remain subject to the other provisions of subchapter 16 from which the owner or operator is seeking relief. Accordingly, if the owner or operator believes that the source operation will not be able to attain compliance with those other provisions, the wisest course would be to follow the time frames discussed above. Otherwise, there is no assurance that an alternative VOC control plan or compliance plan would be approved before May 31, 1995.

Contents of alternative VOC control plan:

N.J.A.C. 7:27-16.17(d) lists the information required to be included in the alternative VOC control plan. The purpose of this information is to enable the Department to work with the owner or operator to determine what represents RACT for each source operation, in accordance with the understanding of RACT discussed at the beginning of this summary. That determination requires the analysis of several factors: the suitability and likely effectiveness of control measures normally used; the availability of suitable and effective control measures other than those that are normally used, or of alternative processes or pollution prevention measures; whether the proposed emission rate is the lowest rate that the source operation can achieve at a cost comparable to the cost of the usual control measures; and whether the cost of further emission reductions would be disproportionate to their extent and impact.

The VOC control plan must first describe each source operation that meets the applicability criteria described above, and list its permit number and any other identifying numbers. Other basic information required in the plan includes the maximum rated capacity of each such source operation and its potential to emit VOC.

The plan must also list VOC control technologies available for use with the source operation, and alternative processes and pollution prevention measures that the owner or operator is considering using with or in place of the source operation to reduce VOC emissions. The owner or operator then analyzes the cost and technological feasibility of each of these control technologies and alternatives, and the estimated reduction in VOC emissions attainable through each.

The plan states the remaining useful life of the source operation. This information is important in determining the cost effectiveness of any VOC control strategy, because as the remaining useful life increases, the total quantity of emissions that can be controlled over that useful life also increases. As a result, the cost effectiveness of any control apparatus would also be greater if the remaining useful life is longer.

The owner or operator would then propose the VOC control technologies or process alternatives to be employed, and a VOC emission limit that could be attained as a result. The plan would include those proposals, together with proposed recordkeeping requirements to document compliance with the plan.

The plan must be accompanied by complete permit applications for all permits that will be required under N.J.A.C. 7:27-8 for the construction, alteration or installation of equipment or control apparatus proposed under the plan. In addition, the plan must include recordkeeping procedures that will enable the owner or operator to document compliance with the plan.

Criteria for approval of alternative VOC control plan:

N.J.A.C. 7:27-16.17(j) lists the criteria that the Department will apply in deciding whether to approve an alternative VOC control plan. These criteria are essentially the same as the criteria for evaluating a facility-specific NO_x control plan under N.J.A.C. 7:27-19.13 (25 N.J.R. 652, February 16, 1993), because both sets of criteria reflect the same understanding of RACT.

To qualify for approval, the plan must address all control technologies available for the control of VOC emissions from the source operation in question, as well as process alternatives and pollution prevention measures. For each control strategy that the owner or operator does not propose to employ, the plan must demonstrate one of the following four possible bases for that decision: (i) that the strategy would be ineffective in controlling VOC emissions; (ii) that it is unsuitable for use with the source operation in question, or would duplicate another control strategy that the owner or operator proposes to employ; (iii) that the costs of the strategy would be disproportionate when compared to either the reduction in the rate VOC emissions that would result, or the total reduction in VOC emissions over the useful life of the control technology or of the source operation; or (iv) that the cost of the strategy would be disproportionate to the costs that other persons in the same industry are incurring for control of VOC emissions from the same type of source operation.

The plan must satisfy two additional criteria related to the cost of VOC control measures. First, the emission limit proposed in the plan must be the lowest that can practicably be achieved at a cost that meets the proportionality tests noted in (iii) and (iv) above; and second, the cost of achieving further emission reductions must be disproportionate to the size and environmental impact of those reductions.

The most significant difference between the criteria in the proposed new VOC rules and the criteria in the NO_x rules is that the VOC rules include criteria for evaluating pollution prevention measures proposed by the owner or operator. The VOC rules provide that any pollution prevention measures included in the VOC control plan must result in actual, quantifiable, Federally enforceable emissions reductions. As noted above, the NO_x rules currently do not provide for a facility-specific NO_x control plan to include pollution prevention measures, but the Department will revise the NO_x rules to make them consistent with the VOC rules.

Contents of capture/control efficiency demonstration:

N.J.A.C. 7:27-16.17(e) describes the contents of a submission to demonstrate either (i) that control apparatus for a source operation collects at least 90 percent by weight of the VOC emissions from the source operation, and prevents at least 90 percent by weight of the collected VOC emissions from being discharged into the outdoor atmosphere, or (ii) that pollution prevention measures will achieve at least this level of emission reductions.

The submission must first describe each source operation that is the subject of the demonstration, and list its permit number and any other identifying numbers. Other basic information required in the plan includes the maximum rated capacity of each such source operation and its potential to emit VOC.

The heart of the submission is a description of the control apparatus or pollution prevention measures that the owner or operator employs or proposes to employ, and an analysis of how they achieve or will achieve the required level of VOC control. In addition, the submission must be accompanied by complete applications for all of permits required under N.J.A.C. 7:27-8 in order to undertake any construction, alteration or installation necessary to achieve the required level of VOC control. In addition, the plan must include recordkeeping procedures that will enable the owner or operator to document compliance with the plan.

Criteria for approval of capture/control efficiency demonstration:

N.J.A.C. 7:27-16.17(l) states the criteria for approving a demonstration that a source operation is served by control apparatus meeting the capture efficiency and control efficiency requirements, or that pollution prevention measures will reduce emissions at least as much as compliance

with those requirements. The most important criteria is that the owner or operator's submission make that demonstration to the Department's satisfaction.

Exclusion of facilities from requirement to submit VOC control plan:

Though a facility's potential VOC emissions may be more than 25 tons per year, its actual emissions may be less. Under N.J.A.C. 7:27-16.17(f), if the owner or operator of such a facility can reduce its potential to emit VOC below 25 tons per year, there is no need to obtain the Department's approval of an alternative VOC control plan. Reducing potential emissions normally requires amending existing permits or submitting new permit applications that could limit emissions on an hourly basis, restrict hours of operation, or commit to other measures to restrict the facility's potential to emit VOC.

To be eligible for this exclusion, the owner or operator must submit a compliance plan. The compliance plan must document that the actual VOC emissions from the facility in 1990 and each calendar year thereafter were less than 25 tons. If the facility commenced operations after 1990, the documentation must cover each year of its operations. The owner or operator must also state his or her intent to reduce the facility's potential to emit VOC to under 25 tons annually, and describe how that reduction will be achieved.

The owner or operator must include with the compliance plan applications for all new permits or permit amendments necessary to achieve the reduction of the facility's potential to emit VOC. The plan must also include recordkeeping requirements that will document the owner or operator's compliance with the plan.

By May 31, 1995, as required by the 1990 CAAA, the facility's potential to emit VOC must have been reduced below 25 tons per year.

Conditions of approval:

As in the NO_x rules, the Department may include conditions in its approval of an alternative VOC control plan if necessary to minimize adverse impacts upon human health, welfare and the environment. The Department may also include such conditions in approving a demonstration of capture/control efficiency or in approving a compliance plan to reduce a facility's potential to emit VOC below 25 tons per year.

The Department's approval of an alternative VOC control plan must be submitted for EPA's approval as a revision to the State Implementation Plan. Accordingly, the Department's approval can terminate if EPA rejects the SIP revision. The Department notes that the requirement for the SIP revision applies only to alternative VOC control plans; it does not apply to facilities that comply with N.J.A.C. 7:27-16.17 by using control apparatus that achieves 90 percent capture efficiency and 90 percent control efficiency (or by achieving the same results through pollution prevention measures).

Alteration of source operations included in alternative VOC control plan, capture/control efficiency demonstration or compliance plan:

As in the NO_x rules, the proposed new rules at N.J.A.C. 7:27-16.17(l) restrict alteration of source operations included in an approved alternative VOC control plan. The owner or operator must first obtain the Department's approval of an amendment to the plan reflecting the alteration, and obtain all permits and certificates required under N.J.A.C. 7:27-8 and other applicable laws and regulations. If the owner or operator fails to do so the Department may assess penalties, and may also unilaterally modify the VOC control plan to reflect the alteration. The restrictions apply to source operations included in a demonstration of capture/control efficiency or in a compliance plan to reduce a facility's potential to emit VOC below 25 tons per year.

Revocation of approval:

Proposed new N.J.A.C. 7:27-16.17(m) lists causes for revocation of approval of an alternative VOC control plan, capture/control efficiency demonstration or compliance plan. Revocation may be based on a violation of a material condition of the approval; a determination that the decision to approve the submission was materially affected by a misstatement or omission of fact by the owner or operator; EPA's rejection of an alternative VOC control plan as a revision to the State's SIP; or a determination by the Department that continuing the operation pursuant to the approval poses a potential threat to public health, welfare or the environment. If the Department revokes its approval for any reason other than an EPA rejection of the SIP revision, the owner or operator can contest the revocation in an adjudicatory hearing pursuant to N.J.A.C. 1:1. If the revocation is based on the EPA decision, however, there is no factual issue that can properly be adjudicated in such a hearing.

Time frames for decision on alternative VOC control plan, capture/control efficiency demonstration, or compliance plan to reduce potential to emit VOC:

N.J.A.C. 7:27-16.17(g) allows the Department 30 days to determine whether an alternative VOC control plan, capture/control efficiency demonstration or compliance plan to reduce a facility's potential VOC emissions contains sufficient information to enable the Department to begin reviewing the plan. If the Department cannot begin its review because the submission is missing too much of the information required under N.J.A.C. 7:27-16.17(d), (e) or (f), the Department will provide the owner or operator with a list of the missing items and a time by which the missing items must be provided. The Department may deny approval of the submission if the additional items are not provided within the allotted time.

Within six months after receiving a proposed alternative VOC control plan, capture/control efficiency demonstration or proposed compliance plan that is sufficiently complete for review, the Department will approve the submission, approve it with modifications, or disapprove it, and notify the owner or operator of that decision in writing.

N.J.A.C. 7:27-16.18 Leak detection and repair

The existing rules at N.J.A.C. 7:27-16.6(d) through (l) establish procedures and requirements for the detection and repair of leaks from which VOCs are emitted. The existing rules prohibit emissions of applicable VOC from connections, joints and fittings not involving moving parts, and limit emissions from leaking seals surrounding moving parts. The existing rules also contain specific requirements applicable to particular types of facilities. The proposed amendments recodify those leak detection and repair (LDAR) provisions at N.J.A.C. 7:27-16.18, revise them to reflect recent changes in Federal statutes and regulations, and add requirements specifically applicable to chemical plants (discussed below).

As noted above, one of the working groups involved in developing the proposed amendments and new rules was devoted primarily to leak detection and repair. This working group was formed with interested persons who attended a widely advertised public workshop; the Department also contacted representatives of the environmental community directly to request their participation. Nonetheless, the working group consisted primarily of representatives of the regulated community and of government.

As a result of the efforts of the working group, N.J.A.C. 7:27-16.18 reflects thorough discussion of LDAR issues with members of the regulated community, which resulted in a detailed evaluation of the suggestions made in that discussion and decisions to incorporate those suggestions that were consistent with the purposes of the rule. The starting point for the discussion was EPA's proposed Hazardous Organic National Emissions Standard for Hazardous Air Pollutants (HON). The proposed HON itself resulted from detailed negotiation with representatives of the regulated community, the environmental community and government.

The proposed HON sets requirements for LDAR programs to control hazardous air pollutants to a Maximum Achievable Control Technology (MACT) standard. See 57 F.R. 62680 (December 31, 1992). This standard is more stringent than the RACT standard that guided the Department in establishing requirements under subchapter 16. Nonetheless, on many LDAR issues the working group reached a consensus that compliance with the MACT requirements of the proposed HON were reasonably attainable and should therefore be incorporated into the proposed amendments.

The Department recognizes that although it worked to obtain participation in the working group from all persons who could potentially be interested in the LDAR requirements, the participants do not represent the entire range of possible interests. The Department therefore stresses that it seeks comments from all interested persons and will consider revisions to the rule in light of those comments, whether or not the commenters exercised their opportunity to participate in the working group.

The Department is aware that some members of the regulated community may disagree with the concept of regulating leak detection and repair at all. However, in order for New Jersey to comply with the Federal mandates of the 1990 CAAA, the Department must regulate leak detection and repair. The alternative to establishing a detailed set

of rules is to regulate LDAR at each major facility on a case-by-case basis. If the Department refrains from adopting the LDAR rules set forth in the proposed amendments, LDAR will be regulated case-by-case. The Department prefers the approach in the proposed amendments because it agrees with the working group that a case-by-case approach would not provide the beneficial predictability and consistency of the proposed amendments, and could substantially burden the resources of the regulated community and the Department in preparing and evaluating individualized LDAR programs.

A detailed description of the specific provision of the proposed new rule follows:

The proposed amendments define "leak" to include gaseous leaks and liquid leaks. A gaseous leak is a release of applicable VOC as a gas or vapor from a hole, crevice or other opening in a component, other than a release that occurs in accordance with the component's design during normal operations. A liquid leak is similarly defined, except there must also be visible evidence of the leak such as a drop, drip, accumulation or pool.

The proposed amendments also use the term "regulated leak." Only regulated leaks are subject to the LDAR requirements. As discussed in detail below, N.J.A.C. 7:27-16.18 establishes maximum allowable concentrations for gaseous leaks. A gaseous leak with a concentration exceeding the applicable maximum is a "regulated leak"; in addition, any liquid leak is a "regulated leak."

Applicability:

N.J.A.C. 7:27-16.18(a) outlines the scope of the LDAR requirements. As in the existing rules, a person who owns or operates any of the following types of facilities is subject to the LDAR requirements:

- Petroleum refineries;
- Natural gas and gasoline processing plants (at which natural gas liquids are processed into products such as ethane, propane, butane and natural gasoline); and
- Synthetic organic chemical or polymer manufacturing facilities, which manufacture one or more chemicals listed in N.J.A.C. 7:27, Appendix I.

N.J.A.C. 7:27-16.18(a)4 adds that the owner and the operator of a "chemical plant" that has the potential to emit at least 25 tons of VOC annually will become subject to the LDAR requirements. EPA estimates that equipment leaks may contribute approximately one-third of all routine (non-accidental) VOC emissions from the chemical industry. 57 FR 62658 (December 31, 1992).

The definition of "chemical plant" in the proposed amendments is based upon the "Standard Industrial Classification" (SIC) code of the business or operation at the facility. The Federal government establishes SIC codes in a manual published by the Office of Management and Budget. A facility is a chemical plant if it includes a business or operation in SIC Major Group 28, Chemicals and Allied Products. The Department has included chemical plants within the scope of the LDAR requirements because its records show that approximately 1,000 chemical plants in New Jersey have the potential to emit at least 25 tons of VOC annually but are not required to have LDAR programs under the existing rules.

The LDAR requirements apply only to particular types of equipment at the facilities listed above. N.J.A.C. 7:27-16.18(b) lists these types of equipment. As in the existing rules, at a natural gas/gasoline processing plant only equipment in contact with a substance that is at least one percent VOC by weight is subject to the LDAR requirements. The existing rules apply to equipment at a synthetic organic chemical or polymer manufacturing facility only if it (i) is in contact with a substance that is at least 10 percent VOC by weight and (ii) is used to produce more than 1,100 tons annually of a synthetic organic chemical or polymer. The proposed amendments essentially preserve these criteria, but clarify that equipment is subject to the LDAR requirements if it used to produce a **total** of 1,100 tons of synthetic organic chemicals and polymers. This change codifies the Department's interpretation of its existing rules; that interpretation is necessary because there is no basis to distinguish between equipment used in producing 1,100 tons of a single chemical and equipment that is used to produce the same total quantity of two different chemicals. The change is also necessary to make the rule consistent with the New Source Performance Standards promulgated by EPA.

Under the existing rules, equipment at a petroleum refinery that comes into contact with any applicable VOC must be included in the LDAR program. Under the proposed amendments, such equipment must be included in the program only if it comes into contact with a substance that is at least 10 percent applicable VOC by weight. This change brings the rule into conformance with the New Source Performance Standard for petroleum refineries at 40 CFR 60.592; the decision to implement the change followed discussions on this point with the working group.

The proposed amendments for chemical plants apply to any component in contact with a substance that is at least 10 percent applicable VOC, and is in gaseous or light liquid VOC service more than 300 hours annually. These components pose the greatest risk of leaks with the potential for significant VOC emissions. This threshold is consistent with EPA's approach in its proposed HON.

The proposed amendments do not impose LDAR requirements upon equipment at research facilities. The existing rules define "research" to mean investigations directed toward the discovery of facts, scientific principles, reactions or substances. Accordingly, a facility that engages in manufacturing operations (other than on a limited scale for research purposes, such as the manufacture of test products) would not be exempted from the LDAR requirements.

Research facilities are unlikely to emit large quantities of VOCs through leaks, for three reasons. First, the quantity of VOCs that research facilities handle is normally far less than the quantity handled at manufacturing facilities. Second, research activities are normally conducted under close supervision by trained technicians; as a result, leaks will normally be detected and repaired quickly through normal practices even in the absence of a mandated LDAR program. Third, research activities are normally conducted in confined spaces where leak detection and control would be an integral part of the operation for the protection and safety of personnel.

In light of these facts, after consulting with the working group the Department has concluded that subjecting research facilities to the LDAR requirements could inhibit research and development activities in the State without bringing a corresponding benefit to the State's air quality. For the same reasons, the Department does not believe that an LDAR program would be considered RACT for research facilities. This conclusion is consistent with the approach in the proposed HON.

Prohibition/limitation of leaks:

The existing rules at N.J.A.C. 7:27-16.6(d) and (e) prohibit all leaks of applicable VOCs from connections, joints and fittings not involving moving parts, and limit the concentration of VOC emissions from leaking seals surrounding moving parts. Any leak of an applicable VOC from a moving part in excess of the concentration allowed, and any leak of an applicable VOC from a nonmoving part, is a violation of the existing rules, notwithstanding the extent of the leak or the degree of diligence the owner or operator has exercised to detect and repair the leak. In addition, the prohibition and the limitation are not expressly limited to the types of facilities specifically listed in the existing rule; they apply to all facilities handling applicable VOCs, though the Department historically has not taken enforcement actions against facilities other than the types specifically listed.

In addition to prohibiting or limiting leaks, the existing rules also establish time frames in which leaking components at petroleum refineries, natural gas/gasoline processing plants and synthetic organic chemical or polymer manufacturing facilities must be repaired. At these facilities, the leak must be repaired within 15 days after the leak is detected, unless it is necessary to shut down a process unit to repair the leak. In that case, the repair must be completed during the next period in which the unit is out of service or not in operation.

The working group asserted that the approach to leak detection and repair in the existing rules was unworkable, and the Department agreed. The total prohibition of leaks from nonmoving parts is especially problematic, because most of the components subject to this prohibition inherently leak to some extent.

In proposing the HON, EPA has presented background information that supports the working group's position. 57 FR 62608 (December 31, 1992). The California South Coast Air Quality Management District (South Coast) also supported that position in its LDAR rule. Specifically, EPA stated that its information indicated that regulation of leaks could not be expressed in a single numerical standard, type of technology or group of work practices. 57 FR at 62664. EPA also found that there was insufficient information available to set an "enforceable not-to-be exceeded standard." *Id.*

In developing alternatives to the complete prohibition, the Department took the following approach which is consistent with the approach evidenced by EPA's proposed HON and South Coast's proposed LDAR rule:

1. Identify and prioritize categories of sources with the greatest potential to emit VOC through leaks;
2. Require facilities in those categories to periodically inspect and audit equipment prone to leaks of VOC;
3. Establish leak thresholds and limits that are protective of air quality and with which compliance is reasonably attainable; and
4. Require that any leaks above the treshholds be repaired as soon as is practicable.

The proposed amendments limit the prohibition on leaks in accordance with this approach. First, the proposed amendments apply the prohibition only to the types of facilities and components described above, rather than applying it to all facilities and components (though as noted above, the Department historically has not taken enforcement action against types of facilities other than those listed in the rule for violations of the prohibition). Second, the proposed amendments define "liquid leak" and "gaseous leak," and provide that a gaseous leak does not constitute a violation of the rule unless it exceeds a given concentration. Third, the proposed amendments allot time to make a first attempt at repairing a leak and to complete repair of the leak; leaks occurring during that alloted time do not constitute violations. Finally, N.J.A.C. 7:27-16.18(r) provides that the owner or operator need not repair a leaking component within the allotted time if the source operation of which the component is a part is taken out of VOC service until the component is repaired and retested.

Allowable concentrations for leaks—generally:

The proposed amendments establish separate requirements for leaks from components with and without moving parts. As a general rule, components with moving parts have a greater tendency to develop leaks than components with only non-moving parts, and a component with only non-moving parts is more likely to remain leak-free once it has been repaired. Examples of components without moving parts are pressure relief devices, flanges, manholes, hatches, instrument connections, sealed connections, joints and fittings. Leaks from components without moving parts are governed by N.J.A.C. 7:27-16.18(c) and Table 18A. Examples of components with moving parts include valves, pumps, compressors, agitators and diaphragms. Leaks from components with moving parts, and from enclosures or seals surrounding such components, are governed by N.J.A.C. 7:27-16.18(d) and Table 18B.

To determine the concentration of VOC in a gaseous leak, the VOC is measured at a distance of no more than one centimeter from the source. To measure the VOC, N.J.A.C. 7:27-16.18(e) requires the use of a specified EPA test method or an alternative that the Department and EPA approve as being equivalent.

To evaluate compliance with the rule, the concentration of VOC in the leak is then compared against the "background concentration" of VOC in the facility. The background concentration is the concentration of VOC within the confines of the facility, measured at least one meter upwind of the leaking component. This procedure applies only to gaseous leaks; as the existing rule provides, all liquid leaks must be repaired.

The specific limits on leak concentration established in the proposed amendments are consistent with those developed by South Coast in its VOC RACT rule and by those developed by EPA in its HON proposal. The limits reflect technological advances in the manufacture of components, seals and gaskets, which minimize leaks. The members of the working group agreed that these technological advances are widely available and that they are reasonably economical. The costs of these advances are discussed in the economic impact statement below.

The proposed amendments set maximum allowable concentrations of VOC in gaseous leaks, so that a leak with a lower VOC concentration will not trigger the requirement for repair. However, as previously indicated there is no such allowable concentration for liquid leak, so that any liquid leak must be repaired. The primary reason for the more stringent regulation of liquid leaks is that the liquid leak will have a much higher concentration of VOC than the gaseous leak. In addition, the Department notes that a liquid leak can be detected with only a visual inspection, without the need to use any testing equipment.

A discussion of the specific limits on leak concentration follows.

Allowable concentration of leaks—components without moving parts:

As noted above, the proposed amendments establish different allowable leak concentrations for components with and without moving parts. Components without moving parts are divided further into two categories: pressure relief devices, and other components without moving parts.

A pressure relief device relieves elevated pressure within equipment or within a conduit or duct serving equipment. The device releases material contained within the equipment, conduit or duct when pressure exceeds a set level. A gaseous leak from a pressure relief device may reach concentrations of up to 500 parts per million (ppm) above background concentration, without violating N.J.A.C. 7:27-16.18. (The Department notes that this maximum would not apply to releases occurring while the pressure relief device is functioning to reduce excessively high pressures in accordance with its design; such releases would not fall within the definition of "leak.") This maximum allowable concentration is the same as EPA has proposed in its HON, see 57 FR 62769 (December 31, 1992), but less stringent than the maximum in South Coast's leak rule; the maximum in the proposed amendments represents a decision by the Department that its maximum in establishing RACT standards should be no more stringent than the HON's MACT standards. Five hundred ppm is also close to the minimum concentration that can be detected by the testing equipment that many facilities are likely to use for this purpose.

From other types of components without moving parts, leaks may reach concentrations of up to 1,000 ppm above background concentration. The allowable maximum is more stringent for pressure relief devices, because a rupture disc used ahead of the pressure relief device should be sufficient to prevent most leaks. Other types of components without moving parts cannot reasonably be made leak-free through the use of any commonly available device such as a rupture disc.

Allowable concentrations of leaks—components with moving parts:

Components with moving parts are also divided into two categories: agitators, and other components with moving parts. An agitator is used to shake, stir or mix material in an enclosed vessel. A gaseous leak from an agitator may reach concentrations of up to 10,000 parts per million (ppm) above background concentration, without violating N.J.A.C. 7:27-16.18. EPA has proposed the same threshold in its proposed HON. See 57 FR 62680 (December 31, 1992). Aspects of the design of an agitator, such as a relatively long shaft and unbalanced weight distribution, make it inherently more difficult to prevent or control leakage. The proposed maximum allowable concentrations reflect this difficulty.

From other types of components with moving parts, the proposed amendments provide that leaks initially may reach concentrations of up to 10,000 ppm above background concentration. However, lower limits will be phased in over time; the maximum allowable concentration will decrease to 5,000 ppm above background concentration beginning on April 1, 1995, and to 1,000 ppm above background concentration beginning on April 1, 1996. The LDAR working group had proposed this schedule, and the Department agreed that it was reasonable. In reaching that conclusion, the Department recognized that although improvements in leak prevention can be achieved with better or more frequent maintenance of the component, it will take time to determine what improvements are necessary. During the phase-in period, facility operators will need to be developing historical data such as the frequency with which valve stems must be repacked and pump shafts must be resealed; they must also be determining whether improved shaft seals can be installed.

Time allotments for repair of leaks:

The proposed amendments require the owner or operator to make a first attempt at repair of a leak within a certain allotted time after detection, and to complete the repair within a certain additional time. The first attempt at repair is the taking of action to stop or reduce the leak; for example, to attempt to repair a pump the owner or operator might tighten packing gland nuts, and ensure that the seal flush is operating at design pressure and temperature. The repair is completed when the leak is brought below the maximum allowable concentration.

Before the owner or operator can first attempt to repair the leak, it will normally be necessary to obtain the proper tools, make the leaking component accessible, and make other such preparations. The proposed amendments allot different amounts of time to complete these preparations and make the first attempt at repair. The amount of time allotted depends upon the concentration of VOC in the leak. As the VOC concentration of the leak increases, the urgency of making the first attempt to repair it increases as well. For larger leaks a prompt first attempt is especially necessary because that first attempt will include efforts to reduce the leakage; the need to take interim measures to reduce the leakage is less critical when the concentration of the leak is lower.

For all leaks requiring repair, the proposed amendments allot 15 days to complete the repair. This time frame is consistent with the position EPA has taken in the HON, and represents a decision by the Department that its time frame should be no more stringent than the HON.

For components without moving parts, the first attempt to repair a liquid leak must be made within two days after the leak is detected. For gaseous leaks, the time allotted for the first repair attempt depends upon the concentration of the leak and the type of component that is the source of the leak. For gaseous leaks from pressure relief devices with a VOC concentration of more than 500 ppm above background concentration, the rule allots five days after detection. For gaseous leaks from other types of components, the rule allots two days if the concentration of the leak is at least 50,000 ppm above background concentration, and five days if the concentration of the leak is at least 10,000 ppm above background concentration but less than 50,000 ppm above background concentration. If the concentration of the leak is at least 1,000 ppm above background concentration but less than 10,000 ppm above background concentration, the rule does not require that the first repair attempt be made within any specified time, but requires only that the final repair must be completed within 15 days.

For components with moving parts, the first attempt to repair a liquid leak must be made within two days after the leak is detected. For gaseous leaks, the time allotted for the first repair attempt again depends upon the concentration of the leak and the type of component that is the source of the leak. For gaseous leaks from agitators with a VOC concentration of more than 10,000 ppm above background concentration, the rule allots five days after detection. For gaseous leaks from other types of components, the rule allots two days if the concentration of the leak is at least 50,000 ppm above background concentration, and five days if the concentration of the leak is at least 10,000 ppm above background concentration but less than 50,000 ppm above background concentration. As noted above, smaller leaks will become subject to the rule beginning in 1995; however, the rule does not require that the first attempt to repair such leaks be made within any specified time.

The proposed amendments require that repairs of all liquid and gaseous leaks subject to the rule must be completed within 15 days. This requirement applies to leaks from components with or without moving parts. However, under N.J.A.C. 7:27-16.18(r) the repair need not be completed within this time if the leaking component is kept out of VOC service until it is repaired.

Leak detection and repair programs:

The existing rules at N.J.A.C. 7:27-16.6(f), (g) and (h) establish requirements for LDAR programs for petroleum refineries, natural gas/gasoline processing plants and synthetic organic chemical/polymer manufacturing facilities, respectively. The proposed amendments recodify those requirements at N.J.A.C. 7:27-16.18(f), (g) and (h).

The most significant change to the LDAR program requirements is to allow less frequent testing of components if previous testing has shown little tendency of the components to leak. The existing rules require quarterly testing of certain types of components. Under the proposed amendments, if two consecutive tests show that less than two percent of all such components leaked at concentrations greater than the maximums allowed under the rule, the testing frequency can be reduced to once every two quarters. If those tests showed that less than one percent of all such components leaked, the testing frequency can be reduced to once every four quarters. If one of these less frequent tests showed an increase in the percentage of leaking components beyond the one or two percent threshold, more frequent testing would again be required.

This approach rewards the use of low-leak design equipment, and encourages the use of low-leak technologies. EPA has taken the same type of approach in its HON proposal, citing data that indicates that combinations of technology, maintenance practices and quality assurance programs can achieve very low leak frequencies while using less frequent monitoring intervals. The Department agrees with EPA's conclusions.

The proposed amendments also require testing of any other component that is part of any of the types of equipment described in N.J.A.C. 7:27-16.18(b) once every two years. The working group agreed with the Department that this testing frequency strikes an appropriate balance among the likelihood of such components developing significant leaks, the extent of the threat that such leaks pose to air quality, and the cost of performing the tests. The proposed amendments to N.J.A.C. 7:27-16.18(f), (g) and (h) also make minor changes to those provisions to clarify them and to use terminology consistent with the rest of N.J.A.C. 7:27-16. One such change is the use of the term "days" rather than "calendar days"; the deletion of the word "calendar" is solely for the sake of consistency, and is not intended to change the meaning of the term.

A new provision at N.J.A.C. 7:27-16.18(i) establishes requirements for LDAR programs at chemical plants. In developing these requirements, the Department drew upon information gained in discussions with the LDAR working group, experience in regulating LDAR at facilities that share some characteristics with chemical plants, and a review of the relevant literature.

The testing requirements include annual testing of all pumps, valves and pressure relief devices in liquid service and quarterly testing of all compressors, valves and pressure relief devices in gas service. The quarterly testing can be reduced to once every two quarters if the two previous tests show that less than two percent of all compressors, valves and pressure relief devices leaked, and once every four quarters if the two previous tests show that less than one percent of such components leaked. The first set of these tests must be completed by May 31, 1995.

N.J.A.C. 7:27-16.18(i) also requires monthly visual inspections of all single mechanical seals and packed seal pumps. Frequent inspections of single mechanical seals are necessary because their design makes them more likely to develop leaks than multiple mechanical seals. Frequent inspections of packed seal pumps are also important, because the threat of leaks increases as the packing material deteriorates.

N.J.A.C. 7:27-16.18(i) also contains several other provisions that are identical to the requirements for LDAR programs at petroleum refineries, natural gas/gasoline processing plants and synthetic organic chemical/polymer manufacturing facilities. One provision requires testing of a pressure relief device within five days after the device has vented to the atmosphere, and testing immediately after repair of any component detected to have a leak. Another provision requires the owner or operator of the chemical plant to repair leaks detected through testing within the applicable time frame set forth in Tables 18A and 18B, discussed above. Until the detected leak is repaired, the leaking component must have an identification tag affixed to it, stating the date on which the leak was detected and a number identifying the component.

Recordkeeping and reporting:

In the existing rule, N.J.A.C. 7:27-16.6(i) sets forth recordkeeping requirements for petroleum refineries, natural gas/gasoline processing plants and synthetic organic chemical/polymer manufacturing facilities required to have LDAR programs. Those requirements are proposed to be amended and recodified at N.J.A.C. 7:27-16.18(j). The amendments add that chemical plants required to have LDAR programs became subject to the recordkeeping requirements beginning on May 31, 1995. The proposed amendments also replace the term "leaking component" with "component detected to have regulated leaks," to clarify that recordkeeping of unknown leaks or leaks below the maximum allowable concentration is not required. The existing rules also require the owner or operator of the facility to submit a quarterly report to the Department listing all leaking components that were not repaired within the time allotted in the rule; under that requirement, the owner or operator could be deemed to have violated the reporting requirement by failing to report information of which he or she was unaware. The proposed amendments clarify the rule to eliminate that possibility.

Testing of inaccessible components:

Some of the components required to be tested under a facility's LDAR plan may be insulated, encased or enclosed. N.J.A.C. 7:27-16.18(k) allows measurements of leaks from such components to be taken outside of the insulation, encasement or enclosure, at a distance of no more than one centimeter. Absent this provision, leaks from such components could be measured only after removing the materials insulating, encasing or enclosing the component; such testing would not be practicable.

N.J.A.C. 7:27-16.18(l) addresses a similar issue: the difficulty of obtaining access to some of the components required to be tested under a facility's LDAR plan. Accordingly, the proposed amendments require "inaccessible components" to be tested only annually, even if the LDAR plan would require quarterly or bi-quarterly testing. "Inaccessible component" is defined at N.J.A.C. 7:27-16.1. As in South Coast's rule, if access to a component is required from the ground, the component is "inaccessible" if it is located more than 15 feet above ground. If access is required from a platform, the component is "inaccessible" if it is located more than 9.6 feet from the platform. South Coast's rule considers a component to be "inaccessible" if it is located more than six feet from the platform; the Department's rule reflects the availability of extensions that make access to more distant components possible.

This reduction in testing frequency does not apply to components installed on or after February 1, 1994. By that time, owners and operators of facilities subject to the LDAR requirements can be expected to be familiar with the proposed amendments and can install new components accordingly.

Miscellaneous revisions:

The proposed amendments recodify N.J.A.C. 7:27-16.6(j) and (k) from the existing rules as N.J.A.C. 7:27-16.18(n) and (o), with minor grammatical changes. At the request of the working group, the Department has also revised N.J.A.C. 7:27-16.18(o) to reflect practical needs of facilities. The existing rule requires that a valve at the end of a line be sealed, and allows the seal to be removed only for sampling or maintenance; however, the line may need to be used for purposes other than sampling or maintenance, and the proposed amendments revise this provision to accommodate those other uses. In addition, the proposed amendments add that owners and operators of chemical plants will become subject to the provision beginning May 31, 1995.

Exemptions:

In the existing rule, N.J.A.C. 7:27-16.6(l) exempts from the testing requirements valves that would require monitoring personnel to be elevated more than 6.6 feet above permanent support surfaces by the use of a ladder or scaffolding. The proposed amendments recodify that provision at N.J.A.C. 7:27-16.18(p), and broaden the exemption as described below.

The Department recognizes that the same circumstances that could endanger monitoring personnel when testing valves could also endanger those personnel when testing other types of components. In addition, the need for high ladders or scaffolding is only one of a number of circumstances in which the monitoring personnel could be endangered; circumstances such as temperature, pressure or explosive conditions could also expose personnel to imminent hazards. Accordingly, the proposed amendments at N.J.A.C. 7:27-16.18(p)2 replace the exemption in the existing rules with a broader exemption that applies to any component that cannot be tested without immediate danger to the personnel performing the test. To qualify for this exemption, the owner or operator of the facility must document the danger to personnel in a safety manual or written policy and specify the circumstances under which the component can be safely tested. The owner or operator must then test the component under such circumstances. The alternative circumstances must still allow for testing that is reasonably equivalent to the standard testing circumstances in accuracy and in efficacy for leak detection.

N.J.A.C. 7:27-16.18(p) exempts certain pumps and valves designed and operated so that the risk of leaks is small enough that less frequent testing will still be sufficiently protective of air quality. The specific types of components exempted are discussed below.

Pumps that by design have no seals (and therefore have little likelihood of developing leaks) are exempted under N.J.A.C. 7:27-16.18(p)3. Examples of such pumps include magnetic drive, canned motor and diaphragm pumps.

N.J.A.C. 7:27-16.18(p)4 exempts pumps equipped with dual mechanical seals provided that they meet certain design and operational requirements. Such a pump has two seals: an inboard seal that runs in the pumped product, and an outboard seal that runs in a barrier fluid. In a pump with this design, leaks to the atmosphere are much less likely to occur than in pumps with single seals. The likelihood of such leakage is less because the outboard seal serves as a backup that will normally prevent the leak even if the inboard seal fails.

For a pump to qualify for this exemption, the seal's barrier fluid cannot be an applicable VOC. If the barrier fluid were an applicable VOC, VOC emissions from the seal would be likely to be similar to emissions from a pump equipped with only a single mechanical seal, because the likelihood that the barrier fluid will leak from the outboard seal is similar to the likelihood that a single seal will leak.

The seal also must be operated with the barrier fluid at a pressure greater than the pump stuffing box pressure (essentially, the output pressure of the pump) at all times, or be equipped with one of the following three features designed to prevent VOC emissions from the outboard seal:

(i) A barrier degassing reservoir that transports the gas or vapor to a VOC control apparatus. That system prevents applicable VOC from accumulating where it can be emitted from the outboard seal;

(ii) A closed-loop system that purges the barrier fluid into a process stream and returns process fluid to the process without venting to the atmosphere; or

(iii) A sensor that detects failure of the seal system, the barrier fluid system or both.

N.J.A.C. 7:27-16.18(p)5 exempts leakless design bellows-type valves. As such a valve is opened, the bellows expand to accommodate the flow without exposing the working parts of the valve to the atmosphere. As a result, the likelihood of VOC emissions to the atmosphere from such a valve is minimized.

N.J.A.C. 7:27-16.18(p)6 exempts process equipment enclosed so that all emissions from any leaking component are vented through a closed-vent system connected to a control apparatus. To qualify for this exemption, the enclosure for the equipment must be maintained under a negative pressure at all times that the equipment is operating. That negative pressure ensures that all emissions are routed through the control apparatus.

Alternative LDAR programs:

The Department recognizes that circumstances may arise in which the testing required at chemical plants under N.J.A.C. 7:27-16.18 can be performed less expensively. For example, at a batch chemical plant, the equipment may be routinely taken out of service after processing of each batch is completed; testing at such times may be less expensive to conduct.

The proposed HON suggests alternative test methods that can be used in this type of circumstance. The proposed amendments include a provision for alternative test methods that is consistent with the proposed HON provisions for batch processing equipment. The Department expects that it is less likely that the alternative test method will be used for continuously operated equipment, because such equipment may not be taken out of service regularly.

N.J.A.C. 7:27-16.18(q) authorizes an owner or operator to perform leak detection through pressure testing of processing equipment, instead of monitoring. Pressure testing may be conducted with either a gas or a liquid. If pressure testing is conducted with a gas, the processing equipment is pressurized to the equipment operating pressure, and the rate of pressure loss is measured after the gas source is shut off. A leak is deemed to have been detected if either (i) the rate of pressure loss exceeds one pound per square inch (psi) per hour, or (ii) there is visible, audible or olfactory evidence of fluid loss. If pressure testing is conducted with a liquid, the processing equipment is filled with the test liquid. If within one hour after the liquid source is shut off, there is any indication of liquid dripping from the equipment or of fluid loss from any seal or component, a leak has been detected.

The proposed amendments require that a leak detected during pressure testing must be repaired before the equipment is returned to service. If the equipment fails a retest following repair, the final repair must be completed as soon as is practicable, and in any event within the time limits set forth in Tables 18A and 18B.

Pressure testing frequency for continuously operated equipment must be at least as great as the monitoring frequencies set forth in N.J.A.C. 7:27-16.18(f) through (i). If pressure testing is used for batch processing equipment, the equipment must be tested each time it is reconfigured because the reconfiguration could make the equipment more likely to leak. Infrequently used equipment must be pressure-tested at least annually, even if it is not reconfigured, to address the possibility that leaks could develop over time.

N.J.A.C. 7:27-16.21 Natural gas pipelines

The existing rule at N.J.A.C. 7:27-16.6 regulate releases of VOC from natural gas pipelines, if the pipeline has the potential to emit more than 3.5 pounds of VOC per hour. Several gas pipelines in the State have potential emissions substantially greater than this amount. The proposed amendments exclude natural gas pipelines from regulation under N.J.A.C. 7:27-16.6, for two reasons: first, because the owners and operators of these pipelines cannot practicably comply with that rule; and second, because substantial VOC emissions reductions can be achieved through an alternative approach that makes compliance much more practicable.

The proposed amendments therefore revise the definition of "facility" make it clear that a natural gas pipeline would not be considered a "major VOC facility" solely because its potential to emit VOC along its entire length exceeded 25 tons annually; the proposed amendments also expressly exclude from regulation under N.J.A.C. 7:27-16.27

pipelines with a lesser potential to emit VOC. Instead, the proposed new rule at N.J.A.C. 7:27-16.21 establish requirements akin to RACT for these pipelines.

Emergency circumstances can make it necessary to vent natural gas from a pipeline in order to prevent an explosion. In such an emergency, there is insufficient time to bring control apparatus to the site of the venting. As a practical matter, venting in these circumstances must almost always occur without controls.

In some non-emergency circumstances (for example, before inspection or maintenance), it may be similarly impracticable to employ controls. The standard method of controlling VOC emissions during venting would be to use a flare or other control apparatus. However, when venting must occur in a heavily populated or urban area it may not be possible to use a flare safely. In addition, venting is slowed when any control device is employed; inasmuch as the pipeline is shut down during venting, the delay resulting from the use of a control device has the potential for harm to the public welfare.

Nonetheless, control strategies can reasonably and practicably be applied in some circumstances, and can result in a substantial reduction in emissions. One recent example illustrates the potential reductions. The operator of a natural gas pipeline had found it necessary to vent a 10-mile stretch of the pipeline in order to perform maintenance. The pipeline carried natural gas at a pressure of 750 psi. Had the pipeline been vented without an effort toward emission control, more than 10,000 pounds of VOC would have been emitted. However, simply because the operator reduced the pressure in the pipeline before venting, less than 700 pounds were emitted.

The Department has developed an approach to implementing control strategies for natural gas pipelines, based on its experience with and knowledge of the industry and upon consultations with representatives of the regulated community. Applying that basis, the Department believes that this approach can be applied without substantial cost or difficulty; at the same time, the Department expects it to result in substantial emission reductions.

The proposed new rules do not require specific types of control measures to be used with natural gas pipelines, primarily because the Department does not yet have sufficient experience with natural gas pipelines to determine what types of control strategies will represent RACT, and because EPA has indicated to the Department that it does not expect to issue a CTG for natural gas pipelines before November 15, 1993. Instead, the proposed new rules require that the owner or operator of a natural gas pipeline prepare and comply with a plan to establish when it will employ controls during a "blowdown event," and identify the controls to be employed. A "blowdown event" is a non-emergency release of natural gas from the pipeline before inspection, maintenance or repair, when more than 2,000 pounds of VOC can be released to the atmosphere.

The plan must meet criteria that address the same needs as the criteria set forth in N.J.A.C. 7:27-16.17. Under a plan that meets those criteria, the proposed controls and the circumstances in which they are to be used will be consistent with the understanding of RACT described in the beginning of this Summary.

The plan need not be reviewed and approved by the Department before it is implemented. Instead, the proposed new rules require that the owner or operator of the pipeline report information to the Department each year that will enable it to evaluate the efficacy of the plan and enable New Jersey to claim all appropriate reductions in its emissions inventory. That information will also assist the Department in developing the basis necessary to evaluate the plans and to establish more concrete RACT requirements.

N.J.A.C. 7:27-16.22 Emission information, recordkeeping and testing

In the existing rules, N.J.A.C. 7:27-16.9 contains general requirements regarding recordkeeping, provision of emissions information to the Department and to EPA, and sampling and testing facilities and methods. This provision is recodified at N.J.A.C. 7:27-16.22, and cross-references are revised to reflect recodifications of recordkeeping requirements.

N.J.A.C. 7:27-16.23 Procedures for demonstrating compliance

N.J.A.C. 7:27-16.23 sets forth the methods by which the owner or operator of a combustion source (a boiler, stationary gas turbine, stationary internal combustion engine, asphalt plant or flare) subject to N.J.A.C. 7:27-16.8, 16.9, 16.10, 16.11 or 16.13 can demonstrate that emissions from the source are in compliance. Those sources are also subject to the NO_x rules at N.J.A.C. 7:27-19. Except as noted below, this section is essentially identical to the corresponding provisions of the NO_x rules at N.J.A.C. 7:27-19.15(a) and (d) (25 N.J.R. 654, February 16, 1993).

As described above, some of the types of sources regulated under the proposed amendments and new rules will be required to install continuous emissions monitoring systems for CO and/or VOC. Under N.J.A.C. 7:27-16.23(a)1, if the air contaminant that is the subject of an emissions limit is continuously monitored by such a system, compliance with the limit is based upon the average of the emissions over one calendar day. If there is no such system to monitor the air contaminant in question, the compliance demonstration is based upon the average of three one-hour stack tests under maximum capacity operating conditions, as in the NO_x rule. The Department's experience has shown that this number and duration of stack tests is the minimum necessary to determine the representative worst-case emissions from the source.

If the testing or monitoring required to demonstrate compliance shows instead that the source is exceeding the applicable NO_x emission limits, the exceedance is considered a violation of subchapter 16 for which the Department may assess penalties under N.J.A.C. 7:27A.

The Department will perform its own inspections and testing of regulated sources from time to time, in addition to obtaining the demonstrations of compliance required under N.J.A.C. 7:27-16.23.

N.J.A.C. 7:27-16.24 Adjusting combustion processes

As noted in the discussion of combustion sources above, the owner or operator of any combustion source regulated under the proposed new rules at N.J.A.C. 7:27-16.8 through 16.11 is required to adjust the combustion process of that source annually. The NO_x rules at N.J.A.C. 7:27-19.16 establish requirements and conditions for such adjustments. The proposed new VOC rules incorporate that provision by reference.

N.J.A.C. 7:27-16.25 Continuous emissions monitoring

As discussed above, certain types of combustion sources must have continuous emissions monitoring systems (CEMS) installed. N.J.A.C. 7:27-16.25 requires that these systems meet EPA performance specifications and quality assurance requirements. In addition, the owner or operator must install and operate the system in compliance with the manufacturer's specifications and EPA requirements, and use it to monitor and record CO emissions continuously. The requirements of N.J.A.C. 7:27-16.25 are essentially identical to the corresponding provisions of the NO_x rules at N.J.A.C. 7:27-19.18, with the exception that the monitoring requirements apply to CO rather than to NO_x. The reasoning behind those requirements is also essentially identical. See 25 N.J.R. 631(a), 641 (February 16, 1993).

As in the NO_x rules, N.J.A.C. 7:27-16.25 also provides for the installation of CEMS only on represntative source operations and items of equipment at a facility. The facility may obtain the Department's approval of a plan for such limited installation if the facility contains multiple source operations or items of equipment that are of the same make and model, and that are operated under similar conditions. The procedures, requirements and conditions of obtaining the Department's approval of such a plan are identical to those set forth in the NO_x rules.

One difference between N.J.A.C. 7:27-16.25 and the proposed NO_x rules concerns the circumstances in which the Department may revoke approval of a plan for limited installation of CEMS. N.J.A.C. 7:27-16.25 provides that the Department can revoke approval of the plan based upon the record of exceedances from the source operation or item of equipment equipped with CEMS. Inasmuch as that source operation or item of equipment will have been deemed representative of other similar units, it would be reasonable to infer that those other units had a similar record of exceedances which were going undetected. For that reason, it could be necessary to require that CEMS be installed on those similar units in order to provide greater certainty in enforcement actions.

N.J.A.C. 7:27-16.27 Exceptions

The RACT requirements of the 1990 CAAA concern three different types of VOC sources: sources covered by a control techniques guideline (CTG) document issued by EPA before November 15, 1990; sources covered by subsequent CTG documents; and all other major stationary sources of VOCs. The provisions of the proposed amendments and new rules discussed above establish RACT requirements only for major stationary sources of VOCs that are not expected to be covered by CTG documents. The Department has previously promulgated requirements that represent RACT for all sources operating in New Jersey that are covered by pre-1990 CTGs. In addition, the proposed amendments

preserve requirements of the existing rules that already apply to certain types of sources expected to be covered by CTG documents.

As required by the Clean Air Act, the EPA Administrator will be issuing CTGs for additional categories of stationary sources. In anticipation of those CTGs, the Department believes that the wisest approach is to refrain temporarily from establishing new specific RACT requirements for those currently unregulated sources, and also to refrain from making case-by-case RACT determinations. Once a CTG is issued, the Department can make these RACT decisions in a manner that is consistent with EPA's decision; until then, there is no such assurance of consistency.

However, the existing rules establish requirements for some of the categories of sources for which no CTG has yet been issued. The regulated community has been complying with these requirements for several years; acccordingly, the proposed amendments and new rule do not make any material change to those requirements.

The Department notes that the 1990 CAAA requires that any of these exempted sources located at major VOC facilities must be required to implement RACT even if no CTG document for such a source has been issued by November 15, 1993. If no CTG has been issued for such a source by that date, by November 1994 the Department will repeal the exemption and review these sources case-by-case, in order to comply with the mandate of the 1990 CAAA. The proposed amendments provide for these CTG-related exemptions to expire on November 15, 1994.

The proposed amendments therefore exempt from subchapter 16 those categories of sources (except for incinerators, discussed below) that are currently operating in New Jersey and are to be covered by upcoming CTGs. Specifically, VOC emissions from the following categories of sources are proposed to be exempted:

1. Offset lithography printing operations, in which ink is transferred from an image plate on one cylinder to an image blanket on a different cylinder, from which the ink is then transferred to the printed surface;
2. Surface coating of plastic parts;
3. Industrial wastewater treatment systems (defined at N.J.A.C. 7:27-16.1 in a manner identical to the definition in the Safe Drinking Water rules at N.J.A.C. 7:27-7:10-13.2); and
4. Other wastewater treatment facilities (defined to encompass all wastewater treatment systems other than those that fall within the definition of "industrial wastewater treatment systems").

The proposed amendments also eliminate the exemptions that are set forth in N.J.A.C. 7:27-16.12(b) of the existing rules. If any source operation currently exempted is part of a major VOC facility, the 1990 CAAA directs the Department to require the implementation of RACT for the source operation. Therefore the exemptions for glass manufacturing furnaces, fiberglass manufacturing furnaces, the burning of fuel for steam generation for space heating, asphalt plant dryers, open burning and sulfuric acid plant burners are no longer authorized. However, these types of sources are added to the list of exemptions from N.J.A.C. 7:27-16.16, so that change to N.J.A.C. 7:27-16.27 will not subject to subchapter 16 any sources other than those that the Department is required to regulate under the 1990 CAAA.

EPA has indicated that no CTG for incinerators is likely to have been issued by November 15, 1993. Accordingly, the proposed amendments do not exempt incinerators; the Department will instead conduct a case-by-case review of incinerators at major VOC facilities pursuant to N.J.A.C. 7:27-16.17. The Department notes that permits issued for the larger incinerators during the last several years establish VOC emission limits that were more stringent than what RACT requirements would have established at the time the permit was issued; many such limits remain more stringent than what would currently be established under a RACT approach. Accordingly, the Department expects that for many such incinerators a case-by-case RACT determination will not result in the need for additional control measures.

The proposed amendments also do not exempt cleanup solvents, though a CTG for cleanup solvents is expected to be prepared. The information currently available does not establish exactly what solvents are to be included within the CTG; as a result, the Department cannot yet determine what would be the appropriate scope of an exemption.

Recodification of Subchapter 16

The following table lists the contents of the existing subchapter 16, notes how each section of the existing rules is affected by the proposed amendments and new rules, and lists the new citation of each provision as recodifed under the proposed amendments and new rules.

Old Citation	Action	New Citation
16.1 Definitions	Amend	16.1 Definitions
16.2 Storage of volatile organic compounds	Amend	16.2 Storage of volatile organic compounds
16.3 Transfer operations	Recodify as 16.3,16.4 and 16.5; Amend	16.3 Gasoline transfer operations
	New Section	16.4 VOC transfer operations, other than gasoline
	New Section	16.5 Marine terminal and tank vessel operations
16.4 Open top tanks and surface cleaners	Recodify; Amend	16.6 Open-top tanks and surface cleaners
16.5 Surface coating graphic arts operations	Recodify; Amend	16.7 Surface coating and graphic arts operations
	New Section	16.8 Boilers
	New Section	16.9 Stationary gas turbines
	New Section	16.10 Stationary internal combustion engines
	New Section	16.11 Asphalt plants
	New Section (Reserved)	16.12 Incinerators
	New Section	16.13 Flares
	New Section (Reserved)	16.14 Industrial wastewater treatment systems
	New Section (Reserved)	16.15 All other wastewater treatment facilities
16.6 Source operations other than storage tanks, transfers, open top tanks, surface coaters and graphic arts operations	Recodify 16.6(a)-(c) as 16.16; Amend	16.16 Other source operations
	New Section	16.17 Case-by-case VOC emission limits for source operations at major VOC facilities
	Recodify 16.6(d)-(m) as 16.18; amend	16.18 Leak detection and repair
16.7 Cutback and emulsified asphalts	Rename and Recodify	16.19 Application of cutback and emulsified asphalts
16.8 Petroleum solvent dry cleaning operations	Recodify	16.20 Petroleum solvent dry cleaning operations
	New Section	16.21 Natural gas pipelines
16.9 Emission information, recordkeeping and testing	Recodify; Amend	16.22 Emission information, recordkeeping and testing
16.10 Variances	Recodify	16.26 Variances
16.11 Applicability	Recodify; Amend	16.1A Purpose, scope, applicability and severability
16.12 Exceptions	Recodify; Amend	16.27 Exceptions

N.J.A.C. 7:27-17 Control and Prohibition of Air Pollution by Toxic Substances

Methylene chloride and methyl chloroform:

The proposed amendments to N.J.A.C. 7:27-17 address methylene chloride (dichloromethane) and methyl chloroform (1,1,1-tricholorethane). These two compounds are regulated as VOCs under the existing rules, but are excluded from the definition of VOC under the proposed amendments because they are negligibly photochemically reactive. However, for the reasons discussed below it is necessary to regulate these compounds as toxic substances under N.J.A.C. 7:27-17.

Short-term exposure to methylene chloride at concentrations of 500 to 1,000 ppm (1,766,847 to 3,533,694 micrograms per cubic meter) can cause lightheadedness, dizziness, nausea, numbness in hands and feet, fatigue, inability to concentrate, reduced coordination, and irritation of the nose and throat. Exposure over the long term can cause liver and kidney damage; in addition, in at least one case repeated exposure at 500 to 3,600 ppm (1,766,847 to 12,721,298 micrograms per cubic meter) has caused brain damage. Exposure at substantially higher concentrations can cause loss of consciousness and death.

Methylene chloride may also cause cancer in humans; studies have shown that it can cause liver and lung cancer in animals. The International Agency for Research on Cancer (IARC) classifies methylene chloride as a Group 2B carcinogenic risk (possibly carcinogenic to humans).

Methylene chloride is included in the list of hazardous air pollutants (HAPs) established under Title III of the Clean Air Act. The Department assesses a unit risk factor of 4.7×10^{-7} per microgram per cubic meter for emissions of methylene chloride when screening new sources. Unit risk factors are used to determine the lifetime risk of contracting cancer due to exposure to toxic compounds. The concentration of exposure (determined by dispersion modeling) is multiplied by the unit risk factor to determine the lifetime risk associated with exposure to a particular toxic compound. For example, to determine the lifetime risk of contracting cancer due to exposure to methylene chloride at a concentration of 200 micrograms per cubic meter, one would multiply the concentration by the unit risk factor of 4.7×10^{-7} per microgram per cubic meter to get a risk of .000094 or almost one in 10,000.

Methylene chloride is used as a paint remover, a urethane foam-blowing agent, a vapor degreasing and dip solvent for metal cleaning, a solvent for aerosol products, a solvent in the pharmaceutical industry, a solvent in the manufacture of polycarbonates by polymerization, and an extractant for caffeine, spices and hops. Methylene chloride is used in the manufacture of plastics, textiles, photographic film, and photoresistant coatings, as a solvent carrier in the manufacture of herbicides and insecticides, and as a component of rapid-drying paints and adhesives, carbon removers, and brush cleaners. Other applications include use as a low-pressure refrigerant, a low-temperature heat transfer medium, and an air-conditioning coolant.

Methyl chloroform is also on the list of HAPs. Short-term exposure to methyl chloroform at concentrations above 900 ppm can cause headaches, dizziness and fatigue. At concentrations above 5,000 ppm it can cause unconsciousness and death; several deaths resulting from exposure to high levels of methyl chloroform in confined spaces have been reported. Exposure over the long term may cause mutations in living cells, and long-term exposure at high concentrations may damage the liver and kidneys. In one study, volunteers exposed to methyl chloroform at 500 ppm for seven hours daily over five days suffered fatigue and problems with balance. Further study may establish that the substance poses a cancer or reproductive hazard.

Methyl chloroform has many industrial and household uses. It is often used as a solvent to dissolve substances such as glue and paint. In industry, it is widely used to remove oil or grease from manufactured metal parts. In the home, it might be in products such as spot cleaners, glues, and aerosol sprays.

In light of the health risks of methylene chloride and methyl chloroform, the Department believes that it would be unwise to allow their exclusion from the definition of VOC to result in substantially relaxed regulation. However, the Department also recognizes that further study of these two compounds is necessary to determine whether the manner in which they are regulated should be changed.

The existing rules at N.J.A.C. 7:27-17 require persons storing, transferring and using toxic substances to control emissions using measures representing advances in the art of control. However, the Department does not believe that it currently has a sufficient basis to subject methylene chloride and methyl chloroform to regulation under that same standard. Instead, the proposed amendments require emissions of these compounds to be controlled through the use of control apparatus and other emission control strategies that represent RACT, rather than advances in the art. The Department is currently evaluating whether methylene chloride and methyl chloroform should be subject to more stringent regulation as toxic substances. As part of that evaluation, the Department requests that interested persons submit comments stating their recommended changes and the basis for those recommended changes, or the basis for a belief that the manner of regulating these compounds should remain unchanged. The Department expects to reach a decision on the issue by the fall of 1994.

To reflect that decision the proposed amendments to N.J.A.C. 7:27-17.3(e) establish a list of "Group II toxic substances" that includes methylene chloride and methyl chloroform; the proposed amendments to N.J.A.C. 7:27-17.4(c) state that persons storing, transferring or using Group II toxic substances must control emissions of those toxic substances using control apparatus or other control strategies that represent RACT.

Effective stack height:

The existing rules at N.J.A.C. 7:27-17.4(a)1 prohibit the emission of any toxic substance into the outdoor atmosphere unless the discharge is at least 40 feet above grade. The proposed amendments clarify that prohibition by incorporating the Department's interpretation of it into the rule.

Under that interpretation, the prohibition does not require that the top of the stack itself be at least 40 feet above grade; instead, it is the distance from the ground to the center line of the plume from the stack that must be at least 40 feet above grade. Accordingly, the extent of the plume rise (that is, the vertical distance from the point of discharge of the effluent stream to the highest point attained by the center line of the effluent stream) must be added to the physical height of the stack to determine whether the discharge is sufficiently high above grade.

To codify this interpretation in the rule, the proposed amendments add a definition of "effective stack height" to N.J.A.C. 7:27-17.1 and amend N.J.A.C. 7:27-17.4(a)1 to state expressly that the effective stack height must be at least 40 feet. The definition includes a formula for calculating effective stack height. The formula includes variables concerning the physical height of the stack, the diameter of the stack outlet, the velocity at which gases exit the stack, and the temperature of such gases. All of these factors influence the extent of the plume rise.

The effective stack height requirement of N.J.A.C. 7:27-17.4(a)1 applies only to discharges of those compounds that are listed as toxic substances under the existing rules. It does not apply to discharges of methylene chloride or methyl chloroform, because (as discussed above) the Department has not yet determined whether it has a sufficient basis to apply the requirement to these two compounds.

Other amendments:

The proposed amendments to N.J.A.C. 7:27-17.1 add or revise definitions. In addition to the definitions of "effective stack height" and "plume rise" discussed above, the proposed amendments also add a definition of "distillates of air" that is identical to definitions of that term elsewhere in N.J.A.C. 7:27. The proposed amendments also revise definitions of "gasoline," "person" and "VOC" in N.J.A.C. 7:27-17.1 to make those definitions identical to the definitions of the same terms elsewhere in N.J.A.C. 7:27.

N.J.A.C. 7:27-17.3(a) currently prohibits the emission of any toxic substance unless the equipment and operation from which the substance is emitted is registered with the Department. N.J.A.C. 7:27-17.3 also requires that the emissions must be at a rate or concentration attainable using advances in the art of control of emissions. The proposed amendments add N.J.A.C. 7:27-17.3(f), which clarifies that a permit application submitted to the Department under N.J.A.C. 7:27-8 satisfies the registration requirement. N.J.A.C. 7:27-8 also requires new sources to meet the advances in the art requirement. The proposed amendments do not expand N.J.A.C. 7:27-17.3 to encompass methylene chloride and methyl chlorofrom; the provision will continue to address only those compounds that are listed as toxic substances in the existing rules.

N.J.A.C. 7:27-23 Prevention of Air Pollution from Architectural Coatings and Consumer Products

The proposed amendments to N.J.A.C. 7:27-23 state that architectural coatings and consumer products that contain methylene chloride and methyl chloroform are regulated under N.J.A.C. 7:27-17 and 23. The

proposed amendments make minor additions, deletions and revisions to the definitions at N.J.A.C. 7:27-23.2 to make them consistent with the remainder of N.J.A.C. 7:27.

N.J.A.C. 7:27-25 Control and Prohibition of Air Pollution by Vehicular Fuels

The proposed amendments to N.J.A.C. 7:27-25 correct an address in the existing rules, and replace the term "VOS" (which is no longer used in N.J.A.C. 7:27) with the term "VOC."

N.J.A.C. 7:27A-3 Civil Administrative Penalties and Requests for Adjudicatory Hearings

The proposed amendments revise N.J.A.C. 7:27A-3.10(e)16, which establishes civil administrative penalties for violations of subchapter 16. The proposed amendments also revise the definition of "VOC" at N.J.A.C. 7:27A-3.2, to make it identical to the definition in subchapter 16.

For requirements of subchapter 16 that are already present in the existing rules but are recodified under the proposed amendments, N.J.A.C. 7:27A-3.10(e)16 is proposed to be revised to reflect those recodifications. The proposed amendments also revise N.J.A.C. 7:27A-3.10(e)16 to establish penalties for violations of requirements that are newly established under the proposed amendments and new rules.

In setting the penalty amounts for violations of newly established requirements, the Department has applied the following criteria:

1. The potential or actual health and environmental impacts of the violation. That impact depends upon factors including the characteristics and quantity of the pollutants involved, and the magnitude of the area affected;

2. The deterrent value of the penalty (that is, the amount sufficient to make the penalty a disincentive that will discourage violations); and

3. Consistency with other DEPE penalties, especially penalties for comparable types of air pollution control violations. For example, the penalties for violations of emission limits under subchapter 16 correspond to existing penalties for violations of emission limits in permits for sources of similar sizes. Penalties for violations of subchapter 16 recordkeeping requirements correspond to existing penalties for violations of other recordkeeping requirements, and the same is true for violations of reporting requirements. The table below cross-references the violations for which the proposed amendments establish penalties, and the comparable violations for which the existing rules establish the same penalties.

Provision of subchapter 16 for which a penalty for violation is proposed	Provision of existing rules with corresponding penalty for comparable violation
N.J.A.C. 7:27-16.3(k)1	N.J.A.C. 7:27-8.3(e)1 or (e)2
N.J.A.C. 7:27-16.3(k)2	N.J.A.C. 7:27-8.3(e)1 or (e)2
N.J.A.C. 7:27-16.3(k)3	N.J.A.C. 7:27-8.3(e)1 or (e)2
N.J.A.C. 7:27-16.3(o)	N.J.A.C. 7:27-8.3(b)
N.J.A.C. 7:27-16.4(b)	N.J.A.C. 7:27-16.3(a)
N.J.A.C. 7:27-16.4(c)	N.J.A.C. 7:27-16.3(c)
N.J.A.C. 7:27-16.4(f)	N.J.A.C. 7:27-16.3(d)
N.J.A.C. 7:27-16.4(i)1	N.J.A.C. 7:27-16.3(i)1
N.J.A.C. 7:27-16.4(i)2 or 3	N.J.A.C. 7:27-16.3(i)2 and (i)3
N.J.A.C. 7:27-16.4(j)	N.J.A.C. 7:27-16.3(j)
N.J.A.C. 7:27-16.4(k)1	N.J.A.C. 7:27-16.3(k)
N.J.A.C. 7:27-16.4(k)2	N.J.A.C. 7:27-8.3(e)1 or (e)2
N.J.A.C. 7:27-16.4(k)3	N.J.A.C. 7:27-8.3(e)1 or (e)2
N.J.A.C. 7:27-16.4(l)	N.J.A.C. 7:27-16.3(m)
N.J.A.C. 7:27-16.4(m)	N.J.A.C. 7:27-8.3(b)
N.J.A.C. 7:27-16.4(o)	N.J.A.C. 7:27-16.5(m)
N.J.A.C. 7:27-16.5(b)	N.J.A.C. 7:27-8.3(e)1 or (e)2
N.J.A.C. 7:27-16.5(c)	N.J.A.C. 7:27-17.5(d)
N.J.A.C. 7:27-16.5(e)	N.J.A.C. 7:27-8.3(e)1 or (e)2
N.J.A.C. 7:27-16.5(f)1	*
N.J.A.C. 7:27-16.5(f)2	*
N.J.A.C. 7:27-16.5(f)3	*
N.J.A.C. 7:27-16.5(j)	N.J.A.C. 7:27-16.5(m)
N.J.A.C. 7:27-16.5(k)1	N.J.A.C. 7:27-16.3(r)1
N.J.A.C. 7:27-16.7(k)2	N.J.A.C. 7:27-16.3(r)2
N.J.A.C. 7:27-16.8(b) or (c)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.8(d)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.8(f)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.8(g) or (h)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.9(b) or (c)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.9(e)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.10(b)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.10(d)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.11(b)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.11(d)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.11(e)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.13(b)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.13(c)	N.J.A.C. 7:27-16.4(m)
N.J.A.C. 7:27-16.13(d)	N.J.A.C. 7:27-16.6(i)1
N.J.A.C. 7:27-16.17(b)1	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.17(b)2	N.J.A.C. 7:27-8.3(e)1 or (e)2
N.J.A.C. 7:27-16.17(c)1	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.17(d)	N.J.A.C. 7:27-16.4(m)
N.J.A.C. 7:27-16.17(e)	N.J.A.C. 7:27-16.4(m)
N.J.A.C. 7:27-16.17(n)	N.J.A.C. 7:27-16.4(m)
N.J.A.C. 7:27-16.18(i)	N.J.A.C. 7:27-16.6(h)
N.J.A.C. 7:27-16.18(q)	N.J.A.C. 7:27-16.16(l)
N.J.A.C. 7:27-16.21(a)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.21(b)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.21(c)	N.J.A.C. 7:27-16.6(i)2
N.J.A.C. 7:27-16.21(d)	N.J.A.C. 7:27-16.9(a)
N.J.A.C. 7:27-16.21(e)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.24(a)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.25(h)	N.J.A.C. 7:27-8.3(e)1
N.J.A.C. 7:27-16.25(l)	N.J.A.C. 7:27-8.3(e)1

*The penalties for violations of N.J.A.C. 7:27-16.5(f)1, 2 and 3 are noted by asterisks (*) above. These provisions establish prohibitions applicable to the transfer or ballasting of applicable VOC into a marine tank vessel. The prohibitions are essentially the same as the prohibitions under N.J.A.C. 7:27-16.3(k)1, 2 and 3 regarding transfers of gasoline. However, the penalties for violation of the marine transfer prohibitions are twice the penalties for violations of the gasoline transfer prohibitions, because the risk of emitting large quantities of VOC is substantially greater if the marine transfer prohibitions are violated than if the gasoline transfer prohibitions are violated.

In the proposed amendments, N.J.A.C. 7:27-16.5 et seq. has been recodified as 7:27-16.7 et seq., 7:27-16.6(a) has been recodified as 7:27-16.16(c) and 7:27-16.8(a) has been recodified as 7:27-16.20(a).

Pursuant to N.J.A.C. 7:27A-3.12, the Department retains the ability to assess penalty amounts, in addition to the penalties established under N.J.A.C. 7:27A-3.10(e)16, to offset any economic benefit that the violator may have realized as a result of not complying with the rules.

Social Impact

The proposed amendments and new rules will have a positive social impact in requiring control of VOC emissions from previously unregulated sources, requiring better control of VOC emissions from sources subject to the existing rules, and in revising requirements under the existing rules.

Improvement in the control of VOC emissions is necessary to enable New Jersey to achieve and maintain the NAAQS for ozone. As a result, the proposed amendments and new rules will help to reduce the exposure to ozone by persons who live or work in New Jersey, and reduce or prevent the degradation of plant life and various human-made materials caused by elevated concentrations of ozone. The social impact statement in the Department's proposed rules for the low emission vehicle program describe the specific effects of elevated ozone concentrations on public health, farm products and other plant life, and materials such as rubber, plastics, dyes and paints. See 24 N.J.R. 1320 (April 6, 1992).

Other revisions to requirements of the existing rules will also have a positive social impact. For example, the leak detection and repair requirements in the existing rules contain some prohibitions with which it has been essentially impossible to comply; the proposed amendments revise those prohibitions to make compliance attainable. In addition, the proposed amendments clarify several provisions that the regulated community has found to be confusing. By removing such unnecessary obstacles to compliance, the proposed amendments make subchapter 16 more credible.

Economic Impact

The proposed amendments and new rules will result in both positive and negative economic impacts. Persons required to comply with the proposed amendments and new rules will incur compliance costs; however, compliance will also result in improved air quality that will mitigate the substantial costs currently associated with air pollution.

A description of the costs that the various types of source operations will incur in complying with the proposed amendments and new rules follows.

Change in definition of VOC:

The proposed amendments exclude several compounds and classes of perfluorocarbons from the definition of VOC. The exclusion will have a positive economic impact upon persons storing, transporting, manufacturing or using such compounds. As noted in the Summary, the Department agrees with the Alliance for a Responsible CFC Policy that the exclusion will remove economic impediments to the use of alternatives to ozone-depleting CFCs and halons. The amount of the cost savings that any particular person will realize depends upon the nature of that person's storage, transportation, manufacture or use of the excluded compounds.

However, no cost savings or any other economic impact will result from the exclusion of methylene chloride and dichloromethane. Because the Department will regulate these compounds as toxic substances, and because the Department will continue to require that emissions of these compounds be controlled through the use of RACT, the proposed amendments are unlikely to cause any material difference in the cost of storing, transferring or using the compounds.

Gasoline tranfer operations:

The Department does not expect the proposed amendments to N.J.A.C. 7:27-16.3, Gasoline transfer operations, to have an economic impact. The proposed amendments clarify potentially ambiguous provisions of the existing rules, delete obsolete requirements and correct minor errors, without materially affecting the substance of the existing rules.

VOC transfer operations other than gasoline:

The proposed amendments at N.J.A.C. 7:27-16.4(c), (d) and (e) set forth new requirements for certain transfers of applicable VOC from delivery vessels into stationary storage tanks. Based upon the Department's experience and upon its discussions with the working group, the Department estimates that the cost of complying with the proposed amendments will range from $2,000 to $10,000 per ton of VOC removed. Within this range, variations in cost reflect the size of the tank, its age, the rate at which the tank is filled, the nature of the substance with which it is filled, and the particular type of control measure selected, as well as the decreasing marginal cost of removing additional quantities of VOC.

The proposed amendments at N.J.A.C. 7:27-16.4(f), (g), (h) and (i) set forth new requirements for certain transfers of applicable VOC into a delivery vessel other than a marine vessel. The Department estimates the cost of retrofitting a delivery vessel to comply with these requirements may be as high as $5,000, depending upon the size and age of the vessel, the number of compartments it contains, and the materials from which it is constructed. The Department estimates that the cost to the loading facility of complying with the proposed amendments ranges from $5,000 to $10,000 per ton of VOC removed, again based upon its experience and upon discussions with the working group. Within this range, variations in cost reflect the maximum transfer capacity of the facility, its age, the number of loading ports it contains, the distance between the loading rack and the controls, the nature of the substances the facility handles, and the type of control measures selected.

The proposed amendments at N.J.A.C. 7:27-16.4(i) require certain tank trucks carrying applicable VOC to undergo annual pressure and vacuum tests. The Department estimates that the cost of this annual testing ranges from $125.00 to $350.00 per truck. The owner or operator would incur additional costs if the testing showed that repairs to the truck were necessary.

N.J.A.C. 7:27-16.4(o) establishes the recordkeeping requirements for facilities regulated under N.J.A.C. 7:27-16(f) for their transfers of non-gasoline VOCs into delivery vessels. Much of the data to be recorded depends upon whether VOC emissions are controlled by a thermal oxidizer or control apparatus using carbon or other adsorptive material.

For transfer operations that employ thermal oxidizer, the Department estimates that the initial cost of installing a system to obtain and record the required data will range from $30,000 to $50,000. Annual costs to operate the system thereafter may be up to several thousand dollars.

For operations that employ control apparatus using carbon or other adsorptive material, the cost of obtaining and recording the required data will vary greatly, depending upon whether the facility is complying by recording the concentration of VOC in the flue gas, or by recording information regarding the replacement and regeneration of the adsorptive material. If the owner or operator elects to comply by recording the VOC concentration, the cost will vary depending upon whether the data is recorded continuously or whether a particular frequency for recording is justifiable. As the frequency decreases, the cost decreases as well. The Department estimates that the cost will range from $30,000 to $60,000. If the owner or operator elects to comply by recording information regarding the frequency of regenerating or replacing the adsorptive material, the compliance cost will be nominal because compliance will consist solely of confirming each day that the control apparatus is regenerating the material at the required frequency, and recording the date and time at which the material is replaced.

Marine tank vessel loading and ballasting operations:

The proposed amendments at N.J.A.C. 7:27-16.5 set forth new requirements for transfers of gasoline and any other applicable VOC as cargo (rather than as fuel) into a marine tank vessel, and ballasting of such vessels.

The proposed amendments apply to two types of transfers: transfers of gasoline at any marine terminal with (a) an annual throughput of at least six million gallons or (b) a daily throughput of 60,000 gallons between May 1 and September 15; and transfers of applicable VOCs other than gasoline at any marine terminal that (a) is a major VOC facility, having the potential to emit at least 25 tons of VOC annually, and (b) has at least one source operation (other than a gasoline transfer operation) that individually has the potential to emit at least 10 tons of VOC annually.

The proposed amendments do not change the requirements applicable to the marine terminals that are subject to the rule because they meet the annual or daily throughput thresholds discussed above. Therefore, the Department does not expect this provision to have an economic impact.

The owner or operator of a marine terminal that is subject to the rule based on its potential to emit VOC is required to obtain the Department's approval of a VOC emission control plan under N.J.A.C. 7:27-16.17 and must implement the plan. Inasmuch as each marine terminal affected by these rules has a unique operational configuration (as discussed in more detail in the Summary), the cost of preparing and implementing a VOC emission control plan will be different for each terminal. RACT for a particular terminal could be anything from the installation of one or more new control measures, to the use of existing gasoline vapor control measures to control emissions from the transfer of non-gasoline VOCs, to the installation of no additional controls at all; it would therefore be misleading to project the cost to implement RACT.

N.J.A.C. 7:27-16.5(j) requires the owner or operator of a marine terminal to record certain information necessary to demonstrate that the terminal's operations comply with N.J.A.C. 7:27-16. The Department expects the cost of recording this information will be approximately $500.00 annually.

Surface coating and graphic arts operations:

The existing rules establish maximum VOC contents for coatings used on metal pipe. The proposed amendments do not change those maximums, but the amendments establish new maximum VOC contents for coatings used on concrete pipes. The Department believes that concrete pipe coaters currently operating in the State already use coatings that comply with the proposed amendments; those coaters therefore will not incur additional costs to comply with the maximum VOC contents established in the proposed amendments.

The existing rules establish maximum allowable VOC contents in coatings for graphic arts operations. The proposed amendments do not change those maximums, but the amendments establish new maximum VOC contents for sheet-fed gravure printing operations and screen printing operations. The cost of complying with these maximums will vary depending upon the method by which the operation attains compliance (for example, by using a variety of surface coatings for which the weighted average VOC content complies with the limit, or installing and using control apparatus). The Department estimates that the cost of compliance will range from $500.00 per ton of VOC removed (if the owner or operator attains compliance by using a compliant coating formulation) to approximately $3,000 per ton (if compliance is attained through the installation and use of control apparatus).

The proposed amendments also establish maximum allowable VOC contents for fountain solutions. As discussed in the Summary above, fountain solutions contain a "dampening aid" to enhance the spreadabili-

ty of the solution across the plate. Isopropyl alcohol, a VOC, has traditionally served as the dampening aids, in concentrations ranging from 0 to 35 percent by volume. The past several years have seen the development of non-alcohol additives that are less volatile than isopropyl alcohol, and can be used to produce fountain solutions that are less than three percent VOC. The non-alcohol additives can also be more cost-effective than alcohol, because they are used in such small quantities. However, the Department also recognizes that switching to alcohol substitutes are likely to add costs in the short term as employees are retrained to use the reformulated fountain solutions. The extent of those costs depends upon the amount of training the employees will need and the time that it takes them to implement their training.

The proposed amendments recodify recordkeeping requirements contained in the existing rules. The existing rules require recording of the number of hours that each formulation is applied; the proposed amendments add that the date and time that each application begins and ends must be recorded as well. The Department does not expect this change to materially affect the cost of making and maintaining the records.

Combustion sources (other than flares):

The proposed new rules at N.J.A.C. 7:27-16.8 through 16.11 address boilers, stationary gas turbines, stationary internal combustion engines and asphalt plants. NO_x emissions from these types of combustion sources are also regulated under the proposed NO_x rules at N.J.A.C. 7:27-19.

The proposed new rules establish emission limits for these sources (with the exception of asphalt plants, discussed below) that the Department believes can be achieved without the installation of any additional control technology; instead, the improvements in operation and maintenance methods required in the proposed NO_x rules (such as annual tune-ups of the combustion process) should be sufficient to enable the combustion sources to attain compliance with the emission limits in the proposed new VOC rules. Therefore, the Department does not expect that compliance with the proposed new VOC rules will require the owners and operators of these sources to incur significant costs beyond what is to be required under the proposed NO_x rules.

The proposed new rules establish VOC emission limits for asphalt plants that the Department believes can be achieved through the use of RACT. The Department expects the cost of achieving those emission limits will range from $500.00 to $5,000 per ton of VOC removed, based on the work needed to attain compliance. Some asphalt plants will be able to attain compliance at low cost simply by adjusting the combustion process; however, it is conceivable that much more substantial work could be necessary, at a substantially higher cost. For example, retrofitting burners with control apparatus could cost from $30,000 to $70,000.

Certain combustion sources (specifically, all utility boilers, any non-utility boiler with a maximum gross heat input rate of more than 250 million BTUs per hour) must be equipped with a continuous emission monitoring system (CEMS) for CO. Inasmuch as the NO_x rules will require CEMS for these boilers, the Department does not expect that compliance with the requirement in the VOC rules will require owners and operators to incur any material additional costs. The Department has refrained from requiring that these boilers be equipped with CEMS for VOC, because that requirement would add substantially to the expense of complying with the rule without providing emissions information that would be substantially more helpful.

Some boilers may have the potential to emit enough VOC to qualify as "major VOC facilities," or may be located at major VOC facilities and have the potential to emit at least three pounds of VOC per hour. The owners or operators of those sources will be required to obtain the Department's approval of a VOC emission control plan under N.J.A.C. 7:27-16.17 and to implement the plan. The Department expects the cost of preparing and implementing a VOC emission control plan to be different for each such source, depending upon the determination of what constitutes RACT for the source. It would therefore be misleading to project the cost to implement RACT.

Flares:

The proposed new rules require that any flare used at a major VOC facility beginning May 31, 1995 must have been designed to destroy at least 95 percent of the VOC fed into it. The flare must also be installed, and operated in accordance with the manufacturer's specifications. Many of the flares currently in operation already meet the destruction efficiency requirement, so that the owners and operators of such flares will incur no additional costs to comply with the proposed new rules. However, older flares that do not meet the requirement will need to be replaced or upgraded, at an estimated cost that could range from $75,000 to as much as $500,000. The cost will rise to the high end of this range only for replacement of flares that come into contact with highly corrosive substances and therefore need to be constructed from stainless steel or other corrosion-resistant materials.

N.J.A.C. 7:27-16.13(c) requires the owner or operator of the flare to submit documentation to the Department to assist in verifying compliance with the rule. The required documentation identifies the owner and operator and the flare, and includes a copy of the manufacturer's specifications, a statement that the flare was installed and is being operated in accordance with the specifications, and a statement that the flare will continue to be so operated. The Department does not expect that the owner or operator will incur any material cost in supplying this documentation.

Compliance with the proposed new rule also requires that the owner or operator inspect the flare annually, to verify that the flare is continuing to be operated in accordance with the manufacturer's specification. The owner or operator is required to keep a log of these inspections, describing any changes made to the flare as a result of the inspection and confirming that the flare is still being operated in accordance with the manufacturer's specifications. The Department estimates the cost of this annual inspection will range from $500.00 to $1,500 per flare.

Other source operations:

The proposed amendments recodify N.J.A.C. 7:27-16.6(a) through (c) at N.J.A.C. 7:27-16.16. The proposed amendments expand the list of source categories that are excluded from the scope of those provisions, but make no other change of any substance. The additional excluded categories are specifically regulated under other provisions of the proposed amendments and new rules. The economic impact of the proposed amendments and new rules upon those additional excluded categories is discussed in the portion of this Economic Impact statement relevant to each category.

Case-by-case VOC emission limits for source operations at major facilities:

The owner or operator of a major VOC facility required to submit a facility-specific VOC control plan will incur compliance costs both in preparing the plan and in complying with it once the Department has approved it. The cost of preparing the plan will vary with the nature and number of source operations at the facility, not specifically regulated under other provisions of subchapter 16, that have the potential to emit at least three pounds of VOC per hour. The cost of complying with an approved plan will vary based upon those same factors, and also upon the extent of the emission reductions required for each source operation covered under the plan.

The owner or operator may be able to avoid incurring most of the cost of compliance with N.J.A.C. 7:27-16.17 if the source operations subject to that section are served by control apparatus that collects at least 90 percent (by weight) of the source's VOC emissions and prevents the emission of at least 90 percent (by weight) of the VOC collected. In addition, the owner or operator can avoid incurring the cost of preparing a facility-specific VOC control plan by electing instead to install and use control apparatus that meets that requirement for 90 percent collection and control efficiency.

Leak detection and repair:

The proposed amendments at N.J.A.C. 7:27-16.18 revise procedures and requirements for the detection and repair of leaks from which VOCs are emitted (leak detection and repair, or LDAR). The LDAR requirements continue to apply to certain equipment at the following types of facilities, as in the existing rules: petroleum refineries, natural gas and gasoline processing plants, and synthetic organic chemical or polymer manufacturing facilities. The proposed amendments extend the LDAR requirements to chemical plants with the potential to emit at least 25 tons of VOC annually.

The proposed amendments to the LDAR requirements will have positive and negative economic impacts, discussed below.

A positive economic impact will result from limiting the types of equipment at petroleum refineries that are subject to the LDAR requirements. The existing rules apply to a variety of components if they are in contact with any applicable VOC. Under the proposed amendments, such a component is subject to the LDAR requirements only if it is in contact with a substance that is at least 10 percent applicable VOC

by weight. The precise cost savings for a particular refinery will depend upon the number and types of components that would be excluded under the proposed amendments.

The proposed amendments exempt equipment at research facilities from the LDAR requirements. The exemption will have a positive economic impact upon research facilities. The cost savings that a particular research facility will realize depend upon circumstances specific to the facility, including the types of applicable VOC present and the types of equipment that come into contact with it. The Department also believes that the exemption will have other positive economic impacts, resulting from the removal of one possible barrier to research and development activities in the State.

The revisions to the prohibition on leaks under the existing rules will also have a positive economic impact upon facilities handling applicable VOCs. The existing rules prohibit all leaks of applicable VOCs from connections, joints and fittings not involving moving parts, and limit the concentration of VOC emissions from leaking seals surrounding moving parts. Any leak of an applicable VOC from a moving part in excess of the concentration allowed, and any leak of an applicable VOC from a nonmoving part, is a violation of the existing rules, notwithstanding the extent of the leak or the degree of diligence the owner or operator has exercised to detect and repair the leak. In addition, the prohibition and the limitation are not limited to the types of facilities specifically listed in the existing rule; they apply to all facilities handling applicable VOCs.

Under the existing rules, an owner or operator was likely to be in violation of the LDAR requirements even as a result of leaks that were not practicable to prevent and that did not pose a significant threat to air quality. The proposed amendments address these problems by setting leak thresholds and limits with which compliance is reasonably attainable, by allotting a fixed amount of time to repair leaks above those limits, and by limiting the LDAR requirements to those categories of sources that have the greatest potential to emit VOC through leaks. As a result, far fewer occurrences will subject an owner or operator to liability for penalties.

Another change that the Department expects to save costs is the provision to allow less frequent testing of components if previous testing has shown little tendency of the components to leak. The precise extent of this savings will depend upon whether test results at a particular facility are sufficient to support annual or semi-annual testing, and the number, type and specific circumstances of the components that qualify for less frequent testing. The Department expects that these potential savings will provide an economic incentive for the use of low-leak design equipment, and encourages the use of low-leak technologies.

The proposed amendments broaden the exemption from testing requirements when circumstances could endanger the personnel performing the tests. The Department expects this change to have a positive economic impact, because the owner of operator will save costs in attempting to make the testing safe, and because fewer injuries to testing personnel should occur.

The proposed amendments should also have a positive economic impact by reducing the testing frequency for certain types of pumps and valves designed and operated so that the risk of leaks is small enough so that less frequent testing will still be sufficient to protect air quality. The reduced testing cost should serve as an economic incentive to install and use these types of components.

LDAR at chemical plants:

The Department expects that owners and operators of chemical plants will incur costs to comply with the proposed amendments. In an effort to minimize those costs while still protecting air quality, the Department developed those requirements after lengthy consultation and negotiation with the LDAR working group, which included representatives of the chemical industry.

The proposed amendments for chemical plants require annual testing of all pumps, valves and pressure relief devices in liquid service; quarterly testing (with the possibility of less frequent testing if the test results are favorable) of all compressors, valves and pressure relief devices in gas service; monthly visual inspections of certain seals and pumps; and repair of leaks within an allotted time after they are detected. The cost of this testing and repair for any particular chemical plant will depend primarily upon what equipment is present at the plant.

Natural gas pipelines:

The owner or operator of a natural gas pipeline required to prepare a VOC control plan will incur compliance costs both in preparing the plan and in complying with it. The cost of preparing the plan will vary with the length of the pipeline and the extent to which circumstances relevant to VOC control strategies vary along the length of the pipeline. The cost of complying with the plan will vary with the types of control strategies used and the frequency with which the plan provides for control measures to be employed.

Penalties:

The proposed amendments to N.J.A.C. 7:27A-3.10 will have an adverse economic impact only upon persons who violate subchapter 16. The extent of the economic impact depends upon a variety of factors, including the nature of the violation and the extent of its effect or threatened effect upon public health, welfare and the environment.

Environmental Impact

The proposed amendments and new rules will have a positive environmental impact by reducing emissions of VOC, thereby reducing the formation of ground-level ozone. The environmental impacts of elevated concentrations of ground-level ozone are discussed in the summary above, and in the proposal of the low emission vehicle program rules, 24 N.J.R. 1315 (April 6, 1992).

The Department expects that compliance with the proposed amendments and new rules will produce VOC emission reductions totaling between one and two percent of the current VOC emission inventory (exclusive of VOC emissions from biogenic sources such as plant life). This estimate is based upon information concerning sources of VOC that the Department collected in its 1990 emissions inventory.

The following discussion outlines the environmental impacts of particular provisions of the proposed amendments and new rules:

Transfers of applicable VOC, other than gasoline:

The existing rules applied several VOC control requirements to transfers of gasoline. The proposed new rule at N.J.A.C. 7:27-16.4 extend those requirements to transfers of applicable VOC other than gasoline.

For transfers of applicable VOC into stationary storage tanks, the owner or operator of the tank is required to install and use control apparatus if (i) the storage tank has a maximum capacity of at least 2,000 gallons, and (ii) estimated annual VOC emissions from transfers into the tank are at least 1,000 pounds. The Department estimates that this requirement can reduce VOC emissions by five tons per year.

For transfers of applicable VOC other than gasoline into delivery vessels, control apparatus must be installed and used if (i) the delivery vessel has a total capacity of at least 2,000 gallons, and (ii) the transfer occurs at a facility that has estimated annual VOC emissions from transfer operations of at least 2,000 pounds. Approximately 75 facilities in the State have estimated annual VOC emissions from transfer operations of at least 2,000 pounds. The Department estimates that controlling VOC emissions in these transfer operations will prevent about five tons of VOC from entering the atmosphere every year.

Marine tank vessel loading and ballasting operations:

N.J.A.C. 7:27-16.5(c) requires marine terminals that (i) have the potential to emit at least 25 tons of VOC annually and (ii) have at least one source operation with the potential to emit 10 tons of VOC annually to implement a facility-specific VOC control plan approved by the Department. The VOC emissions reductions that any such terminal will achieve will depend upon what types of control measures represent RACT for the terminal. The Department cannot project that compliance with the proposed new rules will reduce VOC emissions reductions by a total of approximately 25 tons per year.

Surface coating and graphic arts operations:

The existing rules address pipe coating operations for metal pipe. The proposed amendments to N.J.A.C. 7:27-16.7 expand the scope of the rule to include pipe coating operations for pipes of any composition other than plastic. However, the Department does not expect this expansion to have any material environmental impact, because the only source operations known to the Department that would become subject to the rule as amended are already in compliance. The benefit of codifying the current practice in the rule is that it discourages these operations from deciding in the future to use coatings with higher VOC contents.

The proposed amendments to N.J.A.C. 7:27-16.7 also expand the existing rules governing graphic arts operations to include sheet-fed gravure printing operations and screen printing operations. The Department does not expect that source operations of these types will need to change their operations significantly in order to achieve compliance, but even small changes will have material environmental impacts because of the large number of source operations regulated. The Department

therefore estimates that an annual reduction of between 10 and 20 tons of VOC emissions will result from compliance with the proposed amendments.

The proposed amendments also establish maximum allowable VOC contents for fountain solutions. The Department estimates that compliance with this requirement will reduce VOC emissions by five tons annually.

Combustion sources:

The Department expects the emission limits for boilers, stationary gas turbines and stationary internal combustion engines to avoid a negative environmental impact that could otherwise result from compliance with the NO_x rules. The emission limits are intended to prevent compliance with the NO_x rules from coming at the expense of increased VOC and CO emissions.

The proposed new rules establish VOC emission limits for asphalt plants that the Department expects to have a positive environmental impact. The Department estimates that compliance with these limits will reduce annual VOC emissions by approximately 10 tons per day from May 1 through September 15 of each year.

The proposed new rules require that a flare used at a major VOC facility must be designed to destroy at least 95 percent of the VOC fed into it. The permits that the Department has issued over the past several years require at least a 95 percent destruction efficiency, and many older flares also are already in compliance with this requirement. The Department cannot accurately determine at this time how many older flares may need to be upgraded or replaced, and therefore has not projected emission reductions resulting from compliance with the flare requirements.

Case-by-case VOC emission limits at major VOC facilities:

The proposed new rule at N.J.A.C. 7:27-16.17 requires that the owner or operator of a major VOC facility with at least one source operation having the potential to emit at least three pounds of VOC per hour must implement a VOC control plan approved by the Department. The VOC emissions reductions that any such facility will achieve will depend upon what types of control measures represent RACT for the source operations at the facility. Accordingly, at this time the Department cannot estimate the VOC emissions reductions that will result from this provision of the proposed new rule.

Leak detection and repair:

The proposed amendments at N.J.A.C. 7:27-16.18 apply leak detection and repair (LDAR) requirements to chemical plants. The Department's records show that there are approximately 1,000 chemical plants in the State that have the potential to emit 25 tons of VOC annually, but are not currently required to have LDAR programs. The Department expects that controlling VOC emissions from leaks from these facilities will contribute substantially to the overall effort to reduce those emissions. Combined with a phased-in reduction in allowable emissions from components with moving parts, the Department believes that VOC emissions from leaks can be decreased by at least 70 percent. As a result, compliance would reduce annual VOC emissions by 3,000 to 5,000 tons.

The environmental impact of the LDAR requirement will be especially important because VOC emissions from leaks normally occur near ground level, rather than being emitted from a stack or chimney. As a result, the VOCs emitted through leaks are less dispersed and more localized, thereby increasing their potential to harm human health and property.

Under the existing rules, a component at a petroleum refinery is subject to LDAR requirements if it is in contact with any concentration of an applicable VOC. Under the proposed amendments, the component is subject to the requirements only if it is in contact with a substance that is at least 10 percent applicable VOC by weight. The Department does not expect this change to have a substantial environmental impact, because the components that are to be excluded from the rule are responsible for only a small part of the total emissions from leaks, and the change will allow the operators of petroleum refineries to concentrate their LDAR efforts on components that account for more VOC emissions.

The Department does not believe that ending the complete prohibition of leaks will have a significant adverse environmental impact. The Department agrees with the working group that full compliance with the prohibition in the existing rule was unattainable; accordingly, the existing rule was more stringent but did not materially reduce emissions. The Department believes that LDAR requirements that are workable and enforceable will have a positive environmental impact.

Natural gas pipelines:

The Department expects that controlling VOC emissions from natural gas pipelines during blowdown events will yield significant emission reductions. As noted in the Summary above, the existing rules have not brought about substantial reductions because the infeasibility of compliance has made it relatively rare.

The Department cannot estimate the magnitude of the emissions reductions at this time, because the proposed new rules do not dictate the control strategies that each pipeline operator will implement. However, reporting requirements under the proposed new rules will enable the Department to quantify the reductions that are achieved in the future.

Regulatory Flexibility Analysis

The proposed amendments and new rules apply to many classes of businesses. The classes of businesses expressly subject to the proposed amendments and new rules include electric generating utilties, asphalt manufacturers, petroleum refineries, natural gas/gasoline processing plants, synthetic organic chemical/polymer manufacturing facilities, and chemical plants. In addition, the proposed amendments and new rules regulate certain types of equipment and source operations that are not limited in their use to particular types of businesses.

Though the proposed amendments and new rules establish compliance requirements that will affect small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., they do not establish exemptions or differing requirements specifically available to small businesses. The 1990 CAAA directs states to require RACT for all major sources of VOC, and does not authorize different treatment for small businesses. However, the Department notes that much of the applicability of the proposed amendments and new rules is limited to equipment and source operations above a certain minimum size; small businesses generally are less likely to operate the larger sources that are subject to the proposed amendments and new rules. The applicability thresholds for each type of source are discussed in detail in the Summary above.

A discussion of the recordkeeping and reporting requirements of the proposed amendments and new rules follows. The recordkeeping and reporting requirements represent the minimum amount of information necessary (i) to enable the Department to monitor compliance with the substantive requirements of the rule applicable to these transfers and (ii) to establish the State's compliance with the requirements of the 1990 CAAA. Accordingly, the amendments and new rules do not establish reduced recordkeeping requirements for small businesses. The Department also notes that the reporting requirements are limited to the information that the Department must obtain regularly in order to monitor compliance, rather than relying upon occasional inspections of a facility's records. Accordingly, the proposal attempts to minimize reporting requirements, though it does not establish reduced reporting requirements specifically applicable to small businesses.

The proposed amendments to N.J.A.C. 7:27-16.4(i) require that any tank truck with a total capacity of at least 2,000 gallons must carry records of its annual pressure and vacuum tests. The Department expects that there will be no material cost associated with such records because the records will routinely be made as part of the testing process, by the person conducting the tests.

N.J.A.C. 7:27-16.4(o) establishes the recordkeeping requirements for certain transfers of non-gasoline VOCs into delivery vessels. The Department estimates that the cost of recording the emissions information required under N.J.A.C. 7:27-16.4(o)2 will depend primarily upon the frequency with which recording is required. Inasmuch as this information is essential in enabling the Department to monitor compliance with the rule, the proposed amendments do not establish reduced requirements for small businesses.

N.J.A.C. 7:27-16.5(j) requires the owner or operator of a marine terminal to record the information necessary to demonstrate that the terminal's operations comply with N.J.A.C. 7:27-16. The Department believes that operators of marine terminals are already recording the bulk of this information.

The proposed amendments at N.J.A.C. 7:27-16.7(n) supplement recordkeeping requirements contained in the existing rules. The existing rules require recording of the number of hours that each formulation is applied; the proposed amendments add that the date and time that

each application begins and ends must be recorded as well. The Department does not expect this change to materially affect the cost of making and maintaining the records.

The proposed new rule at N.J.A.C. 7:27-16.13 requires the owner or operator of a flare to maintain a log of annual inspections of the flare. The information to be logged includes any changes made to the flare as a result of the inspection and confirmation that the flare is still being operated in accordance with the manufacturer's specifications. The Department estimates that the cost of obtaining the information to be logged is less than $500 per flare. The information represents the absolute minimum that the Department believes to be necessary in verifying compliance; accordingly, the proposed new rules do not establish a different requirement for small businesses.

The proposed amendments to N.J.A.C. 7:27-16.18 extend leak detection and repair (LDAR) requirements to owners and operators of chemical plants. The LDAR provisions require the owner or operator to maintain a log of information concerning components from which regulated leaks have been detected. The Department does not believe that the log requirement will add materially to the cost of detecting and repairing the leak. The LDAR provisions also require the owner or operator to submit a quarterly report to the Department listing all leaking components that were not repaired within the time allotted in the rule; the Department also does not expect that this requirement will add materially to the cost of detection and repair.

Natural gas pipelines:

The proposed new rules require owners and operators of natural gas pipelines subject to the rule to report information annually regarding the quantity of emission reductions that have been achieved pursuant to the emission control plan for each pipeline. The Department does not believe that recording this information and reporting it to the Department will add materially to the cost of the emission control strategy itself.

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

...

"ASTM" means the American Society for Testing and Materials.

...

"Open burning" means any fire [where] **from which** the products of combustion are emitted directly into the open air, and are not by design directed through a stack or chimney.

...

7:27-2.1 Definitions

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

...

"Open burning" means any fire [whose] **from which the** products of combustion are emitted directly into the open air, and are not **by design** directed [thereto] through [the] **a** stack or chimney [of an incinerator].

...

7:27-8.1 Definitions

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

...

"Volatile organic compound" or "VOC" means any [organic substance, mixture of organic substances, or the organic components of any mixture of organic and inorganic substances that] **compound of carbon, excluding 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 emission limits or content standards, VOC shall be measured by [approved] test methods **which have been approved in writing by the Department.** [This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which is an organic substance and evaporates from the coating during the application and drying phase.] This term does not include **the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:**

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
[chlorodifluoromethane (CFC-22)]
trifluoromethane [(FC-23)] **(HFC-23)**
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
chlorodifluoromethane (HCFC-22)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)
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 at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

7:27-8.2 Applicability

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

(c) Notwithstanding the definition of the term VOC in this subchapter, the provisions of this subchapter which apply to VOC shall also apply to Group II TXS listed in N.J.A.C. 7:27-17.3 Table 1.

SUBCHAPTER 16. CONTROL AND PROHIBITION OF AIR POLLUTION BY VOLATILE ORGANIC COMPOUNDS

7:27-16.1 Definitions

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

...

"Actual emissions" means the rate at which an air contaminant is actually emitted, either directly or indirectly, to the outdoor atmosphere, in units of mass per calendar year, seasonal period, or other time period specified in this subchapter.

"Agitator" means an apparatus with an external seal used to shake, stir, or mix material in an enclosed vessel.

...

"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.

"Asphalt" means a solid, semisolid, or liquid material [of which the main constituentes are bitumens], **produced by mixing**

bituminous substances together with gravel, crushed rock or similar materials, and used commonly as a coating or paving.

"ASTM" means the American Society for Testing and Materials.

"Background concentration" means, with respect to the measurement of the emission of VOC from a component, the concentration of VOC in the ambient air as determined within the facility and at least one meter upwind of the component being tested.

"Ballasting" means the loading of water or other liquid into a marine tank vessel's cargo tank to obtain proper propeller, rudder, and hull immersion.

...

"Batch type asphalt plant" means an asphalt plant where the aggregate and asphalt cement or other binder are mixed in equipment other than a rotary dryer.

"Blowdown event" means the non-emergency release of natural gas from a pipeline for the purposes of inspection, maintenance, or repair and where, in the absence of control, more than 2,000 pounds of VOC could be released to the atmosphere.

"British thermal unit" or "BTU" means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

...

"Capture system" means all equipment including, but not limited to, hoods, ducts, fans, booths, ovens, and dryers, that contains, collects, and transports an air contaminant to a control apparatus.

"Carbon monoxide" or "CO" means a colorless, odorless, tasteless gas at standard conditions, having a molecular composition of one carbon atom and one oxygen atom.

...

"Catalytic oxidizer" means a type of control apparatus which reduces the emission of air contaminants by causing the air contaminant molecules to decompose by oxidation, accomplished by preheating the gases being emitted to a predetermined temperature, which is less than required for thermal oxidation, and contacting the preheated gases with catalysts to promote decomposition.

...

"Chemical plant" means any facility, or any part thereof, classified within the Standard Industrial Code (SIC) Major Group 28, "Chemical and Allied Products."

...

"CO" means carbon monoxide.

"Combined cycle gas turbine" means a gas turbine in which heat is recovered from the turbine's exhaust gases to heat water or generate steam.

"Combustion source" means a source operation or item of equipment which combusts fuel.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary, as determined by the Department, for commencing technical review of the application. Designating an application complete for purposes of commencing technical review does not preclude the Department from requesting or accepting any additional information.

"Component" means, with respect to leak detection and repair, any part of a source operation, including any equipment and control apparatus, from which emissions of air contaminants may be released into the ambient air. This term includes, but is not limited to, any agitator, valve, flange, fitting, gasket, seal, joint, pump, compressor, pressure relief device, diaphragm, manhole, hatch, sight-glass, instrument connection or other connection, meter, or associate equipment. This term does not include a designed emission point of a stack or chimney.

"Compressor" means a device used to compress gases or vapors by the addition of energy, and includes all associated components used to make connections or seals.

"Conductive ink" means an ink used in screen printing which contains material that permits electric current to flow through printed lines or patterns.

...

"Construction ballast" means the filling of an underground storage tank with [gasoline] **any VOC, including gasoline,** to provide stability during construction.

...

"Delivery vessel" means any [mobile storage tank including, but not limited to, tank trucks, railroad tank cars, barges or tankers.] **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.**

...

"Drum mix asphalt plant" means an asphalt plant where the asphalt cement or other binder is added to the aggregate while the aggregate is still in the rotary dryer.

"Emission statement" means a report of the actual annual emissions of a facility submitted by the owner or operator to the Department pursuant to the requirements of N.J.A.C. 7:27-21.

...

"Facility" means the combination of all structures, buildings, equipment, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person. **For the purposes of this definition, each natural gas pipeline compressor or pump station and each section of natural gas pipeline between same shall be deemed to be a separate facility.**

"Federally enforceable" means all limitations and conditions on operation, production, or emissions that can be enforced by EPA. The foregoing limitations and conditions that can be enforced by EPA include, but are not limited to, those established in:

1. Any standards of performance for new stationary sources (NSPS) promulgated at 40 CFR 60;

2. Any national emission standard for hazardous air pollutants (NESHAP) promulgated at 40 CFR 61;

3. Any provision of an applicable SIP;

4. Any permit issued pursuant to requirements established at 40 CFR 51, Subpart I; 40 CFR 52.21; 40 CFR 70; or 40 CFR 71; or

5. Any permit or order issued pursuant to the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., or this chapter.

...

"First attempt at repair" means rapid action taken for the purpose of stopping or reducing a leak. First attempts at repair include, but are not limited to, the following practices where practicable: tightening of packing gland nuts, tightening of flanges, and ensuring that the seal flush is operating at design pressure and temperature.

"Fitting" means a component used to attach or connect pipes or piping details including, but not limited to, flanges and threaded connections.

"Flare" means a device used for the destruction of waste or by-product gases by passing them through a flame and then directly into the outdoor atmosphere.

"Flexographic printing **operation**" means a system of transferring images onto a substrate through first applying ink to [a smooth] **an inking** roller which in turn [rolls] **transfers** the ink onto the raised [pattern] **image areas** of a rubber or elastomeric [pad, fastened around a] **plate secured to a** second roller, which then [rolls] **transfers** the ink onto the substrate.

...

"Fountain solution" means an aqueous solution used in graphic arts operations to dampen the plate and prevent the non-image areas of the plate from accepting the hydrophobic inks used.

...

"Fugitive emissions" means any emissions of an air contaminant released directly or indirectly into the atmosphere which do not pass through a stack or chimney.

"Gaseous leak" means the emission of applicable VOC directly or indirectly to the atmosphere as a gas or vapor from a hole, crevice, or other opening in a component, other than an emission that is in accordance with the component's design during normal operations.

"Gasoline" means any petroleum distillate or petroleum distillate/oxygenated blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater [and used as an automotive fuel], **and commonly or commercially known or sold as gasoline.**

...

["Gasoline loading facility" means a plant at which gasoline is transferred into delivery vessels.]

"Gas turbine" means an internal combustion engine fueled by liquid or gaseous fuel, which generates mechanical energy in the form of a rotating shaft which is used to drive an electric generator or other industrial equipment.

["Graphic arts" means it includes rotogravure and flexographic printing used to produce published material and packaging for commercial or industrial purposes, rotogravure and flexographic printing on vinyl or urethane coated fabric or sheets, sheet-fed gravure, screen printing, and fabric printing operations.]

"Graphic arts operation" means the application of one or more surface coating formulations across portions of a surface using one or more rotogravure or flexographic printers used to produce published material and packaging for commercial or industrial purposes, or any rotogravure or flexographic printers used to produce vinyl or urethane coated fabric or sheets, or any sheet-fed gravure, screen printing, or fabric printing operations 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.

"Gravure printing operation (sheet-fed)" means a system of transferring images onto a substrate through first applying ink to a cylinder into the surface of which small, shallow cells have been etched forming a pattern, then wiping the lands between the cells free of ink with a doctor blade, and finally contacting the substrate, which is fed in single sheets, onto the cylinder so that the surface of the substrate is pressed into the cells, transferring the ink to the substrate. This term does not include proof presses which are being used to check the quality of the image formation of newly engraved or etched gravure cylinders.

"Hatch" means a system, including a cover which may be opened or closed, that provides access to the interior of a tank or other enclosed container.

"Inaccessible component" means any component located over 15 feet above ground when access is required from the ground or any component located over 9.6 feet away from a platform when access is required from the platform.

"Incinerator" means any device, apparatus, equipment, or structure using combustion or pyrolysis to oxidize, reduce or salvage any material or substance. "Incinerator" does not include thermal or catalytic oxidizers used as control apparatus on equipment, but it does include (without limitation) any thermal destruction facility which is a resource recovery facility, as such terms are defined in N.J.A.C. 7:26-1.4.

...

"Industrial wastewater treatment system" means any structure or structures by means of which industrial liquid waste or sludges are subjected to any treatment process requiring the issuance of an individual NJPDES permit regulated by the Department pursuant to the New Jersey Pollutant Discharge Elimination System Permit Program, N.J.A.C. 7:14A, under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

"Ink transfer" means a decal, printed using screen printing onto a special release carrier, that will be transferred from the carrier to a substrate. Final transfer of the decal to the substrate may or may not occur at the screen printing facility.

"Laboratory operations" means any action, process, or treatment utilizing chemical, physical, or biological factors to conduct experimental research, tests, or demonstrations.

"Leak" means a gaseous leak or a liquid leak of VOC.

...

"Liquid leak" means the release of liquid applicable VOC from a hole, crevice, or other opening in a component subject to N.J.A.C. 7:27-16.18, other than a release of liquid VOC in accordance with the component's design during normal operations. The presence of a drop, drip, accumulation, pool, or other visible evidence of a liquid VOC demonstrates that a liquid leak has occurred.

...

"Lithograhic printing operation" means printing by a planographic method in which the image and nonimage areas are on the same geometric plane.

...

"Major VOC facility" means any facility which has the potential to emit 25 or more tons of VOC per year.

...

["Marine delivery vessel" means any mobile storage tank designed to move on water, such as barges or tankers.]

"Marine tank vessel" means any tugboat, tanker, freighter, passenger ship, barge, boat, ship, or watercraft, which is specifically constructed or converted to be capable of carrying liquid cargo in tanks.

"Marine terminal" means any facility, or part thereof, at which liquid cargo is loaded into or unloaded out of marine tank vessels.

"Maximum gross heat input rate" means the maximum amount of fuel a combustion source is able to combust in a given period as stated by the manufacturer of the steam generating unit. This term is expressed in BTUs per hour, based on the highest BTU value of the fuels combusted.

...

"New Jersey's coastal waters" means the Atlantic Ocean area and all areas under tidal influence within three nautical miles (5,566 meters) of the mean high water line as measured from the New Jersey coast, except that, if at any point along the line of measurement, within or beyond three nautical miles (5,566 meters), there is a meeting of waters under the exclusive jurisdiction of any other State or the United States of America, New Jersey's jurisdiction shall end at that point. Any point of measurement shall be taken from a point of New Jersey land, permanent or nonpermanent, and extended azimuthally to a distance of three nautical miles (5,566 meters) or to the point where another State or the United States of America has jurisdiction.

"Non-utility boiler" means any steam generating unit which is not a utility boiler.

"Offset lithography" means a planographic method of printing in which the image and nonimage areas are on the same plane and where the ink is transferred from an image plate on one cylinder to an image blanket on a different cylinder. The ink is finally transferred from the image blanket to the surface to be printed.

...

"Open burning" means any fire from which the products of combustion are emitted directly into the open air, and are not by design directed through a stack or chimney.

...

"Order" means any and all orders issued by the Department including, but not limited to, administrative orders and administrative consent orders.

["Organic substance" means any chemical compound or mixture of chemical compounds of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, and ammonium carbonate.]

"Other wastewater treatment system" means any structure or structures by means of which liquid waste or sludges (other than industrial liquid waste or sludges) are subjected to any treatment process requiring the issuance of an individual NJPDES permit pursuant to the New Jersey Pollutant Discharge Elimination System Permit Program, N.J.A.C. 7:14A, under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

...

"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] **any** State or any agencies or instrumentalities thereof.

...

"Planography" means any method of printing from a flat surface.

"Plastic part" means a piece made from a substance that has been formed from a natural or synthetic resin through the application of pressure or heat or both.

...

"Platform" means any elevated horizontal surface, either temporary or permanent, used for the purpose of gaining access to a component.

...

"Potential to emit" means the maximum capacity of a source operation or 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. This term includes the fugitive emissions emitted by the source operation or facility as calculated in a manner consistent with the provisions of N.J.A.C. 7:27-21 and current guidance issued by the Department pursuant thereto.

"Ppm" means parts per million.

"Ppmvd" means parts per million by volume, dry basis. This is the number of parts in a mixture, by volume, which are of the specified substance, not including the number of parts contributed by water.

"Pressure relief device" means a type of component which is installed for safety to relieve elevated pressure within equipment, or within a conduit or duct serving equipment. Such a component is designed to release material contained within the system when the pressure within the system exceeds a set level.

"Pressure relief valve" means a type of pressure relief device which consists of a valve that automatically opens when the pressure within the system exceeds a set level.

...

"Pump" means a device used to transport fluids by the addition of energy, and includes all associate components used to make connections or seals.

"Receiving vessel" means any vessel into which [a] **an applicable** VOC is introduced including, but not limited to, storage tanks, delivery vessels, and manufacturing process vessels.

...

"Regenerative cycle gas turbine" means a gas turbine which recovers heat from its exhaust gases and uses that heat to preheat the combustion air which is drawn into the gas turbine.

"Regulated leak" means any gaseous leak of applicable VOC at a concentration or level above any applicable limit established in Tables 18A and 18B and any liquid leak of an applicable VOC.

...

"Repair" means, with respect to a VOC leak, a corrective action taken to eliminate the leak.

...

"Rotogravure printing **operation (web-fed)**" means a system of transferring images onto a substrate through first applying ink to a cylinder into the surface of which small, shallow cells have been etched forming **an image or** a pattern, then wiping the lands between the cells free of ink with a doctor blade, and finally [rolling] **contacting** the substrate, which is fed from a continuous roll, over the cylinder so that the surface of the substrate is pressed into the cells, transferring the ink to the substrate[, but]. **This term** does not include proof presses which are being used to check the quality of the image formation of newly engraved or etched gravure cylinders.

"Rupture disc" means a type of pressure relief device which is designed to fracture, rupture, or burst under pressure when the pressure within the system exceeds a set level. Such a device is commonly a diaphragm held between flanges, which under conditions of normal operation remains intact and prevents gases from being released from the system.

"Screen printing operation" means a system of transferring images onto a substance in which the printing ink passes through a fabric to which a stencil has been applied. The openings in the stencil determine the form and dimensions of the imprint.

...

"Simple cycle gas turbine" means a gas turbine which does not recover heat from its exhaust gases.

...

"Special purpose screen printing inks and coatings" means inks and coatings used in screen printing which are used to print ink transfers, or are designed to resist or withstand any of the following: more than two years of outdoor exposure, exposure to chemicals, solvents, acids, detergents, oil products or cosmetics, temperatures in excess of 170 degrees Fahrenheit, vacuum forming, embossing or molding.

...

"Standard Industrial Classification Code" or "SIC Code" means the system devised by the United States Office of Management and Budget to classify establishments according to the type of economic activity in which they are engaged.

"Stationary gas turbine" means any simple cycle gas turbine, regenerative cycle gas turbine, or combined cycle gas turbine that is not self-propelled. The term includes a gas turbine of any of these types which is mounted on a vehicle for portability.

"Stationary internal combustion engine" means any internal combustion engine that is not self-propelled. This term includes internal combustion engines which are mounted on vehicles for portability.

"Steam generating unit" means any furnace, boiler, or other device which combusts fuel for the purpose of producing steam.

...

"Surface coating formulation" means the material used to form a protective, functional, or decorative film including, but not limited to, paint, varnish, ink, or adhesive, applied to or impregnated into a substrate. **This term includes such material whether used in a surface coating or graphic arts operation.**

...

"Surface coating of paper" means the application of any coating, excluding plastisol, uniformly distributed across the web, which is put on paper, or on pressure-sensitive tapes regardless of substrate (including paper, fabric, or plastic film); related web coating processes on plastic film including, but not limited to, typewriter ribbons, photographic film, and magnetic tape; and decorative coating on metal foil including, but not limited to, gift wrap and packaging. **This term does not include any graphic arts operation.**

"Surface coating of pipe" means the application of any coating to a pipe of any composition, except plastic.

...

"Surface coating operation" means the application of one or more surface coating formulations **across an entire 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.**

...

"Thermal oxidizer" means a type of control apparatus which reduces the emission of air contaminants by subjecting the gases being emitted to elevated temperatures which cause the air contaminant molecules to decompose.

"Toxic substance" or "TXS" means a substance listed in Table 1 of N.J.A.C. 7:27-17.3.

...

"Utility boiler" has the meaning defined in N.J.A.C. 7:27-19.

"Vacuum service" means equipment operating at an internal pressure which is at least 0.725 pounds per square inch [absolute] (37.5 millimeters of mercury) below ambient pressure.

"Valve" means a device that regulates or isolates the fluid flow in a pipe, tube, or conduit by means of an external actuator.

...

"Volatile organic compound" or "VOC" means any [organic substance, mixture of organic substances, or the organic components of any mixture of organic and inorganic substances that] **compound of carbon, excluding 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 emission limits or content standards, VOC shall be measured by [approved] test methods **which have been approved in writing by the Department.** [This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which is an organic substance and evaporates from the coating during the application and drying phase.] This term does not include **the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:**

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
[chlorodifluoromethane (CFC-22)]
trifluoromethane [(FC-23)] **(HFC-23)**
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
chlorodifluoromethane (HCFC-22)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)
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 at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

...

7:27-16.1A Purpose, scope, applicability, and severability

(a) This subchapter establishes requirements and procedures concerning the control and prohibition of air pollution by volatile organic compounds. The purpose of this subchapter is to require any stationary source or group of sources, located within a contiguous area and under common control to implement reasonably available control technology (RACT) to control VOC emissions. EPA defines RACT to mean the lowest emission limitation that a particular source is capable of meeting by the application of air pollution control technology which is reasonably available considering technological and economic feasibility. Specific applicability thresholds are provided throughout the subchapter. Carbon monoxide limits are included for combustion sources, in order to control VOC emissions, which are also products of incomplete combustion.

(b) As set forth at N.J.A.C. 7:27-17.4(c), this subchapter's requirements for the implementation of control measures, including, but not limited to requirements for the installation and use of control apparatus, or the use of compliant coatings, shall apply with full force to Group II TXS until the Department amends this rule in response to EPA rule-making or otherwise.

(c) Whenever persons, equipment, control apparatus or any VOC subject to the provisions of this subchapter are also subject to the provisions of any other subchapters of this chapter, the requirements of the relevant provisions of this subchapter and all subchapters of this chapter will apply.

(d) Whenever a VOC subject to the emission rate provisions of this subchapter is also subject to the emission rate provisions of any other subchapters of the chapter, the relevant provisions of the subchapter requiring the lowest allowable rate will apply.

(e) No owner or operator subject to this subpart may build, erect, install, or use any article, machine, equipment, process, or other method the use of which conceals emissions that would otherwise constitute applicability or non-compliance with any section of this subchapter. This includes, but is not limited to, the use of gaseous diluents to achieve compliance, and the piecemeal carrying out of an operation to avoid coverage by a section of this subpart that applies only to operations larger than a specified size.

(f) Any approval of a permit or certificate issued by the Department authorizing the demonstration of compliance through a mathematical combination of sources shall expire as of March 28, 1994.

(g) Each owner and each operator of any equipment or source operation subject to this subchapter is responsible for ensuring compliance with all requirements of this subchapter. If there is more than one owner or operator of the equipment or source operation, each owner and each operator is jointly and severally liable for any penalties for violations of this subchapter.

(h) If any provision of this subchapter or the application thereof to any person or circumstance is adjudicated to be invalid or unenforceable to any extent, the remainder of this subchapter or its application to any person or circumstance other than those that are the subject of the adjudication shall continue to be unaffected by the adjudication.

7:27-16.2 Storage of volatile organic compounds

(a) General provisions are:

1. No person shall cause, suffer, allow, or permit the storage of any **applicable** VOC [having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch absolute (1 millimeter of mercury) or greater at standard conditions] in any stationary storage tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater exposed to the rays of the sun unless the external surface of the tank is painted and maintained white or an equivalent method of emission control approved by the Department is used.

2. (No change.)

(b) No person shall cause, suffer, allow, or permit the storage of any **applicable** VOC [having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch absolute (1 millimeter of mercury) or greater at standard conditions] in any stationary storage tank having a maximum capacity of 10,000 gallons (37,850 liters) or greater unless such stationary storage tank is equipped with control apparatus as determined in accordance with the procedures for using Table [1] **2A** or as approved by the Department as being equally or more effective in preventing the emission of a VOC into the outdoor atmosphere.

Procedure for Using Table [1] **2A**

Step 1:	(No change.)
Step 2:	Select the appropriate line in Table [1] **2A** for the vapor pressure determined in Step 1.
Step 3:	(No change.)
Step 4:	(No change.)
Step 5:	(No change.)

TABLE [1] **2A**
(No change in text.)

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

(g) Any stationary storage tank in Range III as determined Table [1] **2A**, constructed or installed on or after December 17, 1979, shall be provided with a double seal floating roof or other control apparatus approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere.

(h) No person shall cause, suffer, allow, or permit the storage of any VOC in any stationary storage tank equipped with an external floating roof, unless[:

1. Prior to June 15, 1990, any such storage tank having a maximum capacity of 40,000 gallons (151,400 liters) or greater is equipped with control apparatus as determined in accordance with the procedure for using Table 1A or as approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere.

2. As of June 15, 1990, and continuously thereafter,] any such storage tank containing a VOC having a vapor pressure of 1.0 pounds per square inch absolute (50 millimeters of mercury) or greater at standard conditions and having a maximum capacity of 20,000 gallons (75,700 liters) or greater is equipped with a double seal-envelope combination or equipment approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere. For the secondary seal, the gap area of gaps exceeding one-eighth inch (0.32 centimeters) in width between the seal and the tank wall shall not exceed 1.0 square inch per foot (6.5 square centimeters per 0.3 meters) of tank diameter.

[Procedure for Using Table 1A

Step 1: Determine the vapor pressure at standard conditions in pounds per square inch absolute of the VOC to be stored.

Step 2: Select the appropriate line in Table 1A for the vapor pressure determined in Step 1.

Step 3: Determine the type of construction of the tank shell or walls, whether riveted or welded.

Step 4: Determine the maximum tank capacity in thousands of gallons.

Step 5: Find the tank capacity range classification for the vapor pressure determined under Step 1 and for the type of construction determined under Step 3.

Step 6: Determine the control requirements in accordance with the following:
Range R-1 and Range W-1: A single seal-envelope combination is required.
Range R-2 and Range W-2: A second seal-envelope combination must be added.

TABLE 1A

DETERMINANTS OF REQUIREMENTS FOR SECOND SEAL RETROFITS ON EXTERNAL FLOATING ROOF STORAGE TANKS CONTAINING VOLATILE ORGANIC COMPOUNDS

VAPOR PRESSURE IN PSIA @ 70°F		TANK CAPACITY IN THOUSANDS OF GALLONS			
		Riveted Tanks		Welded Tanks	
		Range R-1	Range R-2	Range W-1	Range W-2
Greater than	But not Greater than	Not Greater than	Greater than	But not Greater than	Greater than
*0.02	1.0	—	—	—	—
1.0	1.2	470	470	—	—
1.2	1.4	400	400	—	—
1.4	1.6	350	350	—	—
1.6	1.8	300	300	—	—
1.8	2.0	265	265	—	—
2.0	2.2	230	230	1,030	1,030
2.2	2.4	200	200	930	930
2.4	2.6	175	175	840	840
2.6	2.8	155	155	770	770
2.8	3.0	135	135	720	720
3.0	3.2	120	120	665	665
3.2	3.4	105	105	620	620
3.4	3.6	90	90	580	580
3.6	3.8	80	80	545	545
3.8	4.0	75	75	510	510
4.0	4.4	65	65	450	450
4.4	4.8	60	60	405	405
4.8	5.2	50	50	360	360
5.2	5.6	45	45	320	320
5.6	6.0	40	40	280	280
6.0	6.4	40	40	245	245
6.4	6.8	40	40	210	210
6.8	7.2	40	40	180	180
7.2	7.6	40	40	155	155
7.6	8.0	40	40	130	130
8.0	8.4	40	40	110	110
8.4	8.8	40	40	90	90
8.8	9.6	40	40	65	65
9.6	10.4	40	40	50	50
10.4	—	40	40	40	40

*Any VOC which has a vapor pressure of 0.02 pounds per square inch absolute at standard conditions is included in this line.

(i) Prior to June 15, 1990, no person shall cause, suffer, allow, or permit the storage of any VOC having a vapor pressure of greater than 1.5 pounds per square inch absolute (75 millimeters of mercury) at standard conditions in any stationary storage tank having a maximum capacity of greater than 40,000 gallons (151,400 liters) and equipped with an external floating roof having a vapor-mounted primary seal unless such tank is equipped with a second seal-envelope combination. The gap area of gaps exceeding one-eighth inch (0.32 centimeters) in width between the secondary seal and the tank wall shall not exceed 1.0 square inch per foot of tank diameter (6.5 square centimeters per 0.3 meters of tank diameter).

(j) Any person subject to the provisions of (h) and (i) above shall comply with the following schedule:

1. By July 1, 1982, a report shall be submitted listing, for each facility, all stationary storage tanks subject to the provisions of (h) and (i) above and identifying those which do not meet the control requirements of (h) above as of the reporting date; and

2. By December 31, 1982, any 15 noncomplying tanks at each facility shall be equipped with control apparatus as determined in accordance with the procedure for using Table 1A or with the provisions of (i) above; and

3. By December 31, 1983, and by the 31st day of December of each year thereafter, a minimum of 15 additional noncomplying tanks at each facility shall be equipped with control apparatus as determined in accordance with the procedure for using Table 1A or with the provisions of (i) above until compliance with the provisions of (h) and (i) above is achieved, but in no event shall any tank not be so equipped by later than December 31, 1986.

(k) No person shall cause, suffer, allow, or permit a second seal-envelope combination retrofit to be constructed or installed pursuant to the provisions of (i) above without first notifying the Department in writing of his intention to do so and providing the Department the opportunity and access for inspecting the condition of the existing seal-envelope combination.]

[(l)](i) No person shall cause, suffer, allow, or permit the storage of any VOC in any stationary storage tank equipped with an external floating roof unless all openings in such roof, excluding emergency roof drains, are covered when not in active use.

[(m)](j) Any delivery vessel that contains any **applicable** VOC [which has a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater at standard conditions] and is located at a facility and is vented to the atmosphere for more than 30 consecutive days shall be considered a stationary storage tank for the purposes of this section.

[(n)](k) Any person responsible for the emission of any **applicable** VOC [having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater at standards conditions] from any storage tank pursuant to this section shall maintain, for each tank, records specifying each VOC stored and the vapor pressure of each VOC at standard conditions.

7:27-16.3 [Transfer] **Gasoline transfer** operations

(a) No person shall cause, suffer, allow, or permit the transfer of [any VOC which has a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater at standard conditions] **gasoline** into any receiving vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such transfer is made through a submerged fill pipe or by other means approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere during transfer. [By no later than December 31, 1986, such] **Such** submerged fill pipe shall be permanently affixed to any underground storage tank of 2,000 gallons (7,570 liters) or greater total capacity into which gasoline is transferred.

(b) (No change.)

(c) No person shall cause, suffer, allow, or permit the transfer of gasoline from any delivery vessel into any stationary storage tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such storage tank is equipped with and operating one of the following controls:

1.-2. (No change.)

3. A vapor balance system with a [drilled cap on the atmospheric vent, the drilled] hole [not to exceed] **of** 1/4 inch (6.4 millimeters) **or less** in diameter **in the cap on the atmospheric vent**;

4. A vapor control system which reduces by no less than 90 percent [by volume] **the concentration of applicable VOC in** the air-vapor mixture displaced during the transfer of gasoline [and which demonstrates]. **Upon the request of the Department, any owner or operator utilizing a vapor control system shall demonstrate** to the satisfaction of the Department achievement of this control efficiency through testing performed when the ambient air temperature is 80 degrees Fahrenheit (°F) (27 degrees Celsius (°C)) or greater; or

5. A floating roof [or equivalent approved by the Department and the EPA].

(d) No person shall cause, suffer, allow, or permit the transfer of any substance into any gasoline vapor laden delivery vessel [of] **having a maximum capacity of** 2,000 gallons (7,570 liters) or greater [total capacity] unless [such transfer is made at a gasoline loading facility and unless] such delivery vessel is connected to control apparatus installed and [operating] **operated** in accordance with the provisions of (e) below.

(e) No person shall cause, suffer, allow, or permit the transfer or loading of gasoline or any **other** substance into any gasoline vapor laden delivery vessel [or marine delivery vessel] **except** at a [gasoline loading facility unless such] facility **that** is equipped with and operating a control apparatus in accordance with the following provisions:

1. Facilities loading 15,000 gallons (56,775 liters) of gasoline or less per day shall be equipped with and operating a vapor balance system or other control apparatus of equal or higher efficiency. Such vapor balance system shall have no open [operating] vent to the atmosphere during transfer and shall not return the vapors to any tank equipped with a floating roof.

2. Facilities loading more than 15,000 gallons (56,775 liters) of gasoline per day shall be equipped with and operating a vapor control system which:

i. Prevents VOC emissions to the outdoor atmosphere from exceeding the maximum allowable emissions as determined from Table [2] **3A**; or

ii. (No change.)

TABLE [2]**3A**
(No change in text.)

3. The daily loading rate shall be calculated on the basis of the daily average rate during the month with the highest throughput in the last 12 months [operated] **of operation**.

[4. For facilities transferring or loading gasoline into marine delivery vessels, only (d) above, and (k) below, and the following shall apply:

i. Effective February 28, 1991, any facility with an annual throughput of 6,000,000 gallons (22,710,000 liters) or greater for loading gasoline into marine delivery vessels shall be equipped with and operating a vapor control system which reduces the total VOC emissions to the outdoor atmosphere by no less than 95 percent by weight.

ii. Effective February 28, 1991, any facility loading 60,000 gallons (227,100 liters) of gasoline or greater into marine delivery vessels in a single day between May 1 and September 15 shall be equipped with and operating a vapor control system which reduces the total VOC emissions to the outdoor atmosphere by no less than 95 percent by weight.

iii. Effective February 28, 1991, any marine delivery vessel receiving gasoline at a facility subject to the provisions of (e)4i or ii above shall have vapor collection piping and connections which route displaced vapors to the control apparatus.

5. For facilities subject to (e)4i or ii above, by January 19, 1990, the applicant shall submit to the Department a completed application for a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" pursuant to the provisions of N.J.A.C. 7:27-8. This

application shall demonstrate the equipment's ability to reduce the total VOC emissions to the outdoor atmosphere by no less than 95 percent by weight.]

(f) [Unless in compliance with] **Except as provided in** (g)[, (h), (r), (s), (t), and (u)] below, no person shall cause, suffer, allow, or permit the transfer of gasoline into any gasoline vapor laden vehicular fuel tank **unless such person complies with (h) and (p) below, and** unless the transfer is made using a vapor control system that is approved by the Department and that is designed, operated, and maintained so as:

1. To prevent [VOC emissions to] **the release into** the outdoor atmosphere [by] **of** no less than 95 percent by weight **of the VOC generated by** [at all] **dispensing** gasoline **at the** [dispensing facilities except those facilities exempted in (g) below] **facility**; and

2. (No change.)

(g) (No change.)

(h) Any person subject to the provisions of (f) above shall comply with the following provisions:

1. (No change.)

2. Documentation of the monthly throughput shall be made available upon request by the Department[,].

(i) No person shall cause, suffer, allow, or permit any delivery vessel **except railroad tank cars or marine tank vessels,** having a maximum [total] capacity of 2,000 gallons (7,570 liters) or greater to contain gasoline unless such delivery vessel:

1.-2. (No change.)

3. Has a record of certification which shall be kept with the delivery vessel at all times and made available upon request by the Department. The record of certification shall include the test title, delivery vessel owner and address, delivery vessel identification number, testing location, date of test, tester's name and signature, and test results. [The provision of this paragraph shall become effective December 31, 1986.]

(j) (No change.)

(k) No person shall cause, suffer, allow, or permit any [VOC to be emitted into the outdoor atmosphere during a] transfer of gasoline, subject to the provisions of (c), (d), (e), and (f) above, [from leaking components of vapor control systems or] **if:**

1. The delivery [vessels] being loaded or unloaded [**if**], **any control apparatus or other equipment serving the transfer operation has a leak that**:

[1. The concentration of the emissions to the outdoor atmosphere is] **i. Results in a concentration of VOC** greater than or equal to 100 percent of the lower explosive limit of propane when measured at a distance of 1.0 inch (2.54 centimeters) **or less** from the [source, or] **location of the leak;** or

[2. The emissions are in the] **ii. Is a** liquid [state.] **leak;**

2. Any component of the delivery vessel designed for preventing the release of gasoline vapors is not installed and operating as designed; or

3. The continued transfer results in a liquid gasoline spill.

(l) (No change.)

(m) No person shall cause, suffer, allow, or permit the transport **or transfer** of [any VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater] **gasoline** in a delivery vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such vessel is vapor-tight at all times while containing any VOC except **during**:

1. [Under emergency] **Emergency** conditions; [or]

2. [While gauging] **Gauging**; or

3. [While venting] **Venting** through a vapor control system approved by the Department.

(n)-(o) (No change.)

[(p) Any person subject to the provisions of (e)1 above and loading 4,000 gallons (15,140 liters) of gasoline or less per day shall comply with the following schedule:

1. By January 1, 1987, the applicant, pursuant to N.J.A.C. 7:27-8, shall submit a completed application for a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" to the Department. This application shall demonstrate compliance with the requirements of (e)1 above.

2. By May 1, 1987, construction of equipment and control apparatus in accordance with the approved "Permit to Construct, Install, or Alter Control Apparatus or Equipment" shall commence.

3. By November 1, 1987, compliance shall be achieved.]

[(q)](**p**) [Any person subject to the provisions of (e)4 above shall submit yearly documentation of the annual throughput of each gasoline loading facility to the Department by June 1 of the calendar year following the year for which the documentation is valid. The annual throughput of gasoline shall be based on the period January 1 through December 31.] **The provisions of this section shall not apply to the loading of gasoline as cargo into any marine tank vessel. Marine tank vessel loading operations occurring in New Jersey or in New Jersey coastal waters are subject to the provisions of N.J.A.C. 7:27-16.5.**

[(r) Any person subject to the provisions of (f) above and having an average monthly throughput of 40,000 gallons (151,400 liters) or greater shall comply with the following schedules:

1. By March 21, 1988, the applicant, pursuant to the provisions of N.J.A.C. 7:27-8, shall submit a completed application for a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" to the Department which meets the requirements of (f) above;

2. By June 21, 1988, construction of equipment and control apparatus in accordance with the approved "Permit to Construct, Install, or Alter Control Apparatus or Equipment" shall commence; and

3. By December 30, 1988, compliance with (f) above shall be achieved.

(s) Any person subject to the provisions of (f) above and having an average monthly throughput of less than 40,000 gallons (151,400 liters) shall comply with the following schedules:

1. By November 1, 1988, the applicant, pursuant to the provisions of N.J.A.C. 7:27-8, shall submit a completed application for a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" to the Department which meets the requirements of (f) above.

2. By March 1, 1989, construction of equipment and control apparatus in accordance with the approved "Permit to Construct, Install, or Alter Control Apparatus or Equipment" shall commence; and

3. By December 29, 1989, compliance with (f) shall be achieved.

(t) Notwithstanding the provisions of (r) above, any existing gasoline dispensing facility with an average monthly throughput of greater than 10,000 gallons replacing an underground gasoline storage tank after the operative date of this subsection shall, prior to using that tank for dispensing gasoline, install equipment meeting the requirements of (f) above.]

[(u) Notwithstanding the provisions of (r) above, any] (**q**) **Any** new gasoline dispensing facility [which begins the installation of an underground gasoline storage tank after the operative date of this subsection] shall install equipment meeting the requirements of (f) above prior to the use of that [tank] **facility** for dispensing gasoline.

[(v) Notwithstanding the provisions of (r) or (s) above, any] (**r**) **Any** person responsible for an existing gasoline dispensing facility which had not previously been required to install a vapor recovery system pursuant to (f) above and which has an average monthly throughput, as determined by (h) above, of greater than 10,000 gallons as of, or after, March 28, 1992 shall comply with the following schedule:

1. Within [3] **three** months of exceeding the average monthly throughput of 10,000 gallons, the applicant, pursuant to the provisions of N.J.A.C. 7:27-8, shall submit a completed application for a "Permit to Construct, Install, or Alter Control Apparatus or Equipment" to the Department which meets the requirements of (f) above;

2. Within [9] **nine** months of exceeding the average monthly throughput of 10,000 gallons, construction of the equipment and control apparatus in accordance with the approved "Permit to Construct, Install, or Alter Control Apparatus or Equipment" shall commence; and

3. Within 18 months of exceeding the average monthly throughput of 10,000 gallons, compliance with (f) above shall be achieved.

[(w)](s) Any person responsible for any gasoline loading facility subject to (e)1, 2, or 3 above shall maintain the following records:

1. On a daily basis, record the total quantity, in gallons or liters, loaded into delivery vessels at the facility;

2. On a continuous basis or at a frequency approved by the Department in writing:

i. (No change.)

ii. For any control apparatus using carbon or other adsorptive material, record the concentration of the total VOC in the flue gas emitted to the outdoor atmosphere; or, **provided that the owner or operator confirms daily that the automatic switching between carbon beds is functioning in accordance with permit conditions,** [on a daily basis,] **record** the date [and time the carbon or other adsorptive material used in any control apparatus is regenerated or replaced] **of carbon bed replacement;** and

3. (No change.)

7:27-16.4 VOC transfer operations, other than gasoline

(a) On and after the operative date of these new rules, the provisions of this section shall apply to any transfer of an applicable VOC, except:

1. The transfer of gasoline. Gasoline transfer operations are subject to the provisions of N.J.A.C. 7:27-16.3; and

2. The loading of applicable VOC as cargo into a marine tank vessel. Marine tank vessel loading operations occurring in New Jersey or in New Jersey's coastal waters are subject to the provisions of N.J.A.C. 7:27-16.5.

(b) No person shall cause, suffer, allow or permit the transfer of any applicable VOC into any receiving vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such transfer is made through a submerged fill pipe or by other means approved by the Department as being equally or more effective in preventing the emission of any VOC into the outdoor atmosphere during transfer. Such submerged fill pipe shall be permanently affixed to any underground storage tank of 2,000 gallons (7,570 liters) or greater total capacity into which the VOC is transferred. This subsection shall not apply to a transfer to a manufacturing process vessel installed before December 17, 1979.

(c) On and after May 31, 1995, no person shall cause, suffer, allow, or permit the transfer of any applicable VOC from a delivery vessel into any stationary storage tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater and having a total calculated annual emission rate over 1,000 pounds of applicable VOC as determined pursuant to (d) below unless the storage tank is equipped with and operating one of the following control apparatus:

1. A vapor control apparatus which reduces by no less than 90 percent the concentration of applicable VOC in the air-vapor mixture displaced during the transfer of applicable VOC;

2. A floating roof; or

3. A vapor balance system with:

i. All atmospheric vents positively closed during transfer;

ii. A conservation vent adjusted to remain closed during transfer; or

iii. A hole of 1/4 inch (6.4 millimeters) or less in diameter in the cap on the atmospheric vent.

(d) For the purposes of (c) above, the total calculated annual emission rate for each tank shall be determined in accordance with the following procedure:

1. Calculate the emission factor for each applicable VOC as follows:

$$EF = VP \times MW \times 24 \times 10^{-6}$$

Where:

EF = the emission factor for each applicable VOC being transferred;

VP = the vapor pressure (psia) of each applicable VOC. If the VOC is heated, this term is the vapor pressure of the VOC at the temperature at the point of transfer; if the VOC is not heated, this term is the vapor pressure of the VOC at standard conditions;

MW = the molecular weight of the applicable VOC; and

24×10^{-6} = a constant to convert units;

2. Determine the calculated annual emission rate by multiplying each emission factor calculated in (d)1 above, by the annual quantity of each applicable VOC transferred from delivery vessels into the tank. Sum the calculated annual emission rates for each applicable VOC transferred. For a storage tank for which a permit is in effect, the annual quantity of each applicable VOC transferred shall be considered to be the maximum quantity allowed by the permit. For a storage tank for which no permit is in effect, the annual quantity of applicable VOC transferred shall be the quantity that was transferred during the previous calendar year (from January 1 through December 31); and

3. Compare the total calculated annual emission rate to 1,000 pounds. If the total calculated annual emission rate for the tank is less than 1,000 pounds, this section does not require the use of any control apparatus. Otherwise, one of the control apparatus described in (c) above must be used.

(e) The provisions of (c) above shall not apply to a storage tank during construction ballast if an applicable VOC is used.

(f) On and after May 31, 1995, no person shall cause, suffer, allow, or permit the transfer of any applicable VOC into any delivery vessel, except railroad tank cars, having a maximum capacity of 2,000 gallons (7,570 liters) or greater and at a facility having a total calculated annual emission rate over 2,000 pounds of applicable VOC, as determined pursuant to (g) below, unless the transfer is directly from a tank equipped with a floating roof or unless any such delivery vessel is connected to one of the following control apparatus:

1. A vapor control apparatus which reduces by no less than 90 percent by weight the total VOC emissions to the outdoor atmosphere; or

2. A vapor balance system with all atmospheric vents positively closed during transfer. Such vapor balance system shall not return the vapors to any tank equipped with a floating roof.

(g) For the purposes of (f) above, the total calculated annual emission rate of applicable VOC transferred into delivery vessels at a facility shall be determined in accordance with the following procedure:

1. Calculate the emission factor for each applicable VOC as follows:

$$EF = VP \times MW \times 24 \times 10^{-6}$$

Where:

EF = the emission factor for each applicable VOC being transferred;

VP = the vapor pressure (psia) of each applicable VOC. If the VOC is heated, this term is the vapor pressure of the VOC at the temperature at the point of transfer; if the VOC is not heated, this term is the vapor pressure of the VOC at standard conditions;

MW = the molecular weight of the applicable VOC; and

24×10^{-6} = a constant to convert units;

2. Determine the calculated annual emission rate by multiplying each emission factor calculated in (g)1 above, by the annual quantity of each applicable VOC transferred into delivery vessels at the facility. Sum the calculated annual emission rates for each applicable VOC transferred. For a facility for which a permit is in effect, the annual quantity of each applicable VOC transferred shall be considered to be the maximum quantity allowed by the permit. For a facility for which no permit is in effect, the annual quantity of applicable VOC transferred shall be the quantity that was transferred during the previous calendar year (from January 1 through December 31); and

3. Compare the total calculated annual emission rate to 2,000 pounds. If the calculated annual emission rate is less than 2,000

pounds, this section does not require the use of any control apparatus. Otherwise, one of the control apparatuses described in (f) above must be used.

(h) The provisions of (f) above shall not apply to a delivery vessel used for less than 30 days for the purpose of holding VOC from a storage tank during a period in which the storage tank is undergoing repair or maintenance.

(i) On and after May 31, 1995, no person shall cause, suffer, allow, or permit any tank truck having a maximum capacity of 2,000 gallons (7,570 liters) or greater to contain applicable VOC unless such tank truck:

1. Sustains a pressure change of less than three inches of water (six millimeters of mercury) in five minutes when pressurized to 18 inches of water (34 millimeters of mercury) and evacuated to six inches of water (11 millimeters of mercury), as tested at least once in every 12-month period for leaks in accordance with test procedures specified by the Department;

2. Has a certification affixed to the vessel in a prominent location, which indicates the identification number of the vessel and the date the vessel last passed the pressure and vacuum tests required by (i)1 above; and

3. Has a record of certification which shall be kept with the delivery vessel at all times and made available upon request by the Department. The record of certification shall include the test title, delivery vessel owner and address, delivery vessel identification number, testing location, date of test, tester's name and signature, and test results.

(j) On and after May 31, 1995, no person shall cause, suffer, allow, or permit a transfer to or from a tank truck of applicable VOC, which transfer is subject to the provisions of (c) or (f) above, if the tank truck being loaded is under a pressure in excess of 18 inches of water (34 millimeters of mercury) gauge or the tank truck being unloaded is under a vacuum in excess of six inches of water (11 millimeters of mercury) gauge.

(k) No person shall cause, suffer, allow, or permit any transfer of applicable VOC, which transfer is subject to the provisions of (c) or (f) above, if:

1. On and after May 31, 1995, the delivery vessel being loaded or unloaded, any control apparatus or other equipment serving the transfer operation has a leak that:

i. Results in a concentration of VOC greater than or equal to 100 percent of the lower explosive limit of propane when measured at a distance within 1.0 inch (2.54 centimeters) of the source; or

ii. Is a liquid leak;

2. Any components of the delivery vessel designed for preventing the release of applicable VOC vapors are not installed and operating as designed; or

3. The transfer results or would result in a liquid VOC spill.

(l) On and after May 31, 1995, no person shall cause, suffer, allow, or permit the transport or transfer of any applicable VOC in a delivery vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such vessel, while containing any applicable VOC, is vapor-tight at all times, except during:

1. Emergency conditions;

2. Gauging; or

3. Venting through a vapor control apparatus approved by the Department.

(m) The owner or operator of any tank truck subject to the provisions of (i), (k) or (l) above shall repair any leaking vessel within 15 days of when the leak was discovered or should have been discovered and shall have the tank truck recertified in accordance with (i) above.

(n) Any owner or operator of a facility with transfer operations subject to the provisions of (c) or (f) above shall comply with the following schedule:

1. By the date which is three months after the operative date of these new rules, submit to the Chief, Bureau of New Source Review, Division of Environmental Regulation, Department of Environmental Protection and Energy, CN 401, Trenton, New Jersey 08625-0401, a complete application for each permit required, pursuant to N.J.A.C. 7:27-8, to achieve compliance with (c) or (f) above; and

2. By May 31, 1995, achieve compliance with (c) or (f) above and maintain compliance with this section thereafter.

(o) The owner or operator of any VOC loading facility subject to (f) above shall maintain the following records:

1. On a daily basis, record the name and total quantity of each applicable VOC, in gallons or liters, loaded into delivery vessels at the facility;

2. On a continuous basis or at a frequency approved by the Department in writing:

i. For any thermal oxidizer used to control the emission of VOC, record the operating temperature at the exit of the combustion chamber and the carbon monoxide concentration in the flue gas emitted to the outdoor atmosphere; or

ii. For any control apparatus using carbon or other adsorptive material, record the concentration of the total VOC in the flue gas emitted to the outdoor atmosphere or record the date of carbon bed the replacement and, on a daily basis, check the functioning of the automatic system for switching between carbon beds; and

3. Upon request of the Department and at a frequency specified by the Department, record any other operating parameter relevant to the prevention or control of the emission of air contaminants from the facility.

(p) Upon the request of the Department, any owner or operator utilizing a vapor control system pursuant to (c)1i or (g)1i above shall demonstrate to the satisfaction of the Department achievement of the required control efficiency through testing performed when the ambient air temperature is 80 degrees Fahrenheit (27 degrees Celsius) or greater.

7:27-16.5 Marine tank vessel loading and ballasting operations

(a) The provisions of this section apply to the following marine tank vessel operations conducted at marine terminals in New Jersey:

1. The transfer of applicable VOC, including gasoline, as cargo into a marine tank vessel; and

2. Ballasting conducted in a marine tank vessel.

(b) The owner or operator of any marine terminal having an annual throughput of 6,000,000 gallons (22,710,000 liters) or greater for loading gasoline as cargo into marine tank vessels or having a daily throughput, between May 1 and September 15, of 60,000 gallons or greater for loading gasoline as cargo into marine tank vessels shall install and operate a control apparatus, which reduces the total VOC emissions to the outdoor atmosphere resulting from gasoline transfers at the facility by no less than 95 percent by weight.

(c) The owner or operator of any marine terminal that meets the following criteria shall, by the date which is three months after the operative date of these rules, submit to the Department a written alternative emission control plan in accordance with N.J.A.C. 7:27-16.17 that shall be implemented in accordance with a schedule in the plan approved in accordance with N.J.A.C. 7:27-16.17:

1. The marine terminal is a major VOC facility;

2. A transfer of some applicable VOC that is not gasoline is conducted at the marine terminal; and

3. Any of the source operations at the terminal which include the transfer of some applicable VOC that is not gasoline has the potential to emit 10 tons per year or more of VOC.

(d) Effective on the operative date of these new rules, the Department shall not approve an application for a permit for equipment or control apparatus, required pursuant to (b) or (c) above, unless:

1. The system has been designed to collect and control the emissions of applicable VOC resulting from ballasting; or

2. The potential to emit VOC from ballasting is limited to less than two pounds of VOC per 1,000 barrels of ballast transferred.

(e) Effective on the operative date of these new rules, if a marine tank vessel or marine terminal is equipped with a control apparatus, no person shall cause, suffer, allow, or permit ballasting to be conducted on a marine tank vessel at a marine terminal unless the control apparatus is used during ballasting to capture and control the VOC emissions resulting from ballasting or unless the potential to emit VOC from ballasting is less than two pounds of VOC per 1,000 barrels of ballast transferred.

(f) Effective on the operative date of these new rules, no person subject to the provision of (b) above, and effective May 31, 1995,

no person subject to (c) above, shall cause, suffer, allow, or permit any transfer of any applicable VOC, or ballasting if:

1. The delivery vessel being loaded, any control apparatus or other equipment serving the transfer operation has a leak that:

i. Results in a concentration of VOC greater than or equal to 100 percent of the lower explosive limit of propane when measured at a distance of 1.0 inch (2.54 centimeters) or less from the source; or

ii. Is a liquid leak;

2. Any component of the marine tank vessel or any control apparatus serving the source operation is not installed and operating as designed; or

3. The transfer results or would result in a liquid VOC spill.

(g) Monitoring for gaseous leaks of VOC shall be conducted according to EPA's Reference Method 21 (40 CFR-Part 60-Appendix A), incorporated herein by reference, or any other equivalent test method approved in advance in writing by the Department and EPA.

(h) Any testing to determine VOC emissions during the transfer of VOC to a marine tank vessel, conducted in order to determine compliance with this section, shall be performed for at least 60 minutes during the transfer of the last 50 percent of total liquid cargo. For a transfer operation for which the transfer of the last 50 percent of the total liquid cargo is less than a 60 minute duration, the testing shall be performed during the transfer of the entire last 50 percent of the total liquid cargo.

(i) Any tests conducted pursuant to this section to determine emissions of VOC shall be carried out in accordance with:

1. New Jersey Air Test Method 3 (N.J.A.C. 7:27B-3);

2. EPA's Reference Method 25 or 25(a) (40 CFR-Part 60-Appendix A); or

3. Any other equivalent test method approved in advance in writing by the Department and EPA.

(j) Effective on the operative date of these new rules, the owner or operator of a marine terminal subject to (b) or (c) above shall maintain at the marine terminal records sufficient to demonstrate compliance with this section. Any records required by this section shall be made available to the Department upon request and shall be maintained for five years. For each transfer of gasoline or other applicable VOC to the marine tank vessel and for performance of ballasting on a marine tank vessel at the marine terminal, the records shall include the following information:

1. The company name and address of the marine terminal;

2. The date and time at which each marine tank vessel arrived and departed from the marine terminal;

3. The name and registry of the marine tank vessel;

4. For any transfer operation, the type of VOC and the quantity, in gallons or liters, loaded into the marine tank vessel;

5. The prior cargo carried by the marine tank vessel and the condition (that is, cleaned, crude oil washed, gas freed, etc.) of the cargo tanks on the marine tank vessel prior to their being loaded or ballasted;

6. For ballasting, the amount of ballast water or other liquid added to ballast tanks which are unsegregated; and

7. For ballasting, a reference to any written procedures followed to prevent venting while ballasting into ballast tanks which are unsegregated.

(k) It is an affirmative defense to liability for a violation of any of the provisions of this section that compliance would have any of the following effects:

1. Require any act or omission that would be in violation of any statute or regulation over which the United States Coast Guard has jurisdiction; or

2. Prevent an act that was necessary to secure the safety of a vessel or the safety of the passengers or crew.

7:27-[16.4]**16.6**

(No change in text.)

7:27-[16.5]**16.7** Surface coating and graphic arts operations

(a) The provisions of this section apply to any surface coating operation or graphic arts operation to which any control criteria set forth in Table 7A, 7B, 7C, or 7D applies. Other surface coating operation or graphic arts operation located at a major VOC facility and having the potential to emit three pounds per hour or more of VOC shall be subject to the provisions of N.J.A.C. 7:27-16.17.

(b) Reserved

[(a)](c) No person shall cause, suffer, allow, or permit the use of any surface coating operation **or graphic arts operation subject to this section,** unless:

1. The VOC content of any surface coating formulation as applied does not exceed the **applicable** maximum allowable VOC content [as] **if any,** specified in Table [3A, 3B, 3C, 3D or 3E] **7A, 7B, 7C, or 7D**; or

2. Until March 28, 1994, the surface coating operation is included in a mathematical combination of sources which was approved by the Department prior to March 28, 1992.

[2.]**3.** If more than one surface coating formulation subject to the same maximum allowable VOC content limit as set forth in [the applicable table] **Table 7A, 7B, 7C, or 7D** is applied by a single surface coating **or graphic arts** operation **and one or more of any such formulation are not in compliance with any limit specified in the applicable table,** the daily weighted mean of the VOC content of the [coatings] **surface coating formulations** as applied does not exceed the **applicable** maximum allowable VOC content as set forth in **the applicable** Table. [3A, 3B, 3C, 3D, or 3E, as] **This daily weighted mean shall be** calculated using the following equation:

$$\text{Daily mean VOC content} = \frac{\sum_{i=1}^{n} [(c_1)(v_1)](C_i)(V_i)}{\sum_{i=1}^{n} [(v_1)](V_i)}$$

where n = number of [coatings] **surface coating formulations**, subject to the same maximum allowable VOC content standard, applied in one day;

i = subscript denoting an individual surface coating formulation;

$[c_1](C_i)$ = maximum actual VOC content per volume of each [coating] **surface coating formulation** (minus water) applied in one day, in pounds per gallon or kilograms per liter; and

$[v_1](V_i)$ = volume of each [coating] **surface coating formulation** (minus water) applied in one day, in gallons or liters; or

[3.]**4.** [If the] **The** surface coating **or graphic arts** operation is served by VOC control apparatus **satisfying the requirements listed in (c)4i through iii below**:

i. The control apparatus **for any surface coating operation** prevents no less than 90 percent by weight of the VOC content in the surface coating formulation as applied each hour from being discharged directly or indirectly into the outdoor atmosphere; or

ii. The control apparatus for any graphic arts operation meets the collection and control requirements set forth in (h) below; or

[ii.]**iii.** The VOC emissions from the surface coating **or graphic arts** operation are controlled by the control apparatus so that the operation results in an hourly VOC emission rate no greater than the maximum allowable hourly emission rate calculated on a solids as applied basis in accordance with the following equation:

$$\text{Maximum allowable hourly rate} = (1-y/d)\ (z)\ (x)/(1-x/d)$$

where x = maximum allowable VOC content per volume of **surface** coating **formulation** (minus water), in pounds per gallon (lb/gal) or kilograms per liter (kg/l) as set forth in Table [3A]**7A**, [3B] **7B**, [3C]**7C**, [3D,] or [3E]**7D** of this section;

d = density of the VOC of the applied surface coating formulation in pounds per gallon (lb/gal) or kilograms per liter (kg/l);

y = VOC content of the applied surface coating formulation (minus water) in pounds per gallon (lb/gal) or kilograms per liter (kg/l); and

z = volume of the **surface** coating **formulation** (minus water) applied per hour in gallons per hour (gal/hr) or liters per hour (l/hr); or

[iii.]**iv.** For a surface coating **or graphic arts** operation that applies more than one surface coating formulation subject to the same maximum allowable VOC content limit as set forth in the applicable table, the control apparatus collects and prevents VOC from being discharged into the outdoor atmosphere so that the actual daily emissions are less than the allowable daily emissions as calculated below:

Actual daily emissions = $(1-n_c n_d)(VOC_a)(V)$

where VOC_a = daily mean VOC content of the surface coating formulations as calculed by [2] **(a)3** above;

V = total daily volume of the surface coating formulations, as applied;

n_c = capture efficiency, i.e. the ratio of the VOC collected by the control apparatus to the VOC in the surface coating formulations as applied, as determined by a method approved by the Department and EPA; and

n_d = destruction efficiency of the control apparatus, i.e. the ratio of the VOC prevented from being discharged into the outdoor atmosphere to the VOC collected by the control apparatus, as determined by a method approved by the Department and EPA; and

Allowable daily emissions = $(1-VOC_a/d)\ (V)\ (x)/(1-x/d)$

where x = maximum allowable VOC content per volume of **surface** coating **formulation** (minus water), in pounds per gallon (lb/gal) or kilograms per liter (kg/l) as set forth in Table [3A]**7A**, [3B] **7B**, [3C]**7C**, [3D,] or [3E]**7D** of this section;

d = density of the VOC of the applied surface coating formulation in pounds per gallon (lb/gal) or kilograms per liter (kg/l);

V = total daily volume, in gallons or liters, of the surface coating formulations (minus water) as applied per day; and

VOC_a = daily mean VOC content of the applied surface coating formulations as calculated by [2] **(a)3** above[; or].

[4. Until March 28, 1994, the surface coating operation is included in a mathematical combination of sources which was approved by the Department prior to March 28, 1992.]

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

[(c)](**e**) The provisions of [(a)](**c**) and [(b)](**d**) above and [(f)](**h**), [(g)](**i**), and [(h)](**j**) below shall not apply to any individual surface coating or graphic arts operation in which the total surface coating formulations containing VOC are applied:

[1. Prior to June 15, 1990, at rates not in excess of one gallon per hour and five gallons per day;]

[2. As of June 15, 1990 and continuously thereafter, at] **1. At** rates not in excess of one half gallon per hour and two and one half gallons per day; or

[3.]**2.** For the purpose of developing new [coatings] **surface coating formulations** or new [coating] equipment **for use in surface coating or graphic arts operations**, or for the purpose of performing research preceding such development provided such **surface coating** formulations are applied at rates not in excess of two gallons per hour and three gallons per day.

[(d)](**f**) [Any person responsible for] **The owner or operator of** any automobile or light duty truck surface coating operation may, as an alternative to complying, pursuant to [(a)] **(c)** above, with the content limits set forth in Table [3A] **7A**, comply with the provisions of Table [3C] **7C** pertaining to spray prime and spray topcoat surface coating formulations, provided that the transfer efficiency of the spray coating operation is determined in accordance with a method approved by the Department and the EPA.

TABLE [3A] **7A**
[MAXIMUM ALLOWABLE VOC CONTENT IN COATINGS FOR]
AUTOMOBILE AND LIGHT DUTY TRUCK SURFACE COATING OPERATIONS
CONTROL CRITERIA AND COMPLIANCE DATES

Type of Operation	Maximum Allowable VOC Content Per Volume of Coating ([Minus Water] **minus water**)		
	Pounds Per Gallon	Kilograms Per Liter	Final Compliance Date
(No change in text.)			

TABLE [3B] **7B**
[MAXIMUM ALLOWABLE VOC CONTENT IN COATINGS
FOR] MISCELLANEOUS SURFACE COATING OPERATIONS
CONTROL CRITERIA AND COMPLIANCE DATES

Type of Operation	Maximum Allowable VOC Content per Volume of Coating (minus water)		
	Pounds Per Gallon	Kilograms Per Liter	**Final Compliance Date**
Group I			
Can Coating			**December 31, 1981**
Sheet basecoat	2.8	0.34	
Two-piece can exterior			
Two- and three-piece can interior body spray, two-piece and exterior	4.2	0.51	
Side-seam spray	5.5	0.66	
End sealing compound	3.7	0.44	
Coil Coating	2.6	0.31	**December 31, 1981**
Fabric Coating	2.9	0.35	**December 31, 1981**
Vinyl Coating	3.8	0.45	**December 31, 1981**
Paper Coating	2.9	0.35	**December 31, 1981**
Metal Furniture Coating	3.0	0.36	**December 31, 1981**
Magnet Wire Coating	1.7	0.20	**December 31, 1981**
Large Appliance Coating	2.8	0.34	**December 31, 1981**
Miscellaneous Metal Parts and Products			**December 31, 1983**
Clear coating	4.3	0.52	
Air-dried coating	3.5	0.42	
Extreme performance coating	3.5	0.42	
All other coatings	3.0	0.36	
Flat Wood Paneling			**December 31, 1983**
Printed hardwood plywood panels and particleboard panels	2.7	0.32	
Natural finish hardwood plywood	3.3	0.40	
Hardboard panels	3.6	0.43	
Group II			
Leather Coating	5.8	0.70	**December 31, 1987**
Urethane Coating	3.8	0.45	**December 31, 1987**
Table Coating	5.5	0.66	**December 31, 1987**
Glass Coating	3.0	0.36	**December 31, 1987**
Wood Furniture			**December 31, 1987**
Semitransparent stain	**6.8**	**0.82**	
Wash coat	**6.1**	**0.73**	
Opaque stain	**4.7**	**0.56**	
Sealer	**5.6**	**0.67**	
Pigment coat	**5.0**	**0.60**	
Clear Topcoat	**5.6**	**0.67**	
Group III			
Coatings for Metal and Concrete Pipe			**May 31, 1995, except December 31, 1983 for metal pipe coating**
Clear coating	**4.3**	**0.52**	
Air-dried coating	**3.5**	**0.42**	
Extreme performance coating	**3.5**	**0.42**	
All other coatings	**3.0**	**0.36**	

TABLE [3C] **7C**
(No change in text.)

NOTE: Each combination of VOC content and transfer efficiency in Table [3C] **7C** is equivalent to a daily emission of 15.1 pounds of VOC per gallon of solids deposited, minus water. Verification of this equivalent emission rate using the methods prescribed in the "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light Duty Truck Topcoat Operations" (EPA 450/3-88-018) shall satisfy compliance with Table [3C] **7C**.

TABLE [3D] **7D**
GRAPHIC ARTS OPERATIONS
Part A
COMPLIANCE DATES

Type of Graphic Arts Operation	Final Compliance Date
Rotogravure printing operations (web-fed) and flexographic printing operations which produces published material or packaging for commercial or industrial purposes[1]	**December 31, 1981**
Rotogravure printing operations (web-fed) and flexographic printing operations on vinyl or urethane coated fabric or sheets[1]	**December 31, 1987**
Fabric printing operations[1]	**December 31, 1987**
Gravure printing operations (sheet-fed)	**May 31, 1995**
Screen printing operations	**May 31, 1995**

Part B

[MAXIMUM ALLOWABLE VOC CONTENT IN COATINGS]
CONTROL CRITERIA FOR GRAPHIC ARTS SOURCE OPERATIONS **EXCEPT SCREEN PRINTING OPERATIONS**

Basis	Control [Criterion] **Criteria**
[For] **Surface coating formulations[2]** that contain water **(except fountain solutions)**:	Maximum Allowable volume percent VOC in volatile fraction of [coatings] **surface coating formulations or fountain solutions** (VOC plus water) as applied. [Volume Percent] 25.0%
[or]	
[For] **Surface coating formulations[2]** that do not contain water:	Maximum Allowable VOC Content per volume of **surface coating** formulation (minus water) Pounds per Gallon: 2.9; Kilograms Per Liter: 0.35
Fountain solutions:	**5.0%, if the temperature of the fountain solution is 55°F or less; or** **3.0%, if the temperature of the fountain solution is higher than 55°F**

Part C
CONTROL CRITERIA FOR SCREEN PRINTING OPERATIONS

Basis	Control Criteria Maximum Allowable VOC content per volume of surface coating formulations[2] Pounds per Gallon	Kilograms per Liter
Substrate Category:[3]		
Paper	**3.3**	**0.40**
Glass and Ceramic	**3.3**	**0.40**
Metal	**3.3**	**0.40**
Rigid and Flexible Plastic	**3.3**	**0.40**
Reflective Sheeting	**3.3**	**0.40**
Pressure Sensitive Decals	**3.3**	**0.40**
Wood	**3.3**	**0.40**
Fabric	**2.9**	**0.35**
	Pounds per Gallon	**Kilograms per Liter**
Surface Coating Formulation:		
Conductive Ink	**8.5**	**1.03**
Special Purpose Screen Printing Inks and Coatings	**6.7**	**0.81**

[1]Control apparatus serving certain graphic arts operations of this type which were constructed prior to the effective date of these amendments may have compliance dates on or after the effective date of these amendments, pursuant to the provisions of (p) below.

[2]This term includes inks and coatings; see definition of "surface coating formulation."

[3]Except where conductive ink and special purpose screen printing inks and coatings are used.

[TABLE 3E
MAXIMUM ALLOWABLE VOC CONTENT IN COATINGS FOR WOOD FURNITURE SURFACE COATING OPERATIONS

Type of Surface Coating Formulation	Maximum Allowable VOC Content per Volume of Coating (minus water) Pounds per Gallon	Kilograms per Liter
Semitransparent stain	6.8	0.82
Wash coat	6.1	0.73
Opaque stain	4.7	0.56
Sealer	5.6	0.67
Pigment coat	5.0	0.60
Clear topcoat	5.6	0.67]

[(e)](g) [Any person responsible for] **The owner or operator of** any metal furniture or large appliance surface coating operation may, as an alternative to complying with the applicable maximum allowable VOC content limits per volume of **surface** coating **formulation** (minus water) set forth in Group I of Table [3B] **7B**, pursuant to [(a)1](c)**1** above, apply to the Department for an alternative maximum allowable VOC content limit per volume of **surface** coating **formulation**, provided such person can demonstrate to the satisfaction of the Department and the EPA that the surface coating formulation is applied at a transfer efficiency of greater than 60 percent.

[(f)](h) **Except as provided in (p) below,** [Any person responsible for a] **the owner or operator of any** rotogravure, **sheet-fed gravure,** flexographic, [or] fabric, **or screen** printing operation may, as an alternative to complying with the **control criteria** requirements set forth in Table [3D] **7D**, pursuant to [(a)1] (c)**1** above, install and use control apparatus which:

1. Collects at least 75 percent by volume of the source gas emitted from a rotogravure **or gravure** printing operation **(sheet-fed)**, including associated dryers, and prevents from being discharged into the outdoor atmosphere [at]:

i. At least [90]**95** percent by volume of the VOC collected on an hourly basis[;] **if a thermal oxidizer is used to control emissions, except as provided in (p) below; or**

ii. At least 90 percent by volume of the VOC collected on an hourly basis if a carbon adsorption system or any other control device is used to control emissions;

2. Collects at least 70 percent by volume of the source gas emitted from a flexographic printing operation, including associated dryers, and prevents from being discharged into the outdoor atmosphere [at]:

i. At least [90] **95** percent by volume of the VOC collected on an hourly basis **if a thermal oxidizer is used to control emissions, except as provided in (p) below**; or

ii. At least 90 percent by volume of the VOC collected on an hourly basis if a carbon adsorption system or any other control device is used to control emissions;

3. Collects at least 70 percent by volume of the source gas emitted from a fabric printing operation, including associated dryers, and prevents from being discharged into the outdoor atmosphere [at]:

i. At least [90] **95** percent by volume of the VOC collected on an hourly basis[.] **if a thermal oxidizer is used to control emissions, except as provided in (r) below; or**

ii. At least 90 percent by volume of the VOC collected on an hourly basis if a carbon adsorption system or any other control device is used to control emissions; or

4. Collects at least 70 percent by volume of the source gas emitted from a screen printing operation and prevents from being discharged into the outdoor atmosphere:

i. At least 95 percent by volume of the VOC collected on an hourly basis if a thermal oxidizer is used to control emissions; or

ii. At least 90 percent by volume of the VOC collected on an hourly basis if a carbon adsorption system or any other control device is used to control emissions.

[(g)](i) Notwithstanding the provisions of [(a)3ii and (a)4] (c)2 and (c)4ii above, [any person responsible for a] **the owner or operator of any** tablet coating operation that uses a surface coating formulation that does not comply with the maximum allowable VOC content limits per volume of coating (minus water) set forth in Table [3B] **7B**, Group II, shall install and use control apparatus which prevents no less than 90 percent by weight of the VOC content in the surface coating formulation as applied each hour from being discharged directly or indirectly into the outdoor atmosphere.

[(h)](j) [Any person responsible for] **The owner or operator of any** wood furniture surface coating operation shall comply with the following requirements:

1. At a facility emitting less than 50 tons (45.36 megagrams) of VOC per year, each surface coating formulation specified in Table [3E] **7B, Group II under "Wood Furniture"** shall be applied using airless, air-assisted airless, or heated airless spray techniques, or another application method approved by the Department and the EPA as having a transfer efficiency of at least 40 percent; or

2. At a facility emitting 50 tons (45.36 megagrams) of VOC or greater per year, each surface coating formulation specified in Table [3E] **7B, Group II under "Wood Furniture"** shall be applied using airless, air-assisted airless, heated airless, electrostatic spray techniques, or flat line processes, or another application method approved by the Department and the EPA as having a transfer efficiency of at least 65 percent.

[(i) Any person responsible for an automobile or light duty truck surface coating operation subject to a VOC content limit for custom topcoating or refinishing set forth in Table 3A of this section shall comply with the following schedule:

1. By July 1, 1989, a plan must be submitted to the Assistant Director, Enforcement Element, New Jersey Department of Environmental Protection, CN 027, Trenton, NJ 08625, for approval describing the measures which will be applied in order to achieve compliance. The plan submittal shall include:

i. Completed applications for all "Permits to Construct, Install, or Alter Control Apparatus or Equipment" and "Certificates to Operate Control Apparatus or Equipment" required by N.J.A.C. 7:27-8; and

ii. Documentation of the rates of application of surface coating formulations in surface coating operations excluded under the provisions of (c) above and (k) below;

iii. Details of production rate changes or process modifications for which no "Permits to Construct, Install, or Alter Control Apparatus or Equipment" are required.

2. By July 1, 1989 and by the first day of every fourth month thereafter, persons subject to an emission limitation for custom topcoating or refinishing using surface coating reformulation as a measure for complying with the provisions of (a) above shall submit detailed reports describing the progress made with specific coating manufacturers and suppliers toward the development of suitable formulations. The reports shall be sent to the Assistant Director, Enforcement Element, at the address in (i)1 above.

3. By no later than six months prior to the applicable final compliance date set forth in Table 3A, construction or installation of equipment and control apparatus, in accordance with the approved plan, shall commence.

4. By the applicable final compliance date set forth in Table 3A, compliance with this Section shall be achieved.]

[(j)](k) [Any person responsible for a surface] **The owner or operator of any pipe** coating operation, **gravure printing operation (sheet-fed), or screen printing operation** subject to [a VOC content limit set forth in Table 3B, Group II for leather coating, urethane coating, tablet coating, glass coating; in Table 3D for fabric or urethane printing operations; or in Table 3E for wood furniture coating,] **(c) above** shall comply with the following schedule:

1. By [January 30, 1987, a plan must be submitted to the Department for approval describing the measures which will be applied in order to achieve compliance. The plan submittal shall include:

i. Completed applications for all "Permits to Construct, Install, or Alter Control Apparatus or Equipment" and "Certificates to Operate Control Apparatus or Equipment"] **the date which is three months after the operative date of these new rules, submit to the Chief, Bureau of New Source Review, Division of Environmental Regulation, Department of Environmental Protection and Energy, CN 401, Trenton, New Jersey 08625-0401, a complete application for each permit** required [by], **pursuant to** N.J.A.C. 7:27-8, **to achieve compliance with (b) above;**

[ii. Completed applications, if relevant, for the mathematical combination of source gases;

iii. Documentation of the rates of application of surface coating formulations in surface coating operations excluded under the provisions of (c) above; and

iv. Details of production rate changes or process modifications for which no "Permits to Construct, Install, or Alter Control Apparatus or Equipment" are required.

2. By January 1, 1987 and by the first day of every fourth month thereafter, persons using surface coating reformulation as a measure for complying with the provisions of (a) or (h) above shall submit detailed reports describing the progress being made with specific surface coating manufacturers and suppliers toward the development of suitable formulations.]

[3.]**2.** By [May 1, 1987,] **March 31, 1994, commence** construction or installation, **in accordance with the approved permit,** of **any** equipment and control apparatus[, in accordance with the approved plan shall commence.] **required to achieve compliance with (b) above; and**

[4.]**3.** By [December 31, 1987,] **May 31, 1995, achieve** compliance with [this section shall be achieved] **(b) above and maintain compliance with this section thereafter.**

[(k)](l) (No change in text.)

[(l)](m) [Any person responsible for the emission of any VOC from] **The owner or operator of** any surface coating operation subject to this section applying only surface coating formulations which are subject to and conform with the applicable VOC content limit set forth in Table [3A, 3B, 3C, 3D, or 3E] **7A, 7B, 7C, or 7D** shall maintain records of the VOC content of each surface coating formulation (minus water) as applied, in pounds of VOC per gallon of coating or kilograms of VOC per liter of coating; the percent by weight of any exempt organic substance; and the daily volume of each surface coating formulation applied.

[(m)](n) [Any person responsible for] **The owner or operator of** any surface coating operation, **or graphic arts operation,** which is subject to this section and which uses one or more surface coating formulations which do not conform with the applicable VOC content limit set forth in Table [3A, 3B, 3C, 3D, or 3E] **7A, 7B, 7C, or 7D**, shall maintain the following records:

1. [On a daily basis, specification of the following for] **For** each surface coating formulation **including each change of diluent or concentration of diluent** as applied, **record the following**:

i. The number of hours **each surface coating formulation was** applied **and the date and time each application started and ended**;

ii. The volume **of each surface coating formulation** applied;

iii. The density of [the] **each surface coating** formulation;

iv. The density of the VOC in [the] **each surface coating** formulation;

v. The percent by weight of VOC in [the] **each surface coating** formulation;

vi. The percent by weight of any exempt organic substance in [the] **each surface coating** formulation; [and]

vii. The percent by weight of any water in [the] **each surface coating** formulation;

2.-4. (No change.)

[(n)](o) [All or part of the information documenting] **The method(s) to be used to determine** the composition of a surface coating formulation as required by [(l)] (m) or [(m)] (n) above [may be in the form] **may include utilization** of standard formulation sheets, material safety data sheets, the results of analytical tests, [or another form] **or other methods approved in advance and** provided that the required information can be readily extracted **from the documents.**

(p) Notwithstanding the provisions of (h)1, 2, or 3 above, the owner or operator of any rotogravure printing operation, gravure (sheet-fed) printing operation, flexographic printing operation, or fabric printing operation, subject to this section pursuant to (a)1 above, may continue to use a control apparatus which was installed and continues to be operated in compliance with a permit issued by the Department for the printing operation prior to the effective date of these amendments so long as the control apparatus has not been altered or replaced since the date of approval of the current permit. If and when the control apparatus is altered or replaced, the new or altered control apparatus shall, at a minimum, meet the requirements set forth in (h)1, 2, or 3 above.

7:27-16.8 Boilers

(a) The provisions of this section apply to any boiler which is subject to the provisions of N.J.A.C. 7:27-19.

(b) The owner or operator of any non-utility boiler with a maximum gross heat input rate of 50,000,000 British thermal units or more per hour or any utility boiler shall:

1. Cause it to emit VOC in concentrations that do not exceed 50 ppmvd at seven percent oxygen; and

2. Adjust its combustion process in accordance with N.J.A.C. 7:27-16.24 before May 1 of each calendar year beginning in 1994.

(c) The owner or operator of any non-utility boiler with a maximum gross heat input rate of 50,000,000 British thermal units or more per hour or any utility boiler shall:

1. Cause it to emit CO in concentrations that do not exceed 100 ppmvd seven percent oxygen; and

2. Adjust its combustion process in accordance with N.J.A.C. 7:27-16.24 before May 1 of each calendar year beginning in 1994.

(d) The owner or operator of any utility boiler or non-utility boiler with a maximum gross heat input rate at least 20,000,000 British thermal units per hour and less than 50,000,000 British thermal units per hour shall adjust the combustion process in accordance with N.J.A.C. 7:27-16.24 before May 1 of each calendar year beginning in 1994.

(e) Any owner or operator of a boiler subject to this section shall achieve compliance with (b) and (c) above by May 31, 1995, and maintain compliance with this section thereafter.

(f) The owner or operator of any utility boiler or non-utility boiler subject to this section shall demonstrate compliance with this subchapter in accordance with the procedures at N.J.A.C. 7:27-16.23 before May 31, 1996.

(g) The owner or operator of any utility boiler subject to this section shall install a continuous emissions monitoring system for CO in accordance with the procedures set forth at N.J.A.C. 7:27-16.25 before May 31, 1995.

(h) The owner or operator of any non-utility boiler with a maximum gross heat input rate of greater than 250,000,000 British thermal units per hour shall install a continuous monitoring system for CO in accordance with the procedures set forth at N.J.A.C. 7:27-16.25 before May 31, 1995.

(i) Any source conducting emissions tests for VOC in accordance with this subsection shall do so using the New Jersey Air Test Method 3 (N.J.A.C. 7:27B-3) or any equivalent method which the Department and the EPA have approved in advance.

(j) Any source conducting emissions monitoring for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix B, Performance Specification Test No. 2, and 40 CFR 60, Appendix F, Quality Assurance Requirements, including any amendments or supplements thereto, incorporated herein by reference, or any equivalent method which the Department and the EPA have approved in advance.

(k) Any source conducting emissions tests for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix A, Reference Method 10, including any amendments or supplements thereto, incorporated herein by reference, or any equivalent method which the Department and EPA have approved in advance.

7:27-16.9 Stationary gas turbines

(a) The provisions of this section apply to any stationary gas turbine which is subject to the provisions of N.J.A.C. 7:27-19.

(b) The owner or operator of any stationary turbine shall cause it to emit CO in concentrations that do not exceed 100 ppmvd at 15 percent oxygen.

(c) The owner or operator of any stationary gas turbine shall cause it to emit VOC in concentrations that do not exceed 50 ppmvd at 15 percent oxygen.

(d) Any owner or operator of a stationary gas turbine subject to this section shall achieve compliance with this section by May 31, 1995, and maintain compliance with this section thereafter.

(e) The owner or operator of any stationary gas turbine subject to this section shall demonstrate compliance with this subchapter in accordance with the procedures at N.J.A.C. 7:27-16.23 before May 31, 1996.

(f) Any owner or operator of any stationary gas turbine subject to this section shall adjust the combustion process in accordance with the procedure set forth at N.J.A.C. 7:27-16.24 before May 1 of each year beginning in 1994.

(g) Any source conducting emissions tests for VOC in accordance with this section shall do so using New Jersey Air Test Method 3 (N.J.A.C. 7:27B-3) or any equivalent method which the Department and the EPA have approved in advance.

(h) Any source conducting emissions monitoring for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix B, Performance Specification Test No. 2, and 40 CFR 60, Appendix F, Quality Assurance Requirements, including any amendments or supplements thereto, or any equivalent method which the Department and the EPA have approved in advance.

(i) Any source conducting emissions tests for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix A, Reference Method 10, including any amendments or supplements thereto, or any equivalent method which the Department and EPA have approved in advance.

7:27-16.10 Stationary internal combustion engines

(a) The provisions of this section apply to any stationary internal combustion engine which is subject to the provisions of N.J.A.C. 7:27-19.

(b) The owner or operator of a stationary internal combustion engine subject to this section shall cause it to emit CO in concentrations that do not exceed 100 ppmvd at 15 percent oxygen.

(c) Any owner or operator of a stationary internal combustion engine subject to this section shall achieve compliance with this section by May 31, 1995, and maintain compliance with this section thereafter.

(d) The owner or operator of any stationary internal combustion engine subject to this section shall demonstrate compliance with this subchapter in accordance with the procedures at N.J.A.C. 7:27-16.23 before May 31, 1996.

(e) Any owner or operator of any stationary internal combustion engine subject to this section shall adjust the combustion process in accordance with the procedure set forth at N.J.A.C. 7:27-16.24 before May 1 of each year beginning in 1994.

(f) Any source conducting emissions tests for VOC to determine compliance with this section shall do so using New Jersey Air Test Method 3 (N.J.A.C. 7:27B-3) or any equivalent method which the Department and the EPA have approved in advance.

(g) Any source conducting emissions monitoring for CO to determine compliance with this section shall do so using the method

set forth at 40 CFR 60, Appendix B, Performance Specification Test No. 2, and 40 CFR 60, Appendix F, Quality Assurance Requirements, including any amendments or supplements thereto, or any equivalent method which the Department and the EPA have approved in advance.

(h) Any source conducting emissions tests for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix A, Reference Method 10, including any amendments or supplements thereto, or any equivalent method which the Department and EPA have approved in advance.

7:27-16.11 Asphalt plants

(a) The provisions of this section shall apply to any batch mix asphalt plant which is located at a major VOC facility. Any drum type asphalt plant shall be subject to the provisions of N.J.A.C. 7:27-16.17.

(b) The owner or operator of a batch type asphalt plant shall cause it to emit CO in concentrations that do not exceed 500 ppmvd at seven percent oxygen and VOC in concentrations that do not exceed 250 ppmvd at seven percent oxygen.

(c) Any owner or operator of an asphalt plant subject to this section shall achieve compliance with this section by May 31, 1995, and maintain compliance with this section thereafter.

(d) Any owner or operator of an asphalt plant subject to this section shall demonstrate compliance with this subchapter in accordance with the procedures at N.J.A.C. 7:27-16.23 before May 31, 1996.

(e) Any owner or operator of any asphalt plant subject to this section shall adjust the combustion process in accordance with the procedure set forth at N.J.A.C. 7:27-16.24 before May 15 of each year beginning in 1994.

(f) Any source conducting emissions tests for VOC to determine compliance with this section shall do so using New Jersey Air Test Method 3 (N.J.A.C. 7:27B-3) or any equivalent method which the Department and the EPA have approved in advance.

(g) Any source conducting emissions monitoring for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix B, Performance Specification Test No. 2, and 40 CFR 60, Appendix F, Quality Assurance Requirements, including any amendments or supplements thereto, or any equivalent method which the Department and the EPA have approved in advance.

(h) Any source conducting emissions tests for CO to determine compliance with this section shall do so using the method set forth at 40 CFR 60, Appendix A, Reference Method 10, including any amendments or supplements thereto, or any equivalent method which the Department and EPA have approved in advance.

7:27-16.12 (Reserved)

7:27-16.13 Flares

(a) Any flare in use at a major VOC facility after May 31, 1995, shall:

1. Have been designed to reduce the concentration of VOC from the source operation by no less than 95 percent;

2. Have been installed in accordance with the specifications provided by the manufacturer of the flare; and

3. Be operated and maintained in accordance with the specifications provided by the manufacturer of the flare.

(b) The owner or operator of any existing flare subject to this section shall submit in writing, to the Assistant Director of Air and Environmental Quality Enforcement, Division of Enforcement Field Operations, Department of Environmental Protection and Energy, CN 411, Trenton, N.J. 08625-0411, the following information prior to May 31, 1994. The following information shall be submitted with any permit application for any flare to be installed after that date. Such submittal shall be certified in accordance with N.J.A.C. 7:27-8.24.

1. The name of the owner and operator of the flare;

2. The make, model and serial number of the flare;

3. A copy of the manufacturer's specification of the performance standards for the flare;

4. A statement that the flare was installed in accordance with the manufacturer's specifications;

5. A statement that the flare is being operated and maintained in accordance with the manufacturer's specifications; and

6. A statement that the flare will continue to be operated in accordance with the manufacturer's specifications.

(c) The owner or operator of a flare subject to this section shall inspect the flare before May 1 of each year beginning in 1994 to verify that the flare continues to be operated in accordance with the manufacturer's specifications for the operation of the flare. The owner or operator of the flare shall record the following in a permanently bound log book at the conclusion of each inspection:

1. The name of the person conducting the inspection;

2. The date on which the inspection was conducted;

3. An entry indicating which flare was inspected;

4. Any changes or adjustments made to the flare as a result of the inspection; and

5. A statement stating that the flare is currently being operated in compliance with the manufacturer's specifications.

7:27-16.14 and 16.15 (Reserved)

7:27-[16.6]**16.16** [Source] **Other source** operations [other than storage tanks, transfers, open top tanks, surface cleaners, surface coaters and graphic arts operations]

(a) The provisions of this section apply to any source operation, except source operations in the following categories (Note: Source operations in those categories designated by an asterisk (*) which have the potential to emit three pounds per hour or more of VOC and which are located at a major VOC facility are regulated by N.J.A.C. 7:27-16.17.)

1. VOC storage operations;

2. Gasoline transfer operations;

3. VOC transfer operations, other than gasoline;

4. Marine transfer operations;

5. Open top tanks and surface cleaners;

6. Surface coating and graphic arts operations;

7. Boilers;

8. Stationary gas turbines;

9. Stationary internal combustion engines;

10. Asphalt plants;

11. Natural gas pipeline blowdown events;

12. Flares;

13. Petroleum solvent dry cleaning operations;

14*. Fiberglass manufacturing furnaces, not at a major VOC facility;

15*. Glass manufacturing furnaces, not at a major VOC facility;

16*. Fuel burning for steam generation for space heating, not at a major VOC facility;

17*. Sulfuric acid plant burners, not at a major VOC facility;

18. Any source operation regulated pursuant to N.J.A.C. 7:27-16.17; and

19. Any source operation exempted from this subchapter pursuant to N.J.A.C. 7:27-16.27.

(b) Source operations to which this section apply are not limited to those involved in manufacturing and include, without limit, the following: agitators, autoclaves, bakery ovens, blenders, centrifuges, distillation processes, driers, extruders, fermentation processes, fiberglass boat or vessel manufacturing operations, fiberglass product manufacturing operations, foam blowing operations, fumigation chambers, mills, mixers, ovens, reactors, receivers, roasters, sterilization operations, and synthetic fiber manufacturing operations.

[(a)](c) No person shall cause, suffer, allow, or permit any VOC to be emitted into the outdoor atmosphere from any source operation [not] subject to the provisions of [N.J.A.C. 7:27-16.2, 16.3, 16.4, 16.5, 16.7, and 16.8] **this section,** in excess of the maximum allowable emission rate, as determined in accordance with the procedure [for using Table 4] **in (d) below.**

[Procedure for Using Table 4]

(d) For the purposes of (c) above, the maximum allowable emission rate for a source operation subject to this section shall be determined in accordance with the following procedure:

1.-2. (No change.)

3. From Table [5] **16B**, find the source gas range classification by selecting the appropriate line for the vapor pressure as determined in Step 1 and the appropriate column for the percent VOC as determined in Step 2.

4. From Table [4] **16A,** Column 2, determine the maximum allowable percent of process emissions for the source gas range as determined in Step 3.

5. The maximum allowable emission rate shall be the pounds (kilograms) per hour (or per batch cycle hour) equivalent to the percent of the process emissions shown in Column 2 or[:

i. Prior to June 15, 1990,] the Exclusion Rate shown in Column 3, whichever is greater.

[ii. As of June 15, 1990, and continuously thereafter, the Exclusion Rate shown in Column 4, whichever is greater.]

TABLE [4] **16A**

MAXIMUM ALLOWABLE HOURLY VOC EMISSIONS FROM SOURCE OPERATIONS

Column 1 Range Determined From [Table 5] **Table 16B**	Column 2 Maximum Allowable emissions, Percent of Process Emissions by Weight	[Column 3] [Exclusion Rates] [Prior to June 15, 1990] [Continuous or] [Batch Cycle Emission] [Pounds [Per Hour	Kilograms] Per Hour]	Column [4] **3** Exclusion Rates As of June 15, 1990 Continuous or Batch Cycle Emission Pounds Per Hour	Kilograms Per Hour
Range A	15	[7	3.18]	3.5	1.59
Range B	15	[6	2.72]	3	1.36
Range C	15	[5	2.27]	2.5	1.14
Range D	12	[4	1.82]	2	0.91
Range E	10	[3	1.36]	1.5	0.68
Range F	8	[2	0.91]	1	0.46
Range G	2	[1	0.45]	0.5	0.23
Range H	0.3	[0	0]	0	0
Range I	15	[7	3.18]	3.5	1.59

Table 16B

[TABLE 5—] DETERMINANTS OF CONTROLS REQUIRED FOR PROCESS SOURCE GASES

(No change in text.)

[(b)](**e**) The provisions of [(a)] **(c)** above shall not apply to a source gas in Range A or B discharged into the outdoor atmosphere through a local exhaust ventilation system whose intake is located within six inches (15 centimeters) of the point at which the source gas is discharged to an internal work space, provided such exhaust ventilation system:

1.-2. (No change.)

[(c)](**f**) For the purpose of this section:

1. Source gases from a single source operation which are emitted from different vents in different range classifications as determined from Table [5] **16B** shall be considered as being discharged from separate source operations for each of which the maximum allowable emission rate must be determined separately.

2. Source operations normally falling within the category subject to the provisions of this section but used for research or development purposes are exempt from compliance with [(a)] **(c)** above provided they do not exceed the hourly exclusion rates for their ranges, as set forth in Table [4] **16A**, Column 3 [or Column 4] as applicable; or provided:

i. No more than two times the applicable hourly exclusion rate set forth in Table [4] **16A**, Column 3 [or Column 4] is emitted in any one hour; and

ii. No more than three times the applicable hourly exclusion rate set forth in Table [4] **16A**, Column 3 [or Column 4] is emitted in any 24-hour period.

3. The maximum allowable emission rate for source gases physically combined (manifolded) for more than one source operation shall be the sum of the maximum allowable emission rates for the separate source gases as determined under N.J.A.C. [7:27-16.5(a), (f), (g) and (h), and 16.6(a) and (b)] **7:27-16.6(c), (h), (i), and (j) and 16.16(c) and (e)**. The process emission rate shall be used as the maximum allowable emission rate of a separate source gas if it is less than the applicable exclusion rate contained in Table [4] **16A**, Column 3 [or Column 4];

4.-6. (No change.)

(NOTE: Subsections (d) through (l) have been recodified at N.J.A.C. 7:27-16.18(c) through (p).)

[(m)](**g**) Any person responsible for a source operation subject to [(a)] **(c)** above shall maintain the following records for each source operation:

1. For each different kind of batch or continuous process for which the source operation is used:

i. Record the following information determined in accordance with the Procedure for Using Table [4] **16A** in [(a)] **(c)** above: the chemical name and vapor pressure of each VOC used, the percent concentration by volume of VOC in the source gas, the volumetric gas flow rate, the source gas range classification, and the maximum allowable emission rate; also record the maximum actual emission rate and maintain the calculations and any test data used to determine the actual emission rate for each process; and, if the source operation is used for more than one process, record the dates on which the source operation is used for each process; or

ii. (No change.)

2.-4. (No change.)

7:27-16.17 Facility-specific VOC control requirements

(a) This section establishes procedures and standards for the establishment of VOC control requirements in the following circumstances:

1. If a major VOC facility contains any source operation that:

i. Is not regulated under N.J.A.C. 7:27-16.2 through 16.16 or 16.18 through 16.21, or exempted under N.J.A.C. 7:27-16.27; and

ii. Has the potential to emit at least three pounds of VOC per hour; or

2. If the owner or operator of a source operation regulated under N.J.A.C. 7:27-16.2 through 16.16 or 16.18 through 16.21 seeks approval of an alternative VOC control plan, which would apply to

the equipment or source operation notwithstanding any control requirement or emission limit which would otherwise apply under this subchapter.

(b) The owner or operator of any facility subject to (a)1 above shall:

1. By three months after the operative date of these new rules, submit one of the following to the Department at the address listed in (q) below:

i. A demonstration that the source operation is served by a control apparatus that collects at least 90 percent by weight of the VOC emissions from the source operation and prevents from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected, or that the owner or operator has implemented pollution prevention measures that achieve at least the same level of VOC emission reductions;

ii. A demonstration that by May 31, 1995 the source operation will be served by control apparatus that collects at least 90 percent by weight of the VOC emissions from the source operation and prevents from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected, or that the owner or operator will implement pollution prevention measures that achieve at least the same level of VOC emission reductions; or

iii. A proposed alternative VOC control plan prepared in accordance with (d) below.

2. Beginning on May 31, 1995, comply with either (b)2i or ii below:

i. Use control apparatus that the Department has determined (pursuant to (1) below) will collect at least 90 percent by weight of the VOC emissions from the source operation and prevent from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected; or

ii. Operate the facility in accordance with an alternative VOC control plan approved by the Department pursuant to (j) below.

(c) An owner or operator seeking approval of an alternative VOC control plan pursuant to (a)2 above shall submit to the Department at the address listed in (q) below a proposed alternative VOC control plan prepared in accordance with (d) below. If and when the Department approves the alternative VOC control plan, the owner or operator shall be subject to the conditions and requirements of the plan and of the Department's approval.

(d) An owner or operator submitting a proposed alternative VOC control plan pursuant to (b)1iii above shall include the following information in the plan:

1. A list of each source operation at the facility to be included in the plan. For a submission pursuant to (b)1iii above, the list shall include each source operation that is not regulated under N.J.A.C. 7:27-16.2 through 16.16, 16.20 or 16.21, and has the potential to emit at least three pounds of VOC per hour. For a submission pursuant to (c) above, the list shall include each source operation for which the owner or operator seeks an alternative to compliance under N.J.A.C. 7:27-16.2 through 16.16, 16.20 or 16.21;

2. The following information for each source operation listed pursuant to (d)1 above:

i. A brief description of the source operation, and its permit number and any other identifying numbers;

ii. The maximum rated capacity of the source operation;

iii. The source operation's potential to emit VOC;

iv. A list of all VOC control technologies available for use with the source operation;

v. A list of all alternative processes and pollution prevention measures that the owner or operator is considering using with or in place of the source operation to reduce VOC emissions;

vi. An analysis of the technological feasibility of installing and operating each control technology and process alternative identified in (d)2iv and v above;

vii. For each control technology and process alternative which is technologically feasible to install and operate, an estimate of the cost of installation and annual operation;

viii. An estimate of the remaining useful life of the existing source operation;

ix. An estimate of the reduction in VOC emissions attainable through the use of each control technology and process alternative identified in (d)2iv and v above;

x. The VOC control technology or technologies or process alternatives which the owner or operator proposes to employ;

xi. For any construction, alteration or installation of any equipment or control apparatus that the owner or operator proposes in the plan, a complete application for all permits required under N.J.A.C. 7:27-8;

xii. A proposed VOC emission limit for the source operation or for the proposed process alternative; and

xiii. Proposed recordkeeping requirements sufficient to document the owner or operator's continued compliance with the plan;

3. Any other information the Department requests that is reasonably necessary to enable it to determine whether the application satisfies the requirements of (j) below; and

4. A certification signed by the owner or operator, satisfying the requirements of N.J.A.C. 7:27-8.24.

(e) An owner or operator submitting a demonstration pursuant to (b)1i or ii above shall include the following information in the demonstration:

1. A list of each source operation at the facility within the scope of (a)1 above;

2. The following information for each source operation listed pursuant to (e)1 above:

i. A brief description of the source operation, and its permit number and any other identifying numbers;

ii. The maximum rated capacity of the source operation;

iii. The source operation's potential to emit VOC;

iv. A description of the control apparatus that serves the source operation (for demonstrations pursuant to (b)1i above) or that the owner or operator states will serve the source operation (for demonstrations pursuant to (b)1ii above);

v. An analysis of how the control apparatus will collect at least 90 percent by weight of the VOC emissions from the source operation and prevent from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected;

vi. A description of any pollution prevention measures that the owner or operator has implemented (for demonstrations pursuant to (b)1i above) or will implement (for demonstrations pursuant to (b)1ii above), and analysis of how such measures will control VOC emissions to the extent required under (b)1i and ii above;

vii. A proposed VOC emission limit for the source operation or for the proposed process alternative; and

viii. Proposed recordkeeping requirements sufficient to document the owner or operator's continued compliance with the plan;

3. A complete application for each permit required under N.J.A.C. 7:27-8 for any equipment or control apparatus to be constructed, altered or installed in connection with the demonstration;

4. Any other information which the Department may request which is reasonably necessary to enable it to determine whether the application satisfies the requirements of (1) below; and

5. A certification signed by the owner or operator, satisfying the requirements of N.J.A.C. 7:27-8.24.

(f) Notwithstanding the provisions of (b) above, the owner or operator of a facility that had actual annual emissions of VOC in 1990 and each year thereafter of less than 25 tons, may comply with the requirements of this section by obtaining the Department's approval of a compliance plan and implementing such a plan. To comply in this manner, the owner or operator shall submit a proposed compliance plan pursuant to (f)1 below, obtain the Department's approval of the plan pursuant to (k) below, and implement the plan pursuant to (f)2 below.

1. The owner or operator shall submit to the Department a proposed compliance plan that includes the following information, and is certified by the owner or operator pursuant to N.J.A.C. 7:27-8.23:

i. Documentation establishing that the actual annual emissions of VOC from the facility in 1990 and each year thereafter were less than 25 tons. If the facility did not commence operations until after 1990, the documentation shall address each year beginning with the

year that operations commenced. The documentation shall include records maintained at the facility and any report of actual emissions, including any emission statement, submitted for the facility to the Department for the relevant years;

ii. A statement of the owner or operator's intent to reduce the facility's potential to emit VOC to less than 25 tons per year;

iii. A description of how the reduction of the facility's potential to emit is to be achieved;

iv. Complete applications for amendments to any existing permit or for any new permit required to achieve the reduction of the facility's potential to emit VOC to less than 25 tons per year; and

v. Proposed recordkeeping requirements sufficient to document the owner or operator's continued compliance with the plan.

2. By May 31, 1995, the owner or operator of the facility shall reduce the facility's potential to emit VOC to less than 25 tons per year and achieve compliance with all new or amended permits.

(g) Within 30 days after receiving a demonstration submitted pursuant to (b)1 above, a proposed alternative VOC control plan submitted pursuant to (b)2 above, or a proposed compliance plan submitted pursuant to (f) above, the Department shall notify the owner or operator in writing whether the submission includes sufficient information to commence review. If the submission does not contain sufficient information to complete the review, the Department shall include in the notice a list of the deficiencies, a statement of the additional information required to make the submission complete, and a time by which the owner or operator must make a complete submission. The Department may refrain from reviewing the substance of the submission until the additional information is provided to the Department.

(h) Failure by an owner or operator to submit the additional information requested by the Department pursuant to (g) above within the time stated in the Department's notification shall constitute a violation of this subchapter. In such case, the Department may deny the request for approval of the submission and pursue its other remedies.

(i) The Department shall seek comments from the general public before making any final decision to approve or disapprove a proposed alternative VOC control plan. The Department shall publish a Notice of Opportunity for Public Comment in a newspaper for general circulation in the area in which the major VOC facility is located. In addition, the Department shall submit any approved alternative VOC control plan to EPA as a proposed revision to New Jersey's State Implementation Plan.

(j) Within six months after receiving a complete proposed alternative VOC control plan, the Department shall approve, approve and modify, or disapprove the proposed plan and notify the owner or operator of the decision in writing. The Department shall approve the proposed plan or request only if it satisfies the following requirements:

1. The proposed plan or request contains all of the information required under (d) above;

2. The proposed plan considers all control technologies available for the control of VOC emissions from the type of equipment or source operation in question;

3. For any control technologies described in (j)2 above which the owner or operator does not propose to use on the equipment or source operation, the proposed plan demonstrates that the control technology:

i. Would be less effective in controlling VOC emissions from the equipment or source operation than the proposed measures;

ii. Is unsuitable for use with the source operation, or duplicative of control technology or pollution prevention measure which the plan proposes to use;

iii. Would carry costs disproportionate to the improvement in the reduction of the VOC emissions rate which the control technology is likely to achieve, or disproportionately large in comparison to the total reduction in VOC emissions which the control technology is likely to achieve over its useful life; or

iv. Would carry costs disproportionate to the costs incurred for the control of VOC emissions from the same type of source operations used by all other persons in the owner or operator's industry;

4. The emission limit proposed for each source operation is the lowest rate which can practicably be achieved at a cost within the limits described in (j)3iii and iv above;

5. The cost of achieving an additional emission reduction beyond each proposed limit would be disproportionate to the size and environmental impact of that additional emission reduction; and

6. For any pollution prevention or other emission reduction measures proposed by the owner or operator, the proposed plan demonstrates that the measures:

i. Result in actual reductions in VOC emissions;

ii. Result in VOC emission reduction which are quantifiable; and

iii. Result in VOC emission reductions which are Federally enforceable.

(k) Within six months after receiving a complete compliance plan submitted pursuant to (f) above, the Department shall approve, approve and modify, or disapprove the proposed compliance plan and notify the owner or operator of the decision in writing. The Department shall approve the proposed compliance plan only if it satisfies the following conditions:

1. The compliance plan contains all of the information required under (f) above;

2. The compliance plan demonstrates to the Department's satisfaction that actual emissions of VOC, including fugitive VOC emissions, in 1990 (or the first year of the facility's operations, if operations commenced after 1990) and each year thereafter are less than 25 tons;

3. The proposed recordkeeping requirements are sufficient to enable the Department to verify that the owner or operator is complying with the plan; and

4. The compliance plan demonstrates that the potential to emit VOC will be less than 25 tons if the plan is approved and implemented.

(l) Within six months after receiving a complete demonstration submitted pursuant to (b)1 above, the Department shall approve, approve and modify, or disapprove the demonstration and notify the owner or operator of the decision in writing. The Department shall approve the demonstration only if:

1. The demonstration includes all of the information required under (e) above;

2. To the extent that the demonstration depends upon any construction, alteration or installation and use of any equipment or control apparatus that is not in use as of the time the demonstration was submitted, the owner or operator has obtained all permits and certificates required for the control apparatus under N.J.A.C. 7:27-8, and has agreed to install and use all such control apparatus in accordance with the permits and certificates;

3. To the extent that the demonstration depends upon the implementation of pollution prevention measures that have not been implemented before the time at which the demonstration was submitted, the owner or operator has agreed to implement such measures; and

4. The demonstration establishes to the satisfaction of the Department that the control apparatus will collect at least 90 percent by weight of the VOC emissions from the source operation and prevent from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected, or that the pollution prevention measures will achieve at least the same level of emission reductions.

(m) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of the source operation(s) necessary to minimize any adverse impact upon human health, welfare and the environment.

(n) Before altering any source operation which is included in an approved alternative VOC control plan, approved compliance plan or demonstration (except as authorized or required in the approval), the owner or operator shall:

1. Pursuant to this section, apply for and obtain the Department's approval of an amendment to the approved compliance plan, VOC control plan, or demonstration, reflecting the proposed alteration. If the owner or operator does not obtain the Department's approval of the amendment before commencing operation of the altered

equipment or source operation, the Department may (in addition to assessing penalties under N.J.A.C. 7:27A-3.10) modify the VOC control plan, compliance plan or demonstration to reflect the alteration, in a manner satisfying the criteria set forth in (j), (k) or (l) above, respectively; and

2. Apply for and obtain such permits and certificates for the alteration, as are required under N.J.A.C. 7:27-8 and any other applicable law or regulation. Any permit application must be submitted with the application to amend the VOC control plan.

(o) The Department may revoke an approval of an alternative VOC control plan, compliance plan or demonstration by written notice to the holder of the approval, if:

1. Any material condition of the approval is violated;

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the owner or operator's submission or any supporting documentation;

3. For an alternative VOC control plan, EPA denies approval of the plan as a revision to the State Implementation Plan; or

4. The Department determines that continued use of the subject source operation pursuant to the approval poses a potential threat to the public health, welfare or the environment.

(p) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-8.12, if:

1. The Department has denied the person's application for approval under this section for any other reason than an EPA rejection of the SIP revision;

2. The person seeks to contest one or more conditions of the Department's approval imposed under (m) above; or

3. The Department has revoked the person's approval pursuant to (o) above.

(q) The owner or operator submitting a proposed alternative VOC control plan, compliance plan or demonstration shall send it to the Department at the following address:

Chief, Bureau of New Source Review
Division of Environmental Regulation
Department of Environmental Protection and Energy
CN 401
Trenton, New Jersey 08625-0401

7:27-16.18 Leak detection and repair

(a) The provisions of this section shall apply to any owner or operator of the following:

1. Any petroleum refinery;

2. Any natural gas/gasoline processing plant;

3. Any synthetic organic chemical or polymer manufacturing facility; or

4. Any chemical plant, other than a synthetic organic chemical or polymer manufacturing facility, which is a major VOC facility.

(b) The provisions of this section shall apply only to equipment in contact with a substance that:

1. At any petroleum refinery, is 10 percent by weight or greater VOC;

2. At any natural gas/gasoline processing plant, is one percent by weight or greater VOC; or

3. At any synthetic organic chemical or polymer manufacturing facility, is ten percent by weight or greater gaseous or light liquid VOC and the equipment is used to produce greater than 1,100 tons per year (1,000 megagrams per year) of synthetic organic chemicals or polymers, or any combination thereof; or

4. At any chemical plant, other than a synthetic organic chemical or polymer manufacturing facility, is ten percent by weight or greater applicable VOC, and the component is in gaseous or light liquid VOC service more than 300 hours per year.

[(d) No person shall cause, suffer, allow, or permit VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater measured at standard conditions to be emitted from leaking flange gaskets, manhole gaskets, measuring instrument connections, sight glass connections, and other sealed connections, joints, and fittings not involving moving parts.

(e) No person shall cause, suffer, allow, or permit VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (1 millimeter of mercury) absolute or greater measured at standard conditions to be emitted from leaking valve bonnets, pump packings, compressor packings, and other seals surrounding moving parts:

1. If the rates of emission result in concentrations of greater than 10,000 ppm by volume when]

(c) After the applicable date set forth in Table 18A, no person subject to this section shall cause, suffer, allow or permit a leak of any applicable VOC from any pressure relief device or any other component without moving parts (including, without limitation, flanges, manholes, hatches, instrument connections, sealed connections, joints and fittings), unless one of the following conditions is satisfied:

1. The leak is not a regulated leak; or

2. The person first attempts to repair the regulated leak, and completes the repair, as soon as is practicable but in no event beyond the time allotted for each of those actions in Table 18A.

(d) After the applicable date set forth in Table 18B, no person subject to this section shall cause, suffer, allow or permit a leak of any applicable VOC from any agitator or any other component with moving parts (including, without limitation, valves, pumps, compressors, agitators and diaphragms), unless one of the following conditions is satisifed:

1. The leak is not a regulated leak; or

2. The person first attempts to repair the leak, and completes the repair, as soon as is practicable but in no event beyond the time allotted for each of those actions in Table 18B.

(e) In determining the concentration of VOC in a gaseous leak from a component, the applicable VOC shall be measured at a distance [of] within 0.4 inches ([1] one centimeter) [from] of the source in accordance with:

1. The EPA test reference method 21 set forth at 40 CFR part 60 Appendix A; or

2. Any other equivalent test method approved in advance in writing by EPA and the Department.

[2. If such emissions are in the liquid state.]

TABLE 18A
TIME LIMITS FOR LEAK REPAIR OF PRESSURE RELIEF VALVES
AND OTHER COMPONENTS WITHOUT MOVING PARTS

Type of Leak	Maximum Number of Days from Date Leak Was Detected until the First Attempt at Repair	Maximum Number of Days from Date Leak Was Detected until the Repair Is Complete	Date Provision Becomes Effective
From a Pressure Relief Device:			
Liquid Leak	2	15	*
Gaseous Leak having a concentration of applicable VOC greater than 500 ppm above background concentration	5	15	*
From Other Such Components:			
Liquid Leak	2	15	*
Gaseous Leak having a concentration of applicable VOC above background concentration equal to or greater than:			
50,000 ppm	2	15	*
10,000 ppm but less than 50,000 ppm	5	15	*
1,000 ppm but less than 10,000 ppm		15	*

*Upon operative date of this rule.

TABLE 18B
TIME LIMITS FOR LEAK REPAIR OF AGITATORS
AND OTHER COMPONENTS WITH MOVING PARTS

Type of Leak	Maximum Number of Days from Date Leak Was Detected until the First Attempt at Repair	Maximum Number of Days from Date Leak Was Detected until the Repair Is Complete	Date Provision Becomes Effective
From an Agitator:			
Liquid Leak	2	15	*
Gaseous Leak having a concentration of applicable VOC greater than 10,000 ppm above background concentration	5	15	*
From Other Such Components:			
Liquid Leak	2	15	*
Gaseous Leak having a concentration of applicable VOC above background concentration equal to or greater than:			
50,000 ppm	2	15	*
10,000 ppm but less than 50,000 ppm	5	15	*
5,000 ppm but less than 10,000 ppm	N/A	15	4/1/95
1,000 ppm but less than 10,000 ppm	N/A	15	4/1/96

*Upon operative date of this rule.

(f) The owner or operator of a petroleum refinery shall develop and [initiate an emission testing] **implement a leak detection and repair** program for [equipment leaks] **any component** subject to the provisions of (c) **and** (d) [and (e)] above. The program shall include the following provisions:

1. The minimum frequency of testing of components shall be as follows:

[1.]**i.** Annually, test all [pump seals] **pumps** and [pipeline] valves in liquid service; [and]

[2.]**ii.** Quarterly, test all [compressor seals] **compressors**, [pipeline] valves [in gaseous service], and pressure relief [valves] **devices** in gaseous service[; and], **unless on both of the past two occasions such testing was conducted at any petroleum refinery the owner or operator determined that:**

(1) Less than two percent of all the pumps, valves, compressors, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every two quarters; or

(2) Less than one percent of all the pumps, valves, compressors, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every four quarters;

[3.]**iii.** Monthly, **visually** inspect all [pump seals] **pumps**; and

iv. Once every two years, test any other type of component;

[4.]**2.** By no later than five [calendar] days after a **pressure** relief [valve] **device** has vented to the atmosphere, [test it] **the pressure relief device shall be tested**; [and]

[5.]**3.** Immediately after repair, [test] any [equipment] **component** from which a **regulated** leak was detected **shall be tested**; [and]

[6.]**4.** By July 1, 1982, the initial [emission] **leak** tests shall be completed; [and]

[7.]**5.** A readily visible identification tag shall be affixed to any [leaking refinery] component **detected to have a regulated leak.** The tag must bear [an identification] **a** number **identifying the component** and the date on which the **regulated** leak was detected. The tag must remain in place until the **regulated** leak is repaired; and

[8.]**6.** Any [leaking refinery] component **detected to have a regulated leak** shall be repaired [within 15 days after the leak is detected]**, in accordance with the schedules set forth in Tables 18A or 18B above,** unless the shutdown of a refinery process unit is necessary to repair the **regulated** leak. [A leak which cannot be repaired prior to the shutdown of a refinery process unit] **In such case, the regulated leak** shall be repaired during the next period in which the unit is out of service **and prior to the next start-up.**

(g) The owner or operator of [a] **any** natural gas/gasoline processing plant shall develop and [initiate an emission testing] **implement a leak detection and repair** program for [equipment leaks] **any component** subject to the provisions of **(c) and** (d) [and (e)] above. The program [shall apply to only that equipment in contact with a substance that is 1.0 percent by weight or greater VOC and] shall include the following provisions:

1. The minimum frequency of testing of components shall be as follows:

[1.]**i.** Quarterly, test all pumps, valves, compressors, and pressure relief [valves] **devices**[;], **unless on both of the past two occasions such testing was conducted at any natural gas/gasoline processing plant the owner or operator determined that:**

(1) Less than two percent of all the pumps, valves, compressors, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every two quarters; or

(2) Less than one percent of all the pumps, valves, compressors, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every four quarters;

[2.]**ii.** Weekly, visually inspect all pumps; **and**

iii. Once every two years, test any other type of component;

[3.]**2.** By no later than five days after a **pressure** relief [valve] **device** has vented to the atmosphere, [test it] **the pressure relief device shall be tested;**

[4.]**3.** Immediately after repair, [test] any [equipment] **component** from which a **regulated** leak was detected **shall be tested;**

[5.]**4.** By March 31, 1987, the initial [emission] **leak** tests shall be completed;

[6.]**5.** A readily visible identification tag shall be affixed to any [leaking] component **detected to have a regulated leak.** The tag must bear [an identification] **a** number **identifying the component** and the date on which the **regulated** leak was detected. The tag must remain in place until the **regulated** leak is repaired; and

[7.]**6.** Any [leaking] component **detected to have a regulated leak** shall be repaired [within 15 days after the leak is detected]**, in accordance with the schedules set forth in Tables 18A or 18B above,** unless the shutdown of a process unit is necessary to repair the **regulated** leak. [A] **In such case, the regulated** leak shall be repaired at the earliest period in which either the process is not in operation or the particular unit is out of service, whichever occurs first, **and prior to the next start-up.**

(h) The owner or operator of a synthetic organic chemical or polymer manufacturing facility **subject to this section** shall develop and [initiate an emission] **implement a leak detection and repair** program for [equipment leaks] **any component** subject to the provisions of **(c) and** (d) [and (e)] above. The program [shall apply only to that equipment in contact with a substance that is 10 percent by weight or greater VOC and that is used to produce greater than 1,100 tons per year (1,000 megagrams per year) of a synthetic organic chemical or polymer and] shall include the following provisions:

1. **The minimum frequency of testing of components shall be as follows:**

i. Quarterly, test all pumps in light liquid service, valves in light liquid **or gas** service, [valves in gas service,] compressors, and [safety] **pressure** relief [valves] **devices on equipment** in gas service[;], **unless on both of the past two occasions such testing was conducted at a synthetic organic chemical or polymer manufacturing facility the owner or operator determined that:**

(1) Less than two percent of all the compressors, valves, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every two quarters; and

(2) Less than one percent of all the compressors, valves, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every four quarters;

[2.]**ii.** Weekly, visually inspect all pumps in light liquid service; **and**

iii. Once every two years, test any other type of component;

[3.]**2.** By no later than five [calendar] days after a **pressure** relief [valve] **device** has vented to the atmosphere, [test it] **the pressure relief device shall be tested;**

[4.]**3.** Immediately after repair, [test] any [equipment] **component** from which a **regulated** leak was detected **shall be tested;**

[5.]**4.** By March 31, 1987, the initial [emission] **leak** tests shall be completed;

[6.]**5.** A readily visible identification tag shall be affixed to any [leaking] component **detected to have a regulated leak.** The tag must bear [an identification] **a** number **identifying the component** and the date on which the **regulated** leak was detected. The tag must remain in place until the **regulated** leak is repaired; and

[7.]**6.** Any leaking component **detected to have a regulated leak** shall be repaired [within 15 days after the leak is detected]**, in accordance with the schedules set forth in Tables 18A or 18B above,** unless the shutdown of a process unit is necessary to repair the **regulated** leak. [A] **In such case, the regulated** leak shall be repaired at the earliest period in which either the process is not in operation or the particular unit is out of service, whichever occurs first, **and prior to the next start-up.**

(i) The owner or operator of a chemical plant that is a major VOC facility shall develop and implement a leak detection and repair program for any equipment subject to the provisions of (d) and (e) above if such equipment is not subject to the provisions of (f), (g), or (h) above. The program shall include the following provisions:

1. The minimum frequency of testing of components shall be as follows:

i. Annually, test all pumps, valves, and pressure relief devices in light liquid service;

ii. Quarterly, test all compressors, valves, and pressure relief devices in gas service, unless on both of the past two occasions such testing was conducted at a chemical plant the owner or operator determined that:

(1) Less than two percent of all the compressors, valves, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every two quarters; and

(2) Less than one percent of all the compressors, valves, and pressure relief devices tested had a regulated leak. In such an instance the owner or operator may elect to conduct such testing once every four quarters;

iii. Monthly, visually inspect all single mechanical seals and packed seal pumps; and

iv. Once every two years, test any other type of component;

2. By no later than five days after a pressure relief device has vented to the atmosphere, the pressure relief device shall be tested;

3. Any component detected to have a regulated leak shall be tested immediately after repair;

4. By May 31, 1995, the initial leak tests shall be completed;

5. A readily visible identification tag shall be affixed to any component detected to have a regulated leak. The tag must bear a number identifying the component and the date on which the regulated leak was detected. The tag must remain in place until the regulated leak is repaired; and

6. Any component detected to have a leak shall be repaired, in accordance with the schedules set forth in Tables 18A or 18B above,

unless the shutdown of a process unit is necessary to repair the regulated leak. In such case, the regulated leak shall be repaired at the earliest period in which either the process is not in operation or the particular unit is out of service, whichever occurs first, and prior to the next start-up.

[(i) Any person subject to the provisions of (f), (g) or (h) above shall comply with the following provisions:

1. After July 1, 1982, for a petroleum refinery and after April 1, 1987, for natural gas/gasoline processing plants and synthetic organic chemical and polymer manufacturing facilities, a] **(j) Any owner or operator of a petroleum refinery subject to (f) above shall comply with (j)1 below beginning July 1, 1982, and shall comply with (j)2 below beginning October 1, 1982. Any owner or operator of a natural gas/gasoline processing plant or synthetic organic chemical/polymer manufacturing facility subject to (g) or (h) above, respectively, shall comply with (j)1 below beginning April 1, 1987, and shall comply with (j)2 below beginning July 1, 1987. Any owner or operator of a chemical plant subject to (i) above shall comply with (j)1 and 2 below beginning May 31, 1995:**

1. A log of information about [leaking] components **detected to have regulated leaks** shall be maintained. The log shall be retained for a minimum of five years and be made available immediately upon request by the Department. The log shall contain the following data **for each instance in which a component is detected to have a regulated leak**:

i. The name of the process unit where the [leaking] component **detected to have a regulated leak** is located;

ii. The type of component;

iii. The tag identification number of the component;

iv. The date on which the **regulated** leak was detected;

v. The date on which the [leaking] component **detected to have a regulated leak** was repaired;

vi. The date and instrument reading of the retest procedure after a [leaking] component **detected to have a regulated leak** is repaired;

vii. A record of the calibration of the monitoring instrument;

viii. An identification of those **regulated** leaks that cannot be repaired until a proccess unit is shut down; and

ix. The total number of components monitored and the total number of components detected [leaking] **to have a regulated leak.**

2. [By October 1, 1982, for a petroleum refinery and by July 1, 1987, for natural gas/gasoline processing plants and synthetic organic chemical and polymer manufacturing facilities, and by] **Within 30 days following** the first day of every third month [thereafter], a report shall be submitted to the Department that lists all [leaking] components detected **to have a regulated leak** during the previous three calendar months [but] **that have** not **been** repaired within [15 days] **the applicable time limits set forth in Tables 18A and 18B**, all [leaking] components **detected to have a regulated leak** whose repair is awaiting a process unit shutdown, the total number of components inspected, and the total number of components detected [leaking] **to have a regulated leak.**

(k) Components that are insulated, encased, or enclosed may be tested for leaks at a distance within 0.4 inches (one centimeter) of the surface of the insulation, encasement, or enclosure.

(l) Notwithstanding the provisions of (f), (g), (h), and (i) above, inaccessible components installed prior to February 1, 1994, are exempt from quarterly testing requirements, and instead such testing shall be conducted on an annual basis.

(m) No component installed on or after February 1, 1994, at a facility subject to this section will be exempt from any applicable testing requirements.

[(j)](n) The provisions of (f), (g), [and] (h), **and (i)** above shall not apply to **a** pressure relief device[s] which [are] **is** connected to an operating flare or to a vapor recovery device, [to] **a** storage tank [valves] **valve**, [to valves] **a valve** that [are] **is** not externally regulated, or [to valves] **a valve** in vacuum service.

[(k)](o) [After July 1, 1982, for a petroleum refinery, and after July 1, 1987, for a natural gas/gasoline processing plant or a synthetic organic chemical or polymer manufacturing facility, no] **No** owner or operator **of any facility listed in (o)1 through 4 below** shall install or operate a valve, except for **a** safety pressure relief valve[s], at the end of a pipe or line containing **applicable** VOC unless the pipe or line is sealed with a second valve, a blind flange, a plug or a cap. The sealing device may be removed only when a sample is being taken, **during actual use in the process,** or during maintenance [operations]. **Owners and operators of the following types of facilities are subject to this prohibition, beginning on the dates set forth below:**

1. Any petroleum refinery subject to (f) above, after July 1, 1982:

2. Any natural gas/gasoline processing plant subject to (g) above, after July 1, 1987;

3. Any synthetic organic chemical or polymer manufacturing facility subject to (h) above, after July 1, 1987; or

4. Any chemical plant subject to (i) above, beginning May 31, 1995.

[(l)](p) The provisions of (f), (g), [and] (h), **and (i)** above shall not apply to [valves which would require monitoring personnel to be elevated higher than 6.6 feet (2 meters) above permanent support surfaces by the use of a ladder or scaffolding. Permanent support surfaces include, but are not limited to, ground level, catwalks and platforms. Such valves shall be monitored annually rather than quarterly.] **the following components:**

1. A component which is primarily used in a laboratory operation or research facility;

2. A component that cannot be tested without immediate danger to the personnel conducting the test. For such components the owner or operator shall document in a safety manual or written policy, the reason that the monitoring personnel would be placed in immediate danger and the circumstances, if any, under which the component could be safely tested (for example, when the component is not in service). Further, when those circumstances arise, the owner or operator shall cause the testing to be performed that is reasonably equivalent to the standard testing circumstances in accuracy and in efficacy for leak detection and shall handle and respond to the results of that testing as this section otherwise requires;

3. A pump that is inherently sealless by design, for example, a magnetic drive, canned motor, or diaphragm pump;

4. A pump equipped with dual mechanical seals, provided that the barrier fluid is not an applicable VOC and that:

i. Each dual mechanical seal is operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure;

ii. Each dual mechanical seal is equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a VOC control apparatus;

iii. Each dual mechanical seal is equipped with a closed-loop system that purges the barrier fluid into a process stream; or

iv. Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both;

5. A leakless design Bellows type valve; and

6. Process equipment enclosed in such a manner that all emissions from any component with a leak is vented through a system that routes those emissions to a VOC control apparatus, provided that the enclosure is maintained under a negative pressure at all times while the process unit is in operation.

(q) Notwithstanding the other subsections of this section, the owner or operator of a facility subject to the provisions of this section may use pressure testing with gas or liquid as an alternative method to comply with leak detection requirements.

1. If the pressure testing alternative is used for continuous processing equipment, the frequency of pressure testing shall be no less than the frequency set forth in (f), (g), (h) and (i).

2. If the pressure testing alternative is used for batch product processes:

i. Each time batch processing equipment is reconfigured, the batch product-process equipment shall be pressure tested for leaks before applicable VOC is first fed into the equipment and the equipment is placed in applicable VOC service, provided, however, that when the seal is broken between two items of equipment or

when equipment is changed in a section of the batch product-processing equipment train, pressure testing is required only for the new or disturbed equipment; and

ii. Notwithstanding (i) above, each batch product process that operates in applicable VOC service during a calendar year shall be pressure tested at least once during the calendar year.

3. When pressure testing with a gas, the following procedures shall be used:

i. The product-process equipment shall be pressurized with a gas to the operating pressure of the equipment, but the equipment shall not be tested at a pressure greater than the pressure setting of the lowest relief valve setting;

ii. Once the test pressure is obtained, the gas source shall be shut off;

iii. The test shall continue for not less than 15 minutes unless it can be determined in a shorter period of time that the allowable rate of pressure drop is exceeded; and

iv. The pressure shall be measured at the beginning and at the end of the test period using a pressure measurement device (gauge, manometer, or equivalent) which has a precision of plus or minus 2.5 mm Hg. If the rate of pressure change is greater than one pound per square inch per hour, or if there is visible, audible or olfactory evidence of fluid loss, a regulated leak is detected.

4. When pressure testing with a liquid, the following procedures shall be used:

i. The product-process equipment shall be filled with the test liquid. Once the equipment is filled, the liquid source shall be shut off;

ii. The test shall be conducted for a period of at least 60 minutes, unless it can be determined in a shorter period of time that there is a regulated leak; and

iii. Each seal in the equipment being tested shall be inspected for indications of fluid loss. If there are any indications of liquid dripping or of fluid loss a regulated leak is detected.

(r) The owner or operator of a facility subject to the provisions of this section is exempt from the requirement to repair any regulated leak within the applicable time limits set forth in this section, so long as no applicable VOC is fed to the source operation of which the component is a part until testing confirms that the leak has successfully been repaired.

7:27-[16.7]**16.19** [Cutback] **Application of cutback** and emulsified asphalts

(a) (No change.)

7:27-[16.8]**16.20**

(No change in text.)

7:27-16.21 Natural gas pipelines

(a) The owner or operator of any natural gas pipeline shall by (90 days from the effective date of this rule) prepare a Control Measure Plan that shall:

1. Identify each control technology or procedure available to the owner or operator for achieving reductions in VOC emissions from a blowdown event. Such control technology or procedures may include, without limitation, pipeline pressure reductions, the use of mobile compressors for recompressing, and the use of control apparatus; and

2. Identify in detail the criteria that the owner or operator will use to select the control technology or procedure, or combination thereof, that will achieve the greatest reductions in VOC reasonably achievable for each blowdown event.

(b) The owner or operator of any natural gas pipeline shall by May 31, 1995 achieve some reduction in VOC emissions from each blowdown event and shall implement the control technologies or procedures that the Control Measure Plan indicates would be appropriate for each blowdown event.

(c) On or before March 1 of each year beginning in 1996, the owner or operator of each natural gas pipeline shall submit a report to the Chief, Bureau Field Operations setting forth the location, date and duration of each blowdown event, a description of the emissions reduction procedures and technology used, and a quantification of the amount of VOC emission reductions achieved for each event.

(d) The owner or operator of any natural gas pipeline subject to (a) above shall retain the Control Measure Plan at the location of any blowdown event in New Jersey and shall provide a copy of such plan to the Department within three days of receipt of a written request from the Department.

(e) If after reviewing a Control Measure Plan, the Department determines that it fails to satisfy the requirements set forth in (a) above, the Department shall notify the owner or operator that it has 30 days to submit to the Department appropriate amendments to its plan. Failure to do so shall constitute a violation of this section. However, an owner or operator may request an adjudicatory hearing regarding the Department's determination in accordance with the procedure at N.J.A.C. 7:27-8.12.

(f) The Department may require amendments to a Control Measure Plan if:

1. The Plan does not contain all of the information required under (a) above;

2. The Plan does not consider all control technology and procedures used or considered for use by other persons in the owner or operator's industry, taking into account the potential for the creation of a safety hazard or the potential for unreasonable interference with enjoyment of life and property;

3. The Plan would be ineffective in controlling VOC emissions during blowdown events;

4. The emission reductions being achieved are not the greatest reductions which can be practicably achieved at reasonable costs; or

5. Implementation of the plan results or would result in any violation of law or regulation.

7:27-[16.9]**16.22** Emission information, record keeping and testing

(a) (No change.)

(b) Any person who owns or operates a source operation subject to any record keeping requirement set forth in this subchapter may submit a request in writing to the Department for approval to maintain records other than those specified at N.J.A.C. 7:27-16.2[(n)] **(k)**, 16.3[(w)]**(s)**, [16.5(l), 16.5(m), 16.6(m), or 16.8(g)] **16.4(l), 16.5(j), 16.6(l), 16.7(h) and (o), 16.13(d), 16.18(j), 16.20(q) or 16.24(c)**. The Department and EPA may approve any such request if the person demonstrates to the satisfaction of the Department and EPA that the alternate records to be maintained are at least as effective in documenting that the source is operating in compliance with the applicable requirements.

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

(h) Any record keeping requirement set forth at N.J.A.C. [7:27-16.2(h), 16.3(w), 16.5(l), 16.5(m), 16.6(m), or 16.8(g)] **7:27-16.2(k), 16.3(s), 16.7(m), 16.7(n), 16.16(g), or 16.20(g)**, shall become effective on October 1, 1992, except for record keeping based on continuous emission monitoring. Any record keeping requirement based on continuous emission monitoring shall become effective on April 1, 1993.

(i) Any person who reports information to the Department pursuant to the requirements set forth at N.J.A.C. 7:27-16.2 [(n)](k), 16.3[(w)](s), [16.5(l), 16.5(m), 16.6(m), or 16.8(g)] **16.7(m) and (n), 16.16(g), or 16.20(g)** may assert a confidentiality claim for that information in accordance with the procedures set forth at N.J.A.C. 7:27-8.14.

7:27-16.23 Procedures for demonstrating compliance

(a) The owner or operator of equipment or a source operation subject to N.J.A.C. 7:27-16.8, 16.9, 16.10, 16.11 or 16.13 that is subject to an emission limit under this subchapter shall demonstrate compliance with the emission limit pursuant to (a)1 below if a continuous emissions monitoring system has been installed on the equipment or source operation for the air contaminant in question, or pursuant to (a)2 below if no such system has been installed for the air contaminant.

1. With respect to an emission limit for any air contaminant monitored by a continuous emissions monitoring system installed

on the equipment or source operation, compliance with the limit is based upon the average of emissions over one calendar day.

2. With respect to an emission limit for any air contaminant that is not monitored by a continuous emissions monitoring system installed on the equipment or source operation, compliance with the limit is based upon the average of three one-hour tests, each performed over a consecutive 60-minute period specified by the Department and performed in compliance with N.J.A.C. 7:27-16.22.

(b) For any equipment or source operation subject to (a) above which was in operation before January 1, 1995, the owner or operator shall demonstrate compliance with this subchapter in accordance with (a)1 or 2 above by May 31, 1996, and thereafter at the frequency set forth in the permit for such equipment or source operation.

(c) For any equipment or source operation subject to (a) above which commences operations or is altered after January 1, 1995, the owner or operator shall demonstrate compliance with this subchapter in accordance with (a) or (b) above within 180 days from the date on which the source commences operation, and thereafter at the frequency set forth in the permit for such equipment or source operation.

(d) An exceedance of any applicable VOC or CO emission limit set forth in this subchapter, determined through testing or monitoring performed pursuant to (a) or (b) above or otherwise, is a violation of this subchapter.

7:27-16.24 Adjusting combustion processes

When any provision of this subchapter requires the adjustment of a combustion process for any equipment or source operation, the owner or operator of the equipment or source operation shall do so in accordance with the terms and conditions of N.J.A.C. 7:27-19.16.

7:27-16.25 Continuous emissions monitoring

(a) Any person required to install a continuous emissions monitoring system under this subchapter shall:

1. Submit to the Department a continuous emissions monitoring equipment and certification protocol. The Department may approve a system if its design and specifications satisfy the requirements established by EPA at 40 CFR Part 60, Appendix B, and 40 CFR Part 60, Appendix F, Quality Assurance Requirements;

2. Install the system in compliance with the EPA regulations listed in (a)1 above, and in accordance with the manufacturer's specifications;

3. Conduct performance tests of the system in accordance with the approved continuous emissions monitoring equipment and certification protocol listed in (a)1 above, and obtain confirmation from the Department that the system satisfies the performance requirements of those regulations;

4. Install and operate the system in accordance with the manufacturer's specifications;

5. Continuously monitor and record CO emissions from the equipment or source operation subject to the monitoring requirement; and

6. Conduct quality assurance procedures in accordance with 40 CFR—Part 60, Appendix F or other standards specified by the Department is being substantially equivalent.

(b) A person required under this subchapter to install continuous emissions monitoring systems on equipment of a given type at a facility may satisfy this requirement without installing such a system on every unit of such equipment at the facility, in accordance with a plan approved in writing by the Department.

(c) A person seeking approval of a plan for limited installation of continuous emissions monitoring systems shall submit a written application to the Bureau of Technical Services. The applicant shall include in the application a plan containing the following information for each source operation for which a continuous emissions monitoring system is required under this subchapter:

1. The name and business address of the person seeking approval of the plan, and the name and address of the facility at which the equipment or source operation is used;

2. The make and model of the equipment or source operation;

3. A description of the conditions under which the equipment or source operation is used;

4. The results of all source emissions testing conducted within the five years preceding the application;

5. A statement that the applicant proposes to install or not install a continuous emissions monitoring system;

6. A statement indicating all reasons why the applicant is requesting that the required continuous emissions monitors not be installed; and

7. Any other information which the Department requests which is reasonably necessary to enable it to determine whether the application satisfies the requirements of (e) below.

(d) Within 30 days after receiving an application, the Department shall notify the applicant in writing whether the application includes all of the information required under (c) above.

1. If the application is incomplete, the Department shall include in the notice a list of the deficiencies, a statement of the additional information required to make the application complete, and the time by which the applicant must submit a complete application.

2. The Department may refrain from reviewing the substance of the application (or any part thereof) until it is complete.

3. The applicant shall submit a complete proposed plan within the time stated in the Department's notification.

4. If the applicant fails to submit a complete application within the time stated in the Department's notification, the Department may reject the application.

(e) The Department shall approve the plan only if:

1. For each item of equipment or source operation on which a continuous emissions monitoring system is not to be installed, there is another item of equipment or source operation at the facility which is:

i. Of the same make and model;

ii. Is used under substantially the same conditions; and

iii. Will have a continuous emissions monitoring system installed on it;

2. Under the plan, a continuous emissions monitoring system will be installed on each utility boiler at the facility if required under 40 CFR 75 or 76; and

3. The emission rate from the equipment or source operation on which the continuous emissions monitoring system is to be installed will not differ significantly from the emission rate from the corresponding equipment or source operation on which no continuous emissions monitoring system is to be installed.

(f) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of the subject equipment or source operation necessary to minimize any adverse impact upon human health, welfare and the environment.

(g) The approval of a plan under (c) above is void upon the alteration of any item of equipment or source operation included in the plan (whether or not the item of equipment or source operation has a continuous emissions monitoring system installed).

1. The owner or operator may apply for and obtain the Department's approval of a revised plan pursuant to this section, reflecting the proposed alteration.

2. Before altering any equipment or source operation which is subject to the plan, the owner or operator shall apply for and obtain such permits and certificates as are required under N.J.A.C. 7:27-8 and any other applicable law or regulation.

(h) The owner or operator shall comply with the approved plan, and with all conditions imposed by the Department under (f) above.

(i) The Department may revoke an approval issued under this section, by written notice to the owner or operator of the facility which is the subject of the plan, if:

1. Any material condition of the Department's approval of the plan is violated;

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the request for the approval or any supporting documentation;

3. The Department determines that as a result of a change in circumstances since the date the installation of any continuous emission monitoring system was approved, the emissions from an

unmonitored item of equipment or source operations are not substantially the same as the emissions from the corresponding continuously monitored item of equipment; or

4. Based upon the record of exceedances shown by one continuous emission monitoring sytem, the Department determines that it is reasonably likely that a source operation or item of equipment is exceeding applicable limits without detection.

(j) In revoking an approval pursuant to (i) above, the Department shall specify an effective date for the revocation which provides the owner or operator with a reasonable amount of time to install a continuous emissions monitoring system on the item of equipment or source operation in question.

(k) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-8.12, if:

1. The Department has denied the person's application for approval of a plan under this section;

2. The person seeks to contest conditions imposed by the Department under (f) above; or

3. The Department has revoked its approval of the person's plan pursuant to (i) and (j) above.

(l) The owner or operator of an item of equipment or source operation required to have a continuous emissions monitoring system shall not operate the equipment or source operation without such a system, except in accordance with a plan approved under this section. If an item of equipment or a source operation required to have a continuous emissions monitoring system is operating without such a system, without first having received approval of a plan authorizing such operation, it shall not be a defense to an enforcement action that an application for approval of a plan is pending.

(m) A person seeking approval of a plan for limited installation of a continuous emissions monitoring system shall send the application to the Department at the following address:

Chief, Bureau of Technical Services
Division of Air Quality Regulation
Department of Environmental Protection and Energy
CN 411
Trenton, New Jersey 08628-0411

7:27-[16.10]**16.26**

(No change in text.)

[7:27-16.11 Applicability

(a) Whenever persons, equipment, control apparatus or any VOC subject to the provisions of this subchapter are also subject to the provisions of any other subchapters of this chapter, the requirements of the relevant provisions of this subchapter and all subchapters of this chapter wil apply.

(b) Whenever a VOC subject to the emission rate provisions of this subchapter is also subject to the emission rate provisions of any other subchapters of this chapter, the relevant provisions of the subchapter requiring the lowest allowable rate will apply.]

7:27-[16.12]**16.27** Exceptions

(a) (No change.)

(b) The provisions of this subchapter shall not apply to the emissions of VOC from the following source operations:

1. [Glass manufacturing furnaces] **Offset lithography printing operations until November 15, 1994;**

2. [Fiberglass manufacturing furnaces] **Surface coating of plastic parts until November 15, 1994;**

3. [Fuel burning for steam generation for space heating] **Natural gas pipelines that are not major VOC facilities, with the exception of blowdown events as set forth in N.J.A.C. 7:27-16.21;**

4. [Incinerators] **Industrial wastewater treatment systems until November 15, 1994;**

5. [Asphalt plant dryers;] **All other wastewater treatment facilities until November 15, 1994; and**

6. Open burning[;].

[7. Sulfuric acid plant burners.]

7:27-17.1 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.**

"Distillates of air" means helium (He), nitrogen (N_2), oxygen (O_2), neon (NE), argon (Ar), xenon (Xe), and carbon dioxide (CO_2).

"Effective stack height" means the distance to the plume center line from the ground as determined by adding the plume rise to the physical height of the stack. It shall be calculated by one of the following equations:

1. If the lowest possible temperature of the gas leaving the stack is 68 degrees Fahrenheit (20 degrees Celsius) or less:

Effective stack height = $H_s + 2.76(D)(B^{1/3})$

where:

H_s = the physical stack height above grade in meters

D = the stack outlet in diameter in meters

B = $(V^2)/T$

V = the stack gas exit velocity in meters per second

T = the stack gas temperature at the stack outlet in degrees Kelvin

2. If the lowest possible temperatuer of the gas leaving the stack is greater than 68 degrees Fahrenheit (20 degrees Celsius):

Effective stack height = $H_s + 8.28(F^{0.75})$

where:

H_s = the physical stack height above grade in meters

F = $(V)(D^2)(T-293)/T$

V = the stack gas exit velocity in meters per second

D = the stack outlet diameter in meters

T = the stack gas temperature at the stack outlet in degrees Kelvin

. . .

"Gasoline" means any petroleum distallate or petroleum distallate/oxegenate blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater [and used as an automotive fuel]**, and commonly or commercially known or sold as gasoline.**

. . .

["Organic substance" means any chemical compound or mixture of chemical compounds of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate.]

"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.

"Plume rise" means the vertical distance from the point at which an effluent stream is discharged into the outdoor atmosphere to the highest point attained by the center line of the effluent stream.

. . .

"Volatile organic compound" or "VOC" means any [organic substance, mixture of organic substances, or the organic components of any mixture of organic and inorganic substances that] **compound of carbon, excluding 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 emission limits or content standards, VOC shall be measured by [approved] test methods **which have been approved in writing by the Department.** [This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which is an organic substance and evaporates from the coating during the application and drying phase.] This term does not include **the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together**

with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
[chlorodifluoromethane (CFC-22)]
trifluoromethane [(FC-23)] **(HFC-23)**
1,1,2-trichloro-1,2,2,-trifluoroethane (CFC-113)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
chlorodifluoromethane (HCFC-22)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)
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 at 40 CFR 51.00(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

7:27-17.3 Storage, transfer, and use of toxic substances

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

(f) Permit applications submitted to the Department pursuant to N.J.A.C. 7:27-8 satisfy the registration requirements of this section.

TABLE 1
TOXIC SUBSTANCES

GROUP I

Name	CAS Number
Benzene (Benzol)	71-43-2
Carbon tetrachloride (Tetrachloromethane)	56-23-5
Chloroform (Trichloromethane)	67-66-3
Dioxane (1,4-Diethylene dioxide)	123-91-1
Ethylenimine (Aziridine)	151-56-4
Ethylene dibromide (1,2-Dibromoethane)	106-93-4
Ethylene dichloride (1,2-Dichloroethane)	107-06-2
1,1,2,2-Tetrachloroethane (sym Tetrachloroethane)	79-34-5
Tetrachloroethylene (Perchloroethylene)	127-18-4
1,1,2-Trichloroethane (Vinyl trichloride)	79-00-5
Trichloroethylene (Trichlorethene)	79-01-6

GROUP II

Name	**CAS Number**
Methylene chloride (Dichloromethane)	**75-09-2**
1,1,1-Trichloroethane (Methyl chloroform)	**71-55-6**

7:27-17.4 Discharge of toxic substances

(a) No person shall cause, suffer, allow or permit any **GROUP I** TXS to be emitted from any source operation into the outdoor atmosphere unless such discharge is:

1. [No] **At any effective stack height of no** less than 40 feet (12.2 meters) above grade; [and]

2. No less than 20 feet (6.1 meters) higher than any area of human use or occupancy **including, but not limited to, the roof of a building, which is** within 50 feet (15.2 meters), **measured horizontally from the point of discharge**; and

3. Directed vertically upward [at a discharge velocity of 3,600 feet per minute (1,097 meters per minute) or greater].

(b) No person shall cause, suffer, allow or permit the emission of a **GROUP I** TXS into the outdoor atmosphere from a system, equipment, or control apparatus not approved by the Department as being effective in preventing aerodynamic downwash.

(c) The Department has determined that Group II TXS should be subject to at least reasonably available control technology requirements. Accordingly, requirements for the implementation of control measures, including, but not limited to, requirements for the installation and use of control apparatus, set forth at N.J.A.C. 7:27-16 and 23, shall apply with full force to Group II TXS until the Department amends this rule in response to anticipated EPA rule-making or otherwise. For example, pursuant to this subsection and N.J.A.C. 7:27-16.4(b), certain transfers of methylene chloride may be conducted only with either a vapor control apparatus which reduces by no less than 90 percent the concentration of methylene chloride in the air-vapor mixture displaced during the transfer, a floating roof, or certain types of vapor balance systems. For another example, pursuant to this subsection and N.J.A.C. 7:27-23.3, a lacquer may not contain more than 5.7 pounds per gallon of methylene chloride, nor may it contain more than 4.7 pounds of VOC together with one pound of methylene chloride.

7:27-23.1 Applicability

(a) This subchapter prescribes the rules of the Department for limiting the VOC content of architectural coatings and consumer products. The following sections shall govern the content of architectural coatings and consumer products used and provided for use in the State and the method to be followed by manufacturers, distributors, and retailers to assure these standards are met.

(b) As set forth at N.J.A.C. 7:27-17.4(c), this subchapter's requirements for the implementation of control measures, including but not limited to, requirements for the installation and use of control apparatus, or the use of compliant coatings, shall apply with full force to Group II TXS until the Department amends this rule in response to EPA rulemaking or otherwise.

7:27-23.2 Definitions

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

...

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

...

["Normal environmental conditions" means temperatures above 50 degrees Fahrenheit (14 degrees Centigrade).]

...

"Normal environmental conditions" means temperatures above 50 degrees Fahrenheit (14 degrees centigrade).

...

"Regulated organic compound" or "ROC" means the total combination of any VOC and any TXS.

...

"Toxic substance" or "TXS" means a substance listed in Table 1 of N.J.A.C. 7:27-17; that is, Benzene (Benzol), Carbon tetrachloride (Tetrachloromethane), Chloroform (Trichloromethane), Dioxane (1,4-Diethylene dioxide), Ethylene dibromide (1,2-Dibromoethane), Ethylene dichloride (1,2-Dichloroethane), 1,1,2,2-Tetrachloroethane (sym Tetrachloroethane), Tetrachloroethylene (Perchloroethylene), 1,1,2-Trichloroethane (Vinyl trichloride), Trichloroethylene (Trichloroethane), Methylene chloride (Dichloromethane), and 1,1,1-Trichloroethane (Methyl Chloroform).

...

"Volatile organic compound" or "VOC" means any [organic substance, mixture of organic substances, or the organic components of any mixture of organic and inorganic substances that] **compound of carbon, excluding 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 emission limits or content standards, VOC shall be measured by [approved] test methods **which have been approved in writing by the Department.** [This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which is an organic substance and evaporates from the coating during the application and drying phase.] This term does not include **the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:**

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
[chlorodifluoromethane (CFC-22)]
trifluoromethane [(FC-23)] **(HFC-23)**
1,1,2-trichloro-1,2,2,-trifluoroethane (CFC-113)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
chlorodifluoromethane (HCFC-22)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)
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 at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

...

[“Volatile organic substance” or “VOS” means any organic substance, mixture of organic substances, or mixture of organic and inorganic substances defined as a volatile organic substance in N.J.A.C. 7:27-16.]

...

[“Wood preservative coating” means any coating which is formulated for the purpose of protecting exposed wood from decay or insect attack by the addition of a wood preservative product registered by the EPA.]

...

7:27-25.1 Definitions

[Words] **The following words** and terms, when used in this subchapter, have [meanings as defined at N.J.A.C. 7:27-1.4 or as follows] **the following meanings**, unless the context clearly indicates otherwise[:].

...

“Department” means the New Jersey Department of Environmental Protection **and Energy.** ...

“Gasoline” means any petroleum distillate or petroleum distillate/oxygenate blend having a Reid vapor pressure of four pounds per square inch (207 millimeters of mercury) absolute or greater, [sold for use or used in a motor vehicle or motor vehicle engine,] and commonly or commercially known or sold as gasoline.

“Volatile organic compound” or “VOC” means any [organic substance, mixture of organic substances, or the organic components of any mixture of organic and inorganic substances that] **compound of carbon, excluding 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 emission limits or content standards, VOC shall be measured by [approved] test methods **which have been approved in writing by the Department.** [This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which is an organic substance and evaporates from the coating during the application and drying phase.] This term does not include **the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:**

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
[chlorodifluoromethane (CFC-22)]
trifluoromethane [(FC-23)] **(HFC-23)**
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
chlorodifluoromethane (HCFC-22)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)
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 at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

...

7:27-25.7 Exemptions

(a) (No change.)

(b) Application for an exemption shall be made on forms obtained from the Department. Any person may request application forms from:

Assistant Director of **Air and Environmental Quality** Enforcement
Division of [Environmental Quality] **Enforcement Field Operations**
Department of Environmental Protection **and Energy**
CN 422
Trenton, New Jersey 08625-**0422**

(c) The Department may require an applicant for an exemption to submit such details about the intended use of the non-conforming gasoline as it considers necessary to evaluate the potential effect of such use on public health, welfare and the environment. Such information shall include, but is not limited to:

1.-3. (No change.)

4. A calculation of the maximum potential additional [VOS] **VOC** emissions that could occur during the May 1 through September 15 period in any year due to the storage, transfer, and use of non-conforming gasoline; and

5. (No change.)

(d)-(l) (No change.)

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.

. . .

"Volatile organic compound" or "VOC" means any [organic substance, mixture of organic substances, or the organic components of any mixture of organic and inorganic substances that] **compound of carbon, excluding 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 emission limits or content standards, VOC shall be measured by [approved] test methods **which have been approved by the Department in writing.** [This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which is an organic substance and evaporates from the coating during the application and drying phase.] This term does not include **the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:**

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
[chlorodifluoromethane (CFC-22)]
trifluoromethane [(FC-23)] **(HFC-23)**
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
chlorodifluoromethane (HCFC-22)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)
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 at 40 CFR 51.100(a)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

7:27A-3.10 Civil administrative penalties for violations of rules adopted pursuant to the Act

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

(e) The Department shall determine the amount of the civil administrative penalty for offenses described in this section on the basis of the provision violated and the frequency of the violation. Footnotes 3, 4, and 8 set forth in this subsection [and (f) below] are intended solely to put violators on notice that in addition to any civil administrative penalty assessed the Department may also revoke the violator's operating certificate or variance. These footnotes are not intended to limit the Department's discretion in determining whether or not to revoke an operating certificate or variance, but merely indicate the situations in which the Department is most likely to seek revocation. The number of the following subsections corresponds to the number of the corresponding subchapter in N.J.A.C. 7:27.

1.-15. (No change.)

16. The violations of N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Compounds (VOC), and the civil administrative penalty amounts for each violation, per source, 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. 7:27-16.2(a)	External Surface	$1,000	$2,000	$5,000[3]	$15,000[3]
N.J.A.C. 7:27-16.2(b)	Control Apparatus	$1,000	$2,000	$5,000[3]	$15,000[3]
N.J.A.C. 7:27-16.2(c)	Vapor Control System	$1,000	$2,000	$5,000[3]	$15,000[3]
N.J.A.C. 7:27-16.2(d)	Gauging/Sampling	$500	$1,000	$2,500[3]	$7,500[3]
N.J.A.C. 7:27-16.2(g)	Floating Roof	$2,000	$4,000	$10,000[3]	$30,000[3]
N.J.A.C. 7:27-16.2(h)	Seal-Envelope	$2,000	$4,000	$10,000[3]	$30,000[3]
[N.J.A.C. 7:27-16.2(i)	Second Seal	$2,000	$4,000	$10,000[3]	$30,000[3]]
[N.J.A.C. 7:27-16.2(k)	Retrofit Notification	$50	$1,000	$2,500[3]	$7,500[3]]
N.J.A.C. 7:27-16.2[(l)](i)	Roof Openings	$600	$1,200	$3,000[3]	$9,000[3]
N.J.A.C. 7:27-16.2[(n)](k)	Records [Keeping]	$500	$1,000	$2,500[3]	$7,500[3]
N.J.A.C. 7:27-16.3(a)	Submerged Fill **(Gasoline)**	$600	$1,200	$3,000[3]	$9,000[3]
N.J.A.C. 7:27-16.3(c)	Transfer of Gasoline	$600	$1,200	$3,000[3]	$9,000[3]
N.J.A.C. 7:27-16.3(d)	Transfer of Gasoline (Delivery)	$600	$1,200	$3,000	$9,000
N.J.A.C. 7:27-16.3(e)1	**Loading** 15,000 gallons or less per day	$1,000	$2,000	$5,000[3]	$15,000[3]
N.J.A.C. 7:27-16.3(e)2	[Greater] **Loading more** than 15,000 gallons per day	$5,000	$10,000	$25,000[3]	$50,000[3]

N.J.A.C. 7:27-16.3(f)1	[VOS Emission] **Release of VOC**	$600	$1,200	$3,000[3]	$9,000[3]
N.J.A.C. 7:27-16.3(f)2	Overfill and Spillage	$1,000	$2,000	$5,000[3]	$15,000[3]
N.J.A.C. 7:27-16.3(h)2	Records Availability	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-16.3(i)1	Pressure Testing	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-16.3(i)2 [and] **or** (i)3	Certification Display	$100	$200	$500	$1,500
N.J.A.C. 7:27-16.3(j)	Transfer Pressure	$600	$1,200	$3,000	$9,000
N.J.A.C. 7:27-16.3(k)**1**	[Leaking Components] **Leak**	$600	$1,200	$3,000	$9,000
N.J.A.C. 7:27-16.3(k)2	**Component**	**$800**	**$1,600**	**$4,000**	**$12,000**
N.J.A.C. 7:27-16.3(k)3	**Spill**	**$2,000**	**$4,000**	**$10,000**	**$30,000**
N.J.A.C. 7:27-16.3(m)	Vapor-Tight Delivery Vessel (**Gasoline**)	$600	$1,200	$3,000	$9,000
N.J.A.C. 7:27-16.3(o)	**Recertify**	**$200**	**$400**	**$1,000**	**$3,000**
[N.J.A.C. 7:27-16.3(q)	Transfer/Loading	$600	$1,200	$3,000	$9,000]
[N.J.A.C. 7:27-16.3(r)1	Permit	$400	$800	$2,000	$6,000]
[N.J.A.C. 7:27-16.3(r)2	Construction	$800	$1,600	$4,000	$12,000]
[N.J.A.C. 7:27-16.3(s)1	Permit	$200	$400	$1,000	$3,000]
[N.J.A.C. 7:27-16.3(s)2	Construction	$400	$800	$2,000	$6,000]
N.J.A.C. 7:27-16.3[(w)](s)	Records [Keeping]	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-16.4(b)	**Submerged Fill (VOC)**	**$600**	**$1,200**	**$3,000[3]**	**$9,000[3]**
N.J.A.C. 7:27-16.4(c)	**Transfer of VOC**	**$600**	**$1,200**	**$3,000[3]**	**$9,000[3]**
N.J.A.C. 7:27-16.4(f)	**Transfer of VOC (Delivery)**	**$600**	**$1,200**	**$3,000**	**$9,000**
N.J.A.C. 7:27-16.4(i)1	**Pressure Testing**	**$500**	**$1,000**	**$2,500**	**$7,500**
N.J.A.C. 7:27-16.4(i)2 or (i)3	**Certification Display**	**$100**	**$200**	**$500**	**$1,500**
N.J.A.C. 7:27-16.4(j)	**Transfer Pressure**	**$600**	**$1,200**	**$3,000**	**$9,000**
N.J.A.C. 7:27-16.4(k)1	**Leak**	**$600**	**$1,200**	**$3,000**	**$9,000**
N.J.A.C. 7:27-16.4(k)2	**Component**	**$800**	**$1,600**	**$4,000**	**$12,000**
N.J.A.C. 7:27-16.4(k)3	**Spill**	**$2,000**	**$4,000**	**$10,000**	**$30,000**
N.J.A.C. 7:27-16.4(l)	**Vapor-Tight Delivery Vessel (VOC)**	**$600**	**$1,200**	**$3,000**	**$9,000**
N.J.A.C. 7:27-16.4(m)	**Recertify**	**$200**	**$400**	**$1,000**	**$3,000**
N.J.A.C. 7:27-16.4(o)	**Records**	**$500**	**$1,000**	**$2,500**	**$7,500**
N.J.A.C. 7:27-16.5(b)	**Control Apparatus**	**$2,000[3]**	**$4,000[3]**	**$10,000[3]**	**$30,000[3]**
N.J.A.C. 7:27-16.5(c)	**Submittal/Plan**	**$500**	**$1,000**	**$2,500**	**$7,500**
N.J.A.C. 7:27-16.5(e)	**Ballasting**	**$2,000[3]**	**$4,000[3]**	**$10,000[3]**	**$30,000[3]**
N.J.A.C. 7:27-16.5(f)1	**Leak**	**$1,200**	**$2,400**	**$6,000**	**$18,000**
N.J.A.C. 7:27-16.5(f)2	**Component**	**$1,600**	**$3,200**	**$8,000**	**$24,000**
N.J.A.C. 7:27-16.5(f)3	**Spill**	**$4,000**	**$8,000**	**$20,000**	**$50,000**
N.J.A.C. 7:27-16.5(j)	**Records**	**$500**	**$1,000**	**$2,500**	**$7,500**
N.J.A.C. 7:27-[16.4(a)]**16.6(a)**	Tank Lids	$500	$1,000	$2,500	$7,500[3]
N.J.A.C. 7:27-[16.4(b)]**16.6(b)**	Unheated Surface Cleaner 25 square feet or less	$500	$1,000	$2,500[3]	$7,500[3]
N.J.A.C. 7:27-[16.4(c)]**16.6(c)**	Unheated Surface Cleaner greater than 25 square feet	$1,000	$2,000	$5,000[3]	$15,000[3]
N.J.A.C. 7:27-[16.4(d)]**16.6(d)**	Heated Tank	$1,000	$2,000	$5,000[3]	$15,000[3]
N.J.A.C. 7:27-[16.4(e)]**16.6(e)**	Vapor Surface Cleaner	$1,500	$3,000	$7,500[3]	$22,500[3]
N.J.A.C. 7:27-[16.4(f)]**16.6(f)**	Unheated Conveyorized Surface Cleaner	$1,000	$2,000	$5,000[3]	$15,000[3]
N.J.A.C. 7:27-[16.4(g)]**16.6(g)**	Heated Conveyorized Surface Cleaner	$1,500	$3,000	$7,500[3]	$22,500[3]
N.J.A.C. 7:27-[16.4(h)]**16.6(h)**	Conveyorized Vapor Surface Cleaner	$2,000	$4,000	$10,000[3]	$30,000[3]
N.J.A.C. 7:27-[16.4(i)]**16.6(i)**	Oil-Water Separator	$500	$1,000	$2,500[3]	$7,500[3]

N.J.A.C. 7:27-[16.4(j)]**16.6(j)**	Written Instructions	$200	$400	$1,000	$3,000[3]
N.J.A.C. 7:27-[16.4(k)]**16.6(k)**	Training Program	$500	$1,000	$2,500	$7,500[3]
N.J.A.C. 7:27-[16.4(l)]**16.6(l)**	Copies of Instructions	$300	$600	$1,500	$4,500[3]
N.J.A.C. 7:27-[16.4(m)]**16.6(m)**	Submittal	$300	$600	$1,500	$4,500[3]
N.J.A.C. 7:27-[16.4(n)]**16.6(n)**	Notification	$200	$400	$1,000	$3,000[3]

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-[16.5(a)]**16.7(c)**				
CLASS **Surface Coating or Graphic Arts**				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1.-3. (No change.)				
From 10 pounds through 22.8 pounds per hour:				
1.-3. (No change.)				
For greater than 22.8 pounds per hour:				
1.-3. (No change.)				

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-[16.5(b)]**16.7(d)**				
CLASS **Surface Coating or Graphic Arts**				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1.-3. (No change.)				
From 10 pounds to 22.8 pounds per hour:				
1.-3. (No change.)				
For greater than 22.8 pounds per hour:				
1.-3. (No change.)				

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-[16.5(e)]**16.7(g)**				
CLASS **Metal Furniture or Large Appliance**				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1.-3. (No change.)				
From 10 pounds through 22.8 pounds per hour:				
1.-3. (No change.)				
For greater than 22.8 pounds per hour:				
1.-3. (No change.)				

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-[16.5(f)]**16.7(h)**				
CLASS **Printing**				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1.-3. (No change.)				
From 10 pounds through 22.8 pounds per hour:				
1.-3. (No change.)				
For greater than 22.8 pounds per hour:				
1.-3. (No change.)				

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-[16.5(g)]**16.7(i)**				
CLASS **Tablet Coating**				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1.-3. (No change.)				
From 10 pounds through 22.8 pounds per hour:				
1.-3. (No change.)				
For greater than 22.8 pounds per hour:				
1.-3. (No change.)				

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-[16.5(h)]**16.7(j)**				
CLASS **Wood Furniture**				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1.-3. (No change.)				
From 10 pounds through 22.8 pounds per hour:				
1.-3. (No change.)				
For greater than 22.8 pounds per hour:				
1.-3. (No change.)				

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.7(k)1	**Permit**	**$400**	**$800**	**$2,000**	**$6,000**
N.J.A.C. 7:27-16.7(k)2	**Construction**	**$800**	**$1,600**	**$4,000**	**$12,000**
N.J.A.C. 7:27-[16.5(l)]**16.7(m) or (n)**	Records [Keeping]	$500	$1,000	$2,500	$7,500
[N.J.A.C. 7:27-16.5(m)	Record Keeping	$500	$1,000	$2,500	$7,500]

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.8(b)1 or (c)1				
CLASS Non-utility and Utility Boilers				
Actual Emission (pounds per million BTU):				
Boiler Heat Input Capacity—Less than 100 MMBTU				
1. Less than 25 percent over the allowable standard	$2,000[3]	$4,000[3]	$10,000[3]	$30,000[3]
2. From 25 through 50 percent over the allowable standard	$4,000[3]	$8,000[3]	$20,000[3]	$50,000[3]
3. Greater than 50 percent over the allowable standard	$8,000[3]	$16,000[3]	$40,000[3]	$50,000[3]
Boiler Heat Input Capacity—From 100-250 MMBTU				
1. Less than 25 percent over the allowable standard	$6,000[3]	$12,000[3]	$30,000[3]	$50,000[3]
2. From 25 through 50 percent over the allowable standard	$8,000[3]	$16,000[3]	$40,000[3]	$50,000[3]
3. Greater than 50 percent over the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]
Boiler Heat Input Capacity—Greater than 250 MMBTU				
1. Less than 25 percent over the allowable standard	$8,000[3]	$16,000[3]	$40,000[3]	$50,000[3]
2. From 25 through 50 percent over the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]
3. Greater than 50 percent over the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.8(b)2, (c)2, or (d)	Adjust Combustion	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.8(f)	Demonstrate Compliance	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.8(g) or (h)	Failure to Install CEM	$10,000	$20,000	$50,000	$50,000

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.9(b) and (c)				
CLASS Stationary Gas Turbine				
Actual Emission (pounds per million BTU):				
3-10 MW Turbine				
1. Less than 25 percent over the allowable standard	$2,000[3]	$4,000[3]	$10,000[3]	$30,000[3]
2. From 25 through 50 percent over the allowable standard	$4,000[3]	$8,000[3]	$20,000[3]	$50,000[3]
3. Greater than 50 percent over the allowable standard	$8,000[3]	$16,000[3]	$40,000[3]	$50,000[3]
11-50 MW Turbine				
1. Less than 25 percent over the allowable standard	$6,000[3]	$12,000[3]	$30,000[3]	$50,000[3]
2. From 25 through 50 percent over the allowable standard	$8,000[3]	$16,000[3]	$40,000[3]	$50,000[3]
3. Greater than 50 percent over the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]
Greater than 50 MW Turbine				
1. Less than 25 percent over the allowable standard	$8,000[3]	$16,000[3]	$40,000[3]	$50,000[3]
2. From 25 through 50 percent over the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]
3. Greater than 50 percent over the allowable standard	$10,000[3]	$20,000[3]	$50,000[3]	$50,000[3]

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.9(e)	Demonstrate Compliance	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.9(f)	Adjust Combustion	$2,000	$4,000	$10,000	$30,000

Citation		First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.10(b)					
CLASS Stationary Internal Combustion Engine					
Actual Emission (grams per horsepower hr):					
1000 Hp or less					
1. Less than 25 percent over the allowable standard		**$2,000[3]**	**$4,000[3]**	**$10,000[3]**	**$30,000[3]**
2. From 25 through 50 percent over the allowable standard		**$4,000[3]**	**$8,000[3]**	**$20,000[3]**	**$50,000[3]**
3. Greater than 50 percent over the allowable standard		**$8,000[3]**	**$16,000[3]**	**$40,000[3]**	**$50,000[3]**
Greater than 1000 Hp					
1. Less than 25 percent over the allowable standard		**$6,000[3]**	**$12,000[3]**	**$30,000[3]**	**$50,000[3]**
2. From 25 through 50 percent over the allowable standard		**$8,000[3]**	**$16,000[3]**	**$40,000[3]**	**$50,000[3]**
3. Greater than 50 percent over the allowable standard		**$10,000[3]**	**$20,000[3]**	**$50,000[3]**	**$50,000[3]**
N.J.A.C. 7:27-16.10(d)	**Demonstrate Compliance**	**$2,000**	**$4,000**	**$10,000**	**$30,000**
N.J.A.C. 7:27-16.10(e)	**Adjust Combustion**	**$2,000**	**$4,000**	**$10,000**	**$30,000**

Citation		First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.11(b)					
CLASS Asphalt plants					
Maximum Actual Emissions					
1. Less than 25 percent over the allowable standard		**$2,000[3]**	**$4,000[3]**	**$10,000[3]**	**$30,000[3]**
2. From 25 through 50 percent over the allowable standard		**$4,000[3]**	**$8,000[3]**	**$20,000[3]**	**$50,000[3]**
3. Greater than 50 percent over the allowable standard		**$8,000[3]**	**$16,000[3]**	**$40,000[3]**	**$50,000[3]**
N.J.A.C. 7:27-16.11(d)	**Demonstrate Compliance**	**$2,000**	**$4,000**	**$10,000**	**$30,000**
N.J.A.C. 7:27-16.11(e)	**Adjust Combustion**	**$2,000**	**$4,000**	**$10,000**	**$30,000**
N.J.A.C. 7:27-16.13(a)	**Flares**	**$1,200[3]**	**$2,400[3]**	**$6,000[3]**	**$18,000[3]**
N.J.A.C. 7:27-16.13(b)	**Submittal**	**$300**	**$600**	**$1,500**	**$4,500**
N.J.A.C. 7:27-16.13(c)	**Log**	**$500**	**$1,000**	**$2,500**	**$7,500**

Citation		First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-[16.6(a)]**16.16(c)**					
CLASS **Other Source Operations**					
Maximum Actual Emissions					
For less than 10 pounds per hour:					
1.-3. (No change.)					
From 10 pounds through 22.8 pounds per hour:					
1.-3. (No change.)					
For greater than 22.8 pounds per hour:					
1.-3. (No change.)					

Citation	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-16.6(g)	**Records**	**$500**	**$1,000**	**$2,500**	**$7,500**
N.J.A.C. 7:27-16.17(b)1	**Control Apparatus**	**$2,000**	**$4,000**	**$10,000**	**$30,000**
N.J.A.C. 7:27-16.17(b)2	**Compliance with Alternative VOC Control Plan**	**$2,000**	**$4,000**	**$10,000**	**$30,000**
N.J.A.C. 7:27-16.17(c)1	**Compliance**	**$2,000**	**$4,000**	**$10,000**	**$30,000**
N.J.A.C. 7:27-16.17(d)	**Submittal**	**$300**	**$600**	**$1,500**	**$4,500**
N.J.A.C. 7:27-16.17(e)	**Submittal**	**$300**	**$600**	**$1,500**	**$4,500**
N.J.A.C. 7:27-16.17(n)	**Submittal**	**$300**	**$600**	**$1,500**	**$4,500**
N.J.A.C. 7:27-[16.6(d)]**16.18(c)**	Leak[s (Per Leak)]	$300	$600	$1,500[3]	$4,500[3]
N.J.A.C. 7:27-[16.6(e)]**16.18(d)**	Leak[s (Per Leak)]	$300	$600	$1,500[3]	$4,500[3]
N.J.A.C. 7:27-[16.6(f)]**16.18(f)**	[Emission Testing Program] **Leak Detection and Repair**	[$5,000] **$3,000**	[$10,000] **$6,000**	[$25,000[3]] **$15,000[3]**	[$50,000[3]] **$45,000[3]**
N.J.A.C. 7:27-[16.6(g)]**16.18(g)**	[Emission Testing Program] **Leak Detection and Repair**	$3,000	$6,000	$15,000[3]	$45,000[3]
N.J.A.C. 7:27-[16.6(h)]**16.18(h)**	[Emission Testing Program] **Leak Detection and Repair**	$3,000	$6,000	$15,000[3]	$45,000[3]
N.J.A.C. 7:27-16.18(i)	**Leak Detection and Repair**	**$3,000**	**$6,000**	**$15,000[3]**	**$45,000[3]**
N.J.A.C. 7:27-[16.6(i)1]**16.18(j)1**	Log	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-[16.6(i)2]**16.18(j)2**	Report[s]	$500	$1,000	$2,500	$7,500
[N.J.A.C. 7:27-16.6(k)	Sealing Device	$600	$1,200	$3,000	$9,000]
N.J.A.C. 7:27-[16.6(l)]**16.18(l)**	Annual [Monitoring] **Testing**	$1,000	$2,000	$5,000	$15,000
[N.J.A.C. 7:27-16.6(m)	Record Keeping	$500	$1,000	$2,500	$7,500]
N.J.A.C. 7:27-16.18(o)	**Sealing Device**	**$600**	**$1,200**	**$3,000**	**$9,000**
N.J.A.C. 7:27-16.18(g)	**Alternative Methods**	**$1,000**	**$2,000**	**$5,000**	**$15,000**
N.J.A.C. 7:27-[16.7]**16.19**	Cutback and Emulsified Asphalt	$1,000	$2,000	$5,000	$15,000

Citation	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-[16.8(a)]**16.20(a)**				
CLASS **Petroleum Solvent Dry Cleaning**				
Maximum Actual Emissions				
For less than 10 pounds per hour:				
1.-3. (No change.)				
From 10 pounds through 22.8 pounds per hour:				
1.-3. (No change.)				
For greater than 22.8 pounds per hour:				
1.-3. (No change.)				

Citation		First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-[16.8(b)]**16.20(b)**	Filtration Emissions	$600	$1,200	$3,000	$9,000
N.J.A.C. 7:27-[16.8(c)1]**16.20(c)1**	Leaking Equipment	$500	$1,000	$2,500[3]	$7,500[3]
N.J.A.C. 7:27-[16.8(c)2]**16.20(c)2**	Open Containers	$500	$1,000	$2,500[3]	$7,500[3]
N.J.A.C. 7:27-[16.8(f)]**16.20(f)**	Total Emissions	$600	$1,200	$3,000	$9,000
N.J.A.C. 7:27-[16.8(g)]**16.20(g)**	Records [Keeping]	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-16.21(a)	**Plan**	**$2,000**	**$4,000**	**$10,000**	**$30,000**
N.J.A.C. 7:27-16.21(b)	**Implement Plan**	**$4,000**	**$8,000**	**$20,000**	**$50,000**
N.J.A.C. 7:27-16.21(c)	**Report**	**$500**	**$1,000**	**$2,500**	**$7,500**
N.J.A.C. 7:27-16.21(d)	**Records Availability**	**$500**	**$1,000**	**$2,500**	**$7,500**
N.J.A.C. 7:27-16.21(e)	**Revise Plan**	**$2,000**	**$4,000**	**$10,000**	**$30,000**
N.J.A.C. 7:27-[16.9(a)]**16.22(a)**	Records Availability	$500	$1,000	$2,500	$7,500
N.J.A.C. 7:27-[16.9(c)]**16.22(c)**	Information	$300	$600	$1,500	$4,500
N.J.A.C. 7:27-[16.9(d)]**16.22(d)**	Monitoring	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-[16.9(e)]**16.22(e)**	Sampling and Testing	$2,000	$4,000	$10,000	$30,000
N.J.A.C. 7:27-16.24(a)	**Adjust Combustion**	**$2,000**	**$4,000**	**$10,000**	**$30,000**
N.J.A.C. 7:27-16.25(h)	**Plan**	**$2,000**	**$4,000**	**$10,000**	**$30,000**
N.J.A.C. 7:27-16.25(l)	**CEM**	**$2,000**	**$4,000**	**$10,000**	**$30,000**

[3]Revoke Certificate to Operate Under N.J.A.C. 7:27-8 (if applicable)

7:27B-3.1 Definitions

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

. . .

"Volatile organic compound" or "VOC" means any [organic substance, mixture of organic substances, or the organic components of any mixture of organic and inorganic substances that] **compound of carbon, excluding 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 emission limits or content standards, VOC shall be measured by [approved] test methods **which have been approved in writing by the Department.** [This term includes, but is not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, diluents, and thinners. In the case of surface coating formulations, this term also includes any coalescing or other agent which is an organic substance and evaporates from the coating during the application and drying phase.] This term does not include **the compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. The list at 40 CFR 51.100(s)(1) currently includes the compounds and the classes of perfluorocarbons set forth below:**

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
[chlorodifluoromethane (CFC-22)]
trifluoromethane [(FC-23)] **(HFC-23)**
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
chlorodifluoromethane (HCFC-22)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluoroethane (HCFC-142b)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1,2-tetrafluoroethane (HFC-134a)
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 at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

. . .

(a)

GREEN ACRES PROGRAM

Green Acres Grant Program

Proposed Readoption: N.J.A.C. 7:36
Proposed Repeal: N.J.A.C. 7:36-8

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

Authority: N.J.S.A. 13:8A-1, 13:8A-20, 13:8A-35 et seq. and P.L.1961, c.46; P.L.1971, c.165; P.L.1974, c.102; P.L.1978, c.118; P.L.1983, c.354; P.L.1987, c.265; P.L.1989, c.183; and P.L.1992, c.88.

DEPE Docket Number: 39-93-07.

Proposal Number: PRN 1993-416.

Submit written comments, identified by Docket Number given above, by September 1, 1993 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Green Acres Rules, N.J.A.C. 7:36, are set to expire on November 21, 1993. As required by the Executive Order, the Department of Environmental Protection and Energy (Department) has reviewed these rules and has determined that all subchapters except subchapter 8 are necessary, reasonable, and proper for the purpose for which they were originally promulgated. Subchapter 8 includes procedures which the State must follow in order to dispose of or divert to a use other than recreation or conservation any lands administered by the Department. The Department is proposing to repeal subchapter 8 because recently enacted legislation specifically regulates virtually all such disposals and diversions. See P.L.1993, c.38, secs. 1-7 (approved February 4, 1993) (to be codified at N.J.S.A. 13:D-51 through 57).

On April 5, 1993, the Department gave notice in the New Jersey Register of its intention to repeal, revise, and repromulgate the rules governing the Green Acres Program and invited public comment on those draft rules (see 25 N.J.R.1473(a)). Time constraints dictate that the Department first propose to readopt the existing rules in order to prevent their expiration under Executive Order No. 66(1978), while it prepares the proposal for the comprehensive new rules. The Department anticipates publishing the proposal to repeal and repromulgate N.J.A.C. 7:36 in the early fall of 1993.

The purpose of N.J.A.C. 7:36 is to set forth the criteria under which the Department, through its Green Acres Program, will award loan and grant assistance to local units for the acquisition or development of land for recreation and conservation purposes and award 50 percent matching grant assistance to nonprofits for such acquisitions. The rules also explain the process necessary to permit the disposal, or diversion to a use other than recreation and conservation, of those lands acquired with Green Acres assistance or otherwise encumbered with Green Acres restrictions.

Subchapter 1 establishes the priorities and objectives of the grant and loan program. Certain terms used in the rules are defined and the general criteria for eligibility and application procedures are set forth.

Subchapter 2 provides that the Department may award Green Acres funding in conjunction with available funding from the United States Department of the Interior Land and Water Conservation Fund.

Subchapter 3 governs the provision of Green Acres funding to local units for recreational development projects. The subchapter provides criteria by which specific cost allowances are made and establishes standards to determine acceptable uses of the subject property.

Subchapter 4 contains standards for the design of recreational development projects.

Subchapters 5 and 6 set forth the specific eligibility criteria and acquisition procedures governing the acquisition of land by local units using Green Acres funds.

Subchapter 7 establishes the requirements regarding retention and use of lands acquired by local units with Green Acres assistance. This subchapter includes provisions regarding the diversion of such lands to uses other than recreation and conservation.

Subchapter 8 contains procedures which the State must follow in order to dispose of, or divert to a use other than recreation and conservation, any lands administered by the Department. This subchapter is being proposed for repeal because recently enacted legislation specifically regulates such disposal or diversion. See P.L.1993, c.38, secs. 1-7 (approved February 4, 1993) (to be codified at N.J.S.A. 13:D-51 through 57). The Department reserves the right to promulgate in the future appropriate and necessary regulations under the new statutory provisions.

Subchapter 9 describes the procedures by which eligible nonprofit organizations may apply for and receive 50 percent matching grants for the acquisition of land for recreation and conservation purposes. This new funding program was established by the Open Space Preservation Bond Act of 1989 (P.L.1989,c.183). Subchapter 9 became effective on June 7, 1993.

Social Impact

The proposed readoption will have a positive social impact by continuing to provide the means for local units to acquire land and develop outdoor recreational facilities and for nonprofits to acquire and preserve land as conservation and recreation areas for the public's enjoyment. Land acquired under this program must be open to the public unless the Commissioner of the Department determines that public use of the land would be detrimental to the land or its natural resources. Nonetheless, even in cases where the land will not be open to the public, the preservation of such land results in increased natural resource protection. The development of recreational facilities will help meet the public's need for active and passive recreational opportunities.

The proposed readoption also ensures the public's continued enjoyment of open lands by requiring that protected open space will not be disposed of or diverted to other uses without being replaced with lands of equivalent economic and environmental value.

Economic Impact

The rules proposed for readoption facilitate the award of Green Acres assistance to local units and nonprofits to acquire and preserve land for recreation or conservation purposes. Local units benefit economically because they can acquire land or develop outdoor recreational facilities with the assistance of a low-interest loan, repayable over 20 years, and, in some instances, a partial grant. In most cases, local units find this preferable to and more economical than financing such activities independently. Nonprofits benefit economically because they can acquire a complete project site and receive a grant from the State for a portion of the project cost, not to exceed 50 percent of the cost of acquisition or $500,000, whichever is less. A nonprofit can use financial resources it already has, funds raised for the specific land acquisition, or the value of lands donated to the nonprofit as part of the approved project to match the State grant.

Upon accepting Green Acres assistance, the local unit or nonprofit must agree to maintain, protect, and make and keep open to the public, in perpetuity, the lands it acquires or develops utilizing Green Acres assistance. The local unit or nonprofit is responsible for all related maintenance and protection costs.

Reasonable survey and appraisal costs incurred for acquisition projects are eligible for Green Acres assistance. Legal fees, the cost of obtaining title insurance, and any other administrative costs incurred by the local unit or nonprofit as part of the acquisition are the responsibility of the local unit or nonprofit.

The Green Acres Program will fund the cost of eligible and approved construction for development projects. If funds are available, the Green Acres Program will fund certain professional services, such as engineering fees, up to 13 percent of the cost of construction.

The rules require the local unit or nonprofit to contract for appraisal, survey, and legal services, and to obtain title insurance on the lands acquired utilizing Green Acres assistance. Local units are required to contract for engineering, construction, and legal services for development projects. Accordingly, the rules create business for, and thus provide economic benefit to, certain survey, appraisal, title insurance, engineering, construction, and legal professionals.

Environmental Impact

The proposed readoption will have a positive environmental impact in that it continues the State financial assistance under the Green Acres Program that enables local units and nonprofits to acquire and preserve land for recreation or conservation purposes and that enables local units to develop outdoor recreational facilities. Lands acquired or developed by local units or nonprofits with Green Acres assistance cannot be diverted for uses other than recreation or conservation without the approval of Green Acres and the State House Commission. If a diversion is approved, the local unit must replace the diverted land with land of at least equal fair market value and of reasonably equivalent recreation or conservation usefulness, size, quality, and location. In addition, nonprofits must donate to the State a conservation restriction or historic preservation restriction, as the case may be, on the lands acquired with Green Acres assistance. Thus, the rules help ensure that there is no net loss of public open space as well as protect the natural and historic resources of Green Acres-assisted lands in perpetuity.

Regulatory Flexibility Analysis

Local units are not small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. (Act). Nonprofits, some of which may be small businesses under the Act, must have as one of their

primary purposes the acquisition of land. Therefore, the costs involved in acquiring land under the Green Acres Program are often part of a nonprofit's normal operating costs. The nonprofits benefit, however, in that some of the costs of acquisition, specifically land, survey, and appraisal costs, are eligible for 50 percent reimbursement under the program.

Nonprofits must follow the application procedures and comply with the conditions imposed by the Green Acres Program. The administrative costs of applying for, and complying with, the conditions of the grant are minimized by the following: the Green Acres Program staff is available to provide technical assistance in the application process; much of the documentation required by the Green Acres Program generally is produced during the nonprofits' normal acquisition activities, so the nonprofits can rely on existing staff and available resources; and all requirements are clearly explained prior to the commencement of the project to reduce any unnecessary work.

Local units and nonprofits will need to retain the services of certain businesses such as appraisal, survey, title insurance, engineering, construction, and legal firms. While the local units and nonprofits must contract for these services, all or a portion of such reasonable costs are eligible for reimbursement by the Green Acres Program, if funds are available. The local units and nonprofits must keep and submit billing records in order to receive reimbursement of eligible costs.

There are some costs associated with complying with the requirements of and conditions for Green Acres assistance. However, no firm estimate of those costs is possible because each project is unique and the resources available to a nonprofit to comply, without expending funds, vary. Among the factors which affect the total cost of compliance are the following: number of individual parcels contained in the project site, availability of volunteer labor, donations from interested parties, location of the project site, environmental sensitivity of the project site, and the cost of acquisition.

Since one of the purposes of the Green Acres Program is to assist nonprofits in the acquisition and preservation of land and natural areas for the public benefit, and the requirements imposed are the minimum necessary for efficient management of the program, no lesser requirements or exemptions for small business nonprofits can be provided.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:36.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:36-8.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Increase in Income Eligibility Limits Pharmaceutical Services; Hearing Aid Assistance for the Aged and Disabled (HAAAD); Pharmaceutical Assistance to the Aged and Disabled Eligibility (PAAD); Lifeline Credit Program/Tenants Lifeline Assistance Program (TLAP)

Proposed Amendments: N.J.A.C. 10:51-5.6; 10:69-5.1; 10:69A-1.2 and 6.2; and 10:69B-4.2

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

Authority: N.J.S.A. 30:4D-20 through 24, 36 through 42; N.J.S.A. 48:2-29.15, 16, 17, 48:2-29.31; P.L. 1993, c.3 (approved January 13, 1993).

Agency Control Number: 93-P-7.

Proposal Number: PRN 1993-412.

Submit comments by September 1, 1993 to:

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

The agency proposal follows:

Summary

The proposed amendments will increase the income limits for three State-funded programs in accordance with recently enacted legislation, P.L. 1993 c.3, approved January 13, 1993. The three programs are administered by the Division of Medical Assistance and Health Services (Division).

The new income levels are applicable to the Pharmaceutical Assistance to the Aged and Disabled program (PAAD), the Hearing Aid Assistance to the Aged and Disabled program (HAAAD), and the Lifeline Credit program/Tenants' Lifeline Assistance program. (The term "Lifeline" will be used generically in this Summary to refer to both homeowners' and tenants' benefits.) The income limit for single individuals has been increased from $15,700 to $16,171; the income limit for married couples has been increased from $19,250 to $19,828. A brief description of these three programs follows.

The PAAD program enables eligible persons to receive prescribed legend drugs, insulin, insulin syringes and certain diabetic testing materials.

The HAAAD program provides eligible individuals a payment of up to $100.00 in a calendar year in which a hearing aid is purchased.

The intent of the Lifeline Credit program is to provide a minimum supply of gas and electricity for heating, lighting, cooling, cooking, and other essential household usages, to residential utility customers whose level of income and age or physical disability make it difficult to meet the extraordinary energy costs of recent years. The intent of the Tenants' Lifeline Assistance program is to afford assistance to residents who would be eligible for the Lifeline Credit program, but who, because their utility costs are included as part of their rental, do not receive an individual utility bill.

The applicability of the recent legislation noted above on the proposed amendments to the New Jersey Administrative Code is discussed below.

Social Impact

The proposed amendments will broaden the scope of PAAD, Lifeline and HAAAD eligibility levels to include individuals of higher income levels.

The law allows new PAAD eligibles to be reimbursed for prescriptions purchased since January 1, 1993.

The proposed higher eligibility levels will provide assistance to approximately 5,721 additional beneficiaries who were previously ineligible for the program. The average annual payment per PAAD recipient is approximately $1,057.78. In addition, the increased eligibility levels in the proposed amendments will allow approximately 4,008 additional eligibles to receive the $225.00. Tenants' Lifeline assistance benefit and approximately 172 eligible persons will be able to receive a $100.00 Hearing Aid Assistance reimbursement. It is permissible for persons to receive benefits through more than one of these assistance programs, and among the newly eligible persons, it is almost inevitable that many will qualify for benefits through two or even all three of these programs.

Economic Impact

The estimated cost of the expansion of the PAAD program is approximately $6 million in FY 1994. The expansion of the Lifeline program will cost a total of approximately $901,125. The increased coverage for Hearing Aid Assistance will amount to a total cost of approximately $17,200. These expenditures are entirely from State funds. PAAD beneficiaries are required by law to pay a $5.00 copayment for each prescription.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required. The persons affected by these amendments are not small businesses, as defined in the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-16 et seq. The persons affected are individual applicants and/or beneficiaries of the PAAD, Lifeline or HAAAD programs. Pharmaceutical providers will continue to fill prescriptions for PAAD eligible beneficiaries as they have in the past. The program is administered by the Division of Medical Assistance and Health Services, which is a governmental agency.

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

10:51-5.6 Eligible PAAD beneficiary

(a) An eligible beneficiary is a legal resident of the State of New Jersey, 65 years of age or older or who is under 65 and over 18

years of age and is receiving Social Security Title II disability benefits with an annual income less than [$15,700] **$16,171** for a single person and less than [$19,250] **$19,828** for a married couple, who possess a current PAAD identification card or the temporary identification card. (See N.J.A.C. 10:51-5.23.)

1. (No change.)

(b) (No change.)

10:69-5.1 Age and income standards

(a) To be eligible for HAAAD, the applicant must be 65 years of age or older or must be under 65 and over 18 years of age and receive Social Security Title II disability benefits and have an annual income below [$15,700] **$16,171** if single or [$19,250] **$19,828** combined income if married.

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

10:69A-1.2 Legal authority

(a) The New Jersey Program of Pharmaceutical Assistance to the Aged and Disabled (PAAD) was established by Chapter 194, Laws of 1975, as amended by:

1.-8. (No change.)

9. Chapter 84, Laws of 1991, effective April 3, 1991 and retroactive to January 1, 1991[.]; **and**

10. Chapter 3, Laws of 1993, effective January 13, 1993 and retroactive to January 1, 1993.

(b) (No change.)

10:69A-6.2 Income standards

(a) Any single permanent resident of New Jersey who is 65 years of age and over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have an annual income of less than [$15,700] **$16,171** to be eligible for PAAD.

(b) Any married permanent resident of New Jersey who is 65 years of age and over or who is under 65 and over 18 years of age and receiving Social Security Title II disability benefits must have a combined (applicant and spouse) annual income of less than [$19,250] **$19,828** to be eligible for PAAD.

1.-2. (No change.)

(c)-(i) (No change.)

10:69B-4.2 Income standards

(a) Any single, permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have an annual income of less than [$15,700] **$16,171** to be eligible for Lifeline.

(b) Any married permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and receiving Social Security Title II disability benefits must have a combined (applicant and spouse) annual income of less than [$19,250] **$19,828** to be eligible for Lifeline.

1.-2. (No change.)

(c)-(h) (No change.)

(a)

DIVISION OF FAMILY DEVELOPMENT

Public Assistance Manual

Fraudulent Receipt of AFDC Assistance; Disqualification Penalties

Proposed Amendments: N.J.A.C. 10:81-2.2, 2.3 and 5.1

Proposed Recodification: N.J.A.C. 10:81-7.46 as 10:81-7.40

Proposed Repeals: N.J.A.C. 10:81-7.40, 7.41, 7.42, 7.43, 7.44, 7.45, and 7.47

Proposed New Rules: N.J.A.C. 10:81-15

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

Authority: N.J.S.A. 2C:20-4, 2C:21-1a, 2C:21-3b, 2C:28-2, 2C:28-3, 2C:28-7, 44:7-6 and 44:10-3; Section 9102(a) of the Federal Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203); Section 416 of the Social Security Act, 45 CFR Parts 235.100, 235.112 and 235.113; and N.J.A.C. 1:1 and 1:10.

Proposal Number: PRN 1993-410.

Submit comments by September 1, 1993 to:

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

The agency proposal follows:

Summary

Current rules at N.J.A.C. 10:81-7.40 through 7.47 set forth methods and criteria for identifying cases of fraudulent receipt of Aid to Families with Dependent Children (AFDC) assistance, and procedures for referring suspected AFDC fraud cases to law enforcement officials. Such rules are in accordance with Title IV-A of the Social Security Act and Federal regulations at 45 CFR 235.110.

Subsequent AFDC fraud control regulations were published in the December 9, 1991 issue of the Federal Register at FR 64195, implementing Section 9102(a) of the Omnibus Budget Reconciliation Act (OBRA) of 1987, Public Law 100-203, which added new Section 416 to the Social Security Act concerning fraud control.

Section 416 of the Social Security Act, which became operational on December 9, 1991, permits states to establish and operate an enhanced optional AFDC fraud control program wherein AFDC disqualification penalties are imposed against individuals found to have intentionally committed an AFDC program violation(s). An intentional program violation (IPV) is defined as a false or misleading statement or act by an individual for the purpose of establishing or maintaining the family's eligibility for AFDC, or for increasing or preventing a reduction or termination in the amount of the AFDC grant, or an act intended to mislead, misrepresent, conceal, or withhold facts, or to propound a falsity. An individual may be determined to have committed such AFDC IPV through the findings of a court of appropriate jurisdiction, or through an administrative disqualification hearing procedure, on the basis of a plea of guilty or nolo contendere. This State, in accordance with the provisions of Section 416, is required to coordinate its actions with any corresponding actions being taken against an individual under the Food Stamp Program, if the factual issues involved arise from the same or related circumstances. Hereinafter, the term "fraud" shall be used interchangeably with "intentional program violation."

The AFDC disqualification penalties applied against an individual found to have committed IPV are: removal of the individual's needs from the AFDC grant for a period of six months upon the first occasion of any such offense; 12 months for the second offense; and permanent disqualification from the AFDC program upon the third or a subsequent occasion of any such offense. In addition, any income and resources of the disqualified individual is considered available in its entirety in determining the remaining unit members' AFDC eligibility and payment. Federal regulations also require that written notice be provided at the time of AFDC application informing applicants of the IPV disqualification penalties. For AFDC recipients, the written notice is to be provided at the time of the next case redetermination, subsequent to implementation of these proposed rules.

The proposed rules incorporate the administrative disqualification hearing process into the AFDC program, as permitted under the Federal regulations. Additionally, these rules initiate an option for an individual alleged to have committed IPV to waive his or her right to an administrative hearing. Written notice of this waiver option is mandated to be provided to an individual 30 days prior to the scheduled hearing date, when evidence warrants the scheduling of a disqualification hearing.

N.J.A.C. 10:81-2.2, 2.3 and 5.1 are amended to include the written notification requirement informing new applicants and recipients of the IPV disqualification penalties.

The Department has elected to create a new subchapter at N.J.A.C. 10:81-15 in order to address the rules applicable to the establishment of IPV. Concurrently, the Department is also repealing those sections of N.J.A.C. 10:81-7 that relate to the establishment of IPV. Specifically, N.J.A.C 10:81-7.40, 7.41, 7.42, 7.43, 7.44, and 7.47 are being repealed and incorporated into 10:81-15. It is noteworthy to mention that the AFDC IPV proposed rules are similar to those in the Food Stamp Program (N.J.A.C. 10:87), and that the United States Department of

Health and Human Services has stated that its AFDC IPV rulemaking is patterned after the rules currently in use in the Food Stamp Program. Accordingly, the Department has modeled the proposed rulemaking after the IPV rules currently in effect in the New Jersey Food Stamp Program. N.J.A.C 10:81-7.45 is being repealed because that section addresses AFDC overpayment recovery which is addressed at N.J.A.C. 10:81-4.23, and is, therefore, not incorporated into the proposed new rules at N.J.A.C. 10:81-15.

New rule N.J.A.C. 10:81-15.1 provides a definition for IPV. Subsection (a) provides a specific definition of IPV, and is based upon regulations at 45 CFR 235.112(b) (FR 64204, Vol. 56, dated December 9, 1991) and the current N.J.A.C. 10:81-7.40(d). Subsection (b) identifies the criteria which must be established through investigation when evaluating alleged IPV, and is based upon the current N.J.A.C. 10:81-7.41(a) and (b). Subsection (c) states that AFDC applicants and recipients shall be advised in writing at the time of application of the AFDC IPV penalties as required at 45 CFR 235.112(d). Subsection (d) states that an individual alleged to have committed IPV is innocent until proven guilty, and is consistent with language currently at N.J.A.C. 10:81-7.40(b). Subsection (e) details the rights of the individual alleged to have committed IPV, and is aligned with the current N.J.A.C. 10:81-7.47.

Proposed new rule N.J.A.C. 10:81-15.2 identifies the means by which the county welfare agency (CWA) may secure a finding of IPV. Subsections (a) and (b) state that the CWA may secure a finding of IPV either through a court of appropriate jurisdiction, or through an administrative disqualification hearing administered by the New Jersey Office of Administrative Law in a manner established by the Uniform Administrative Procedure Rules (N.J.A.C. 1:1). Referral for such action is to be made when sufficient evidence exists that an IPV appears to have occurred. State-level IPV hearings are permitted under 45 CFR 235.113(b). Court hearings are presently allowed under N.J.A.C. 10:81-7.43 and 45 CFR 235.112(a). It should be mentioned that the proposed AFDC IPV hearing system will be similar to that in the Food Stamp Program and that, under 45 CFR 235.112(a), the CWA must coordinate its IPV investigation with any being undertaken to substantiate IPV in the Food Stamp Program when the factual issue(s) arise from the same or related circumstances.

Proposed new N.J.A.C. 10:81-15.3(a) identifies the circumstances under which an instance of alleged IPV shall be referred for an administrative disqualification hearing. This provision is virtually identical to that in the Food Stamp Program under N.J.A.C. 10:87-11.6. N.J.A.C. 10:81-15.3(b) and (c) detail instances when cases have been referred to a court of appropriate jurisdiction and are not to be subsequently referred for an administrative disqualification hearing. N.J.A.C. 10:81-15.3(d) states that the CWA shall coordinate the scheduling of an individual's administrative disqualification hearing with any fair hearing which the individual is requesting in accordance with 45 CFR 235.112(b)(1).

Proposed new rule N.J.A.C. 10:81-15.4 addresses the individual's right to waive an administrative disqualification hearing and accept a finding of IPV. Subsection (a) states that the accused shall have the option of waiving his or her right to an administrative disqualification hearing per 45 CFR 235.113(c) (FR 64206, Vol. 56). N.J.A.C. 10:81-15.4(a)1 through 5 specify the information provided on the written notice of the waiver option which is given to the individual and which further explains the individual's right to waive the hearing.

Proposed new rules N.J.A.C. 10:81-15.5 establishes the procedures to be followed when conducting an administrative disqualification hearing. These procedures are based upon the Federal regulations at 45 CFR 235.113(b) (FR 64206, Vol. 56). Those Federal regulations, however, are not presented in their entirety because N.J.A.C. 1:1 and 1:10, which govern hearing procedures administered by the Office of Administrative Law, currently contain guidelines identical to the aforementioned Federal regulations.

N.J.A.C. 10:81-15.5(a) through (d) detail how the hearing shall be conducted. Subsection (e) stipulates the timeframes in which the hearing shall be conducted and is supported by 45 CFR 235.113(b)(9)(iii). Subsection (f) addresses the information to be provided in the advance notice of hearing to the accused individual as required under 45 CFR 235.113(b)(3). Noteworthy among those provisions of the notice is a statement warning the individual of the consequences of non-appearance of the individual, without good cause, at the hearing; the rescheduling procedure for subsequent hearing dates for good cause reasons; and a delineation of the disqualification penalties. Subsection (g) provides that the time and place of the hearing shall be arranged so that the hearing is accessible to the individual suspected of IPV. Subsection (h) permits a new hearing if the individual does not appear at the original hearing, but with good cause. This provision is similar to that in the Food Stamp Program under N.J.A.C. 10:87-11.7. Subsection (i) is consistent with 45 CFR 235.113(b)(6) in stating that necessary medical assessments shall be obtained at CWA expense.

Proposed new rule N.J.A.C. 10:81-15.6 addresses issues pertinent to the individual's participation in the AFDC program while awaiting the administrative disqualification hearing. Subsection (a) states that the individual cannot be disqualified until the hearing has been held and a determination of IPV has been founded, and is similar to the policy in the Food Stamp Program at N.J.A.C. 10:87-11.8(a). Subsection (b) states that the CWA may take action against the individual to terminate or reduce benefits provided that the CWA has information which indicates that the individual is not currently eligible for benefits. This provision is consistent with Food Stamp Program policy at N.J.A.C. 10:87-11.8(c), and 45 CFR 235.113(b)(10) (FR 64206, Vol. 56).

The proposed new rule N.J.A.C. 10:81-15.7 states that the individual is not entitled to an administrative appeal after a finding of IPV through an administrative disqualification or beyond the signing of a waiver of the right to a disqualification hearing. The individual may appeal the IPV finding, however, to a court of appropriate jurisdiction. The proposed new rule is consistent with Food Stamp Program policy at N.J.A.C 10:87-11.10, and 45 CFR 235.112(a)(2) (FR 64204, Vol. 56).

Proposed new rule N.J.A.C. 10:81-15.8 addresses the concept of the finding of IPV through a court of appropriate jurisdiction. Subsections (a) through (d) of the proposed new rule are similar to those in the Food Stamp Program at N.J.A.C. 10:87-11.11. In addition, potential IPV cases are currently referred to prosecutors or other law enforcement officials under N.J.A.C. 10:81-7.43, which is permissible under 45 CFR 235.112(a) (FR 64204, Vol. 56).

Proposed new rule N.J.A.C. 10:81-15.9 introduces the concept of the consent agreement. Subsection (a) provides an overview to the utilization of the consent agreement which is to be pursued in instances where a court hearing will not be held because the individual agrees to meet the terms of a court order, or enters into a pre-trial agreement. Subsection (a) is consistent with 45 CFR 235.113(d)(1). Subsection (b) specifies the information which is to be contained in the disqualification consent agreement.

Some of the information is required under 45 CFR 235.113(d)(2), but the Department is requiring additional information in order to be consistent with the Food Stamp Program at N.J.A.C. 10:87-11.4. Subsection (c) specifies the action to be taken by the CWA once the individual has signed the disqualification consent agreement, as per 45 CFR 235.113(d)(2)(ii).

Proposed new rule N.J.A.C. 10:81-15.10 addresses the actions which the CWA must take if a finding of IPV is overturned by a court of appropriate jurisdiction. Subsections (a) through (b) of the proposed new rule are similar to those in the Food Stamp Program at N.J.A.C. 10:87-11.12. CWAs are obligated to provide restoration of underpaid benefits where applicable.

Proposed new rule N.J.A.C. 10:81-15.11 addresses the disqualification penalties which are to be imposed as a result of a finding of IPV either through a court of appropriate jurisdiction, an administrative disqualification hearing, or by signing a disqualification consent agreement or a waiver of right to an administrative disqualification hearing. Subsection (a) is based upon 45 CFR 235.112(c)1, (FR 64204, Vol. 56), and is also similar to the disqualification penalties in the Food Stamp Program at N.J.A.C. 10:87-11.1 in stating that the first offense shall be a six-month disqualification from the AFDC program, the second offense shall be a 12-month disqualification from the AFDC program, and the third offense shall be permanent exclusion from the AFDC program. Subsection (b) indicates that any income or resources of the disqualified individual shall be considered available, in its entirety, to the remaining AFDC eligible unit members. Subsection (c) states that any finding of fraud which was discovered prior to the adoption of the proposed rules shall not be considered as an occurrence of IPV when determining the length of any future IPV disqualification sanction. In addition, any findings of IPV made after the adoption of N.J.A.C. 10:81-15 shall be subject to the IPV disqualification penalties. Subsection (d) states that if the court does not impose a disqualification period, the CWA shall impose a disqualification period in accordance with this section, unless the court stated otherwise; this is consistent with 45 CFR 235.112(d)(2)(ii). Subsection (e) states that a disqualification period, once imposed, cannot be removed unless the disqualification is reversed by a court of appropriate jurisdiction, and is consistent with 45 CFR

235.112(c)(2). Subsection (f) states that IPV sanctions cannot be substituted for other penalties imposed for an act of IPV, and is consistent with 45 CFR 235.112(c)(3). Subsection (g) states that the IPV disqualification penalties only affect the individual concerned and cannot be combined with other AFDC program sanctions; the proposed subsection is consistent with 45 CFR 235.112(c)(3).

Proposed new rule N.J.A.C. 10:81-15.12 provides procedures on the imposition of disqualification periods. Subsection (a) states that if the individual is not eligible for the AFDC program at the time of the disqualification, the sanction shall be postponed until the individual is eligible for AFDC benefits, which is comparable to N.J.A.C. 10:87-11.2 in the Food Stamp Program, and consistent with 45 CFR 235.113(c)(3). Subsection (b) states that a disqualification resulting from the individual signing the waiver of right to an administrative disqualification hearing shall be imposed on the first day of the second month which follows the date of the notice described at N.J.A.C. 10:81-15.13(f), and is consistent with 45 CFR 235.113(c)(3). Subsection (c) specifies the timeframe under which a disqualification period shall be imposed when the IPV finding results from the individual signing the consent agreement, and is consistent with 45 CFR 235.113(d)(2)(ii). Subsection (d) stipulates the timeframe under which an IPV sanction shall be imposed if it originated from an administrative disqualification hearing, and is consistent with 45 CFR 235.112(b)(11). Subsection (e) states the timeframes in which the CWA shall impose an IPV sanction resulting from a court hearing, and is comparable with the Food Stamp Program at N.J.A.C. 10:87-11.2(e). Subsection (f) specifies that a written notice shall be provided to each individual found to have committed IPV. The subsection delineates the information which must appear in the notice and is consistent with 45 CFR 235.113(b)(11), (c)(3), and (d)(2)(ii). Subsections (g) and (h) state the policies to be applied when an individual found to have committed IPV moves from one county or state to another; these policies are supported by 45 CFR 235.112(c)(3).

Proposed new N.J.A.C. 10:81-15.13(a) through (e) stipulate the responsibilities which the CWA has in substantiating IPV. The proposed new rule also prescribes administrative practices which are to be followed by the CWA in investigating and reporting instances of IPV. These are consistent with rules currently in place at N.J.A.C. 10:81-7.42. The proposed new rule which requires an investigation for each possible occurrence of IPV is based upon 45 CFR 235.113(a).

Social Impact

Proposed new rules N.J.A.C. 10:81-15, as well as the amendments to N.J.A.C. 10:81-2, 5 and 7, will initiate a system whereby individuals can be disqualified from receiving AFDC benefits as a result of an act of IPV. The proposed new rules will adversely affect those individuals who otherwise are eligible to receive AFDC assistance, but who have committed IPV, as those individuals will not be eligible for such assistance while under sanction for IPV. For the purpose of projecting the number of individuals who may be affected by the proposed new rules and amendments, 730 individuals were convicted of defrauding the AFDC program in Federal fiscal year (FFY) 1992, and those individuals would have been subject to the penalties of the proposed new rules had it been in effect at that time. In addition, other individuals may also be disqualified if they are found to have committed IPV in an administrative disqualification hearing, or by signing either the consent agreement or the waiver of right to an administrative disqualification hearing. In FFY 1992, 2,517 AFDC recipients repaid overissued benefits which occurred due to alleged fraud. The Department believes that many of those individuals would have been subject to disqualification penalties imposed through administrative disqualification hearings.

It is anticipated that the proposed new rules will have minimal impact on the CWAs, who are responsible for investigating all instances of alleged IPV. CWAs are currently performing required investigations of individuals who appear to have defrauded the AFDC program under N.J.A.C. 10:81-7.40; therefore, the proposed new rules will not impose additional work upon those agencies.

The proposed new rules will affect the Office of Administrative Law (OAL) because that agency will be responsible for conducting the administrative disqualification hearings established by the proposed new rules. The hearings, however, will be similar to those conducted by OAL to determine IPV in the Food Stamp Program (N.J.A.C. 10:87). In FFY 1992, 2,517 AFDC recipients were not convicted of fraud in court due to the county monetary court thresholds, but repaid overissued AFDC benefits resulting from alleged fraud. The Department anticipates that many of those individuals would have been subject to administrative disqualification hearings had those procedures been in effect.

Economic Impact

The Department anticipates that the establishment of an IPV disqualification process in the AFDC program will result in approximately 3,200 individuals being removed from the AFDC program during FFY 1993. Each individual will be subject to a minimum disqualification period of six months.

In FFY 1992, there were 730 individuals who either plead or were convicted of fraud in the AFDC program. Additionally, 2,517 individuals, whose cases were not referred for prosecution, agreed to reimburse the CWAs for fraudulently receiving AFDC benefits. Utilizing an average monthly AFDC benefit of $123.00 per individual, it is anticipated that AFDC payments in FFY 1993 will be reduced Statewide by approximately $2,396,286 under the amendments, repeals and new rules proposed herein.

Regulatory Flexibility Statement

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

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

10:81-2.2 Purpose and scope of first contact

(a) Responsibility of the agency during the initial contact shall include, but not be limited to:

1.-2. (No change.)

3. Informing the individual that disqualification penalties, in accordance with N.J.A.C. 10:81-15.11, shall be imposed on an individual who is a member of a family applying for AFDC who is found, through an administrative disqualification hearing or a court of appropriate jurisdiction, on the basis of a plea or finding of guilty or nolo contendere (not including pre-trial intervention) to have intentionally:

i. Made a false or misleading statement or misrepresented, concealed, or withheld facts for the purpose of establishing the family's eligibility for AFDC, or of increasing or preventing a reduction in the amount of the AFDC grant or a denial of assistance; or

ii. Committed any act intended to mislead, misrepresent, conceal or withhold facts for the purpose of establishing the family's eligibility for AFDC or of increasing or preventing a reduction in the amount of the AFDC benefit or a denial of AFDC assistance.

Recodify existing 3.-8. as **4.-9.** (No change in text.)

10:81-2.3 Completion of forms

(a) The applicant will be fully assisted by the IM worker or by any person of his or her choice in completing the Application and Affidavit for Public Assistance (PA-1J). Form PA-1J is used to apply for AFDC, AFDC-related emergency assistance, refugee resettlement, categorically related Medicaid and food stamp benefits. **Additionally, the applicant shall be provided, at both the time of application and redetermination, with written notice of the AFDC penalties imposed on any individual who is determined through either an administrative disqualification hearing or a court of appropriate jurisdiction to have committed an intentional program violation of the AFDC Program. The applicant shall sign two copies of the notice. The CWA shall provide one copy to the applicant; the other copy shall be attached to the PA-1J.** The applicant will also be given the pamphlets "Your Rights and Responsibilities in the AFDC Program" (Form PA-197) and "Fair Hearing in the Aid to Families with Dependent Children Program (AFDC)" (Form PA-196). The client's obligation to report changes, as stated in Form PA-197, will be carefully explained by the IM worker.

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

10:81-5.1 Continuing eligibility defined

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

(c) The IM worker [should] **shall** be alert to indications of change in need for financial assistance or change in circumstances which may affect the eligible unit's continuing eligibility or amount of

payment and shall take appropriate action without delay. It shall be the agency's responsibility to review cases to assure that the [client] **family** receives the full grant [he/she is] **to which they are** entitled [to], and that public funds are not granted illegally. Any adjustment shall be made as promptly as possible.

1. At the time of each case redetermination, each AFDC recipient shall be provided with written notice explaining the penalties which shall be imposed if any individual is determined, either through the administrative disqualification hearing or a court of appropriate jurisdiction, to have committed any AFDC intentional program violation(s). The recipient shall sign two copies of the notice. One copy shall be provided to the recipient, and the other copy shall be attached to the PA-1J.

[10:81-7.40 Fraudulent receipt of assistance

(a) To protect the assistance agency and the public, it is essential to exercise appropriate controls against the commission of fraud.

(b) A person is presumed innocent until convicted. Therefore, in any receiving case, except as provided in the following paragraph, assistance shall be continued to an eligible person, even though there is reason to suspect that fraud has been committed, while the facts are under review by the agency or the law enforcement authority.

(c) Resolution of the question of possible fraud requires the cooperation of the recipient to protect his/her own interest; therefore, a recipient's failure or refusal to cooperate in the investigation would be grounds for suspending assistance pending resolution of the issue. If during the investigation of an application for assistance, substantial evidence of fraud appears, disposition of the application shall be deferred pending resolution of the issue.

(d) Statutory authority regarding the identification and treatment of assistance fraud may be found in New Jersey Statutes Annotated, as follows:

1. N.J.S.A. 2C:20-4, Theft by Deception;
2. N.J.S.A. 2C:21-1a, Forgery;
3. N.J.S.A. 2C:21-3b, Offering a False Instrument for Filing;
4. N.J.S.A. 2C:28-2, False Swearing;
5. N.J.S.A. 2C:28-3, Unsworn Falsification to Authorities; and
6. N.J.S.A. 2C:28-7, Tampering with Public Records or Information.]

10:81-7.41 [Criteria for identifying cases of possible fraud] **(Reserved)**

[(a) Fraud is defined as obtaining or attempting to obtain payments of assistance to which an individual is not entitled by means of willful misrepresentation or by intentional concealment of a relevant fact. There are three basic elements which must be established:

1. The misrepresentation or concealment must have been deliberate and done knowingly. Fraud does not exist if the misrepresentation or concealment is the result of an unintentional act, a misunderstanding or mental incompetency. Distinction must also be made between intent to defraud by the individual and omission, neglect or error by the agency's representatives in securing and recording information;

2. The misrepresentation or concealment must have been undertaken for the express purpose of receiving or obtaining benefit from or attempting to receive or obtain benefit from a payment of assistance to which the individual was not entitled;

3. If the misrepresentation or concealment, or attempt to misrepresent or conceal a relevant fact, had been known to the county welfare agency, assistance would not have been granted or would have been granted in a lesser amount.

(b) The evidence to establish these points must be factual and capable of being demonstrated in a court of law through the testimony of witnesses or by documentary evidence. Since fraud is subject to criminal action, it must be proved beyond a reasonable doubt.]

10:81-7.42 [County welfare agency responsibility; administration plan] **(Reserved)**

[(a) The role of the county welfare agency is limited to responsibility for determining whether there is basis in fact for believing that fraud may have been committed, so that referral to the county prosecutor or other proper law enforcement official for legal action is justified. The action taken by the law enforcement official following referral determines what further legal action shall be pursued. Whether fraud has actually occurred is a question for the court.

1. The CWA director may utilize the power of subpoena given him/her by N.J.S.A. 44:7-20 to secure testimony and records pertinent to the investigation and needed to determine true facts.

(b) Each CWB shall develop an operational method to carry out its responsibility which is best suited to its administrative structure and to local conditions and resources. There must be clear allocation of duties and functions in the total process of investigation, reporting, evaluation, decision to refer, and so forth. In respect to the function of investigation, the county welfare board may select one or a combination of the following plans:

1. Cooperative arrangements with other county agencies:

i. The county welfare board may arrange for special investigation of cases of suspected fraud by another appropriate agency or official, such as, office of the county adjustor, the probation department or the office of the county prosecutor, without cost of CWB.

2. Special staff investigator:

i. The county welfare board may appoint to staff a "special investigator(s)" whose duty will be to give special attention to case situations involving suspicion of fraud (and other related situations requiring special investigation skills), to prepare the necessary reports, and to function in a liaison capacity for the director and welfare board to the law enforcement authorities. Such special investigator(s) will have no law enforcement authority and will not engage in activity which is properly the responsibility of the IM worker.

3. Staff function:

i. The CWB may elect to have staff carry the responsibility for the necessary special investigation in instances of suspected fraud, relying upon consideration with CWB counsel for the technical aspects of establishing adequate evidence on which to base a decision.

4. Whatever administrative plan is adopted, there will be instances where discussion should be arranged with welfare board counsel and/or the county prosecutor's office as to the nature and conduct of the investigation.

(c) The CWB shall file with the State division a detailed description of the administrative plan, and shall advise the division of any subsequent proposed change in the plan before it becomes effective.]

10:81-7.43 [Referral to law enforcement authorities] **(Reserved)**

[When the investigation of any case of suspected fraud is completed, the director of the CWB, in consultation with counsel, shall be responsible for determining whether the matter should be referred to the county prosecutor or other proper law enforcement official.]

10:81-7.44 [Reports on cases involving fraudulent receipt of assistance] **(Reserved)**

[(a) In cases where the county welfare agency has completed an investigation based upon a belief that fraud has been committed, a report (Form PA-33, Investigation Initiation Sheet) shall be routed through the CWA director to the assistance investigations unit of the Division of Public Welfare. The form shall be completed when the county welfare agency determines that no fraud exists, when the case is disposed of through administrative action, or when the case is forwarded to the county prosecutor.

(b) Upon disposition of the case by law enforcement officials (county prosecutor or municipal court), a subsequent report (Form PA-34, Investigation Disposition Sheet) shall be completed and routed through the CWA director to the assistance investigations unit of the Division of Public Welfare.]

10:81-7.45 [Recovery of assistance paid] **(Reserved)**

[(a) In every fraud case, in addition to any criminal prosecution, recovery of the assistance illegally obtained may be sought. The threat of prosecution should not be used as a means of effecting recovery; nor should the fact of a recovery affect the CWA decision concerning proper referral to the prosecutor. However, any recovery, or plan for recovery, should be reported to the prosecutor whenever such a referral has been made.

(b) The provisions of subsection (a) of this section are not intended to limit the responsibility and obligation of the CWA to seek recovery, through voluntary agreement or civil action, of funds improperly received by a client under circumstances other than fraud.]

10:81-[7.46]**7.40** (No change in text.)

10:81-7.47 [Rights of individual under investigation] **(Reserved)**

[(a) The CWA shall insure than an individual under investigation shall have the following rights:

1. Right to confidentiality: The agency shall insure that information obtained from or concerning a person under investigation shall be restricted in accordance with N.J.A.C. 10:81-7.31 through 35. The agency shall take special precautions in obtaining information from a third party so that no accusations relevant to the alleged fraud are disclosed, including the reason for the investigation or the nature of the allegation, without the written consent of the individual under investigation.

2. Preservation of civil liberties: The agency shall insure that investigative methods do not infringe on the civil liberties of the individual or interfere with due process of law. The agency shall be prohibited from obtaining forced entry, conducting residence searches without consent of the client, making home visits during normal sleeping hours (generally 10:00 P.M. to 7:00 A.M.) or requiring that an individual be subjected to a lie detector test.

3. Warning and waiver of rights:

i. When the questioning of an individual regarding a possible charge of fraud becomes accusatory in nature, the investigator shall read and explain the contents of Form PA-45, Warning and Waiver of Rights, to the individual, explaining his/her right to refrain from answering any question and/or to terminate the interview at will, regardless of the fact that the waiver of rights statement has been signed;

ii. The investigator shall ask that the individual sign the waiver of rights statement on Form PA-45, indicating that he/she understands his/her rights and agrees to discuss the matter without the presence of an attorney. The investigator shall witness the waiver by signing and dating the document. A copy of the signed document shall be given to the individual;

iii. If the individual refuses to sign the waiver, no questioning shall occur at this time. If the individual requests the presence of an attorney, he/she shall make such arrangements before any subsequent interview. However, the investigation shall not be delayed pending an interview;

iv. The individual shall be advised of the opportunity, where available, to obtain legal counsel through Legal Services, Legal Aid Society, lawyer referral service or the Office of the Public Defender.]

SUBCHAPTER 15. INTENTIONAL PROGRAM VIOLATION

10:81-15.1 Definition of intentional program violation (IPV)

(a) Intentional program violation (IPV) is any statement or act by an individual for the purpose of establishing or maintaining the family's eligibility for AFDC, or for increasing or preventing a reduction in the AFDC benefit amount, or to prevent denial or termination of assistance, which is intentionally:

1. A false or misleading statement or misrepresentation, concealment, or withholding of facts; or

2. An act intended to mislead, misrepresent, conceal, withhold facts, or to propound a falsity.

(b) When evaluating alleged IPV by an individual, there are three basic elements which must be established through investigation:

1. The misrepresentation or concealment must have been deliberate and done knowingly. IPV does not exist if the misrepresentation or concealment is the result of an unintentional act, a misunderstanding or mental incompetency. Distinction must also be made between an intent to defraud on the part of an individual, and omission, neglect or error by the CWA's representatives in securing and recording information;

2. The misrepresentation or concealment must have been undertaken for the express purpose of receiving or obtaining benefit from, or attempting to receive or obtain benefit from, a payment of assistance to which the individual was not entitled; and

3. If the misrepresentation or concealment, or the attempt to misrepresent or conceal a relevant fact, had been known to the CWA, assistance would not have been granted or would have been granted in a lesser amount.

(c) The evidence to establish the three points delineated in (b) above must be factual and capable of being demonstrated in an administrative disqualification hearing or in a court of law through the testimony of witnesses, or by documentary evidence.

(d) At the time of application for AFDC, individuals shall be provided with written notice informing them of the AFDC disqualification penalties that will be imposed for committing IPV (see N.J.A.C. 10:81-2.2(a)3 and 2.3(a)). Current AFDC recipients shall also be provided with the written notice at the time of case redetermination (see N.J.A.C. 10:81-5.1(c)).

(e) A person is presumed innocent until proven guilty. Except as provided in N.J.A.C. 10:81-15.6(b), assistance shall be continued to an eligible person, even though there is reason to suspect that IPV has been committed, while the facts are under review by the CWA or the law enforcement authority.

(f) The CWA shall ensure that an individual under investigation shall have the following rights:

1. The CWA shall ensure that information obtained from or concerning a person under investigation shall be restricted in accordance with N.J.A.C. 10:81-7.31 through 7.35. The CWA shall take special precautions in obtaining information from a third party so that no accusations relevant to the alleged IPV are disclosed, including the reason for the investigation or the nature of the allegation, without the written consent of the individual under investigation.

2. The CWA shall ensure that investigative methods do not infringe on the civil liberties of the individual or interfere with due process of law. The CWA shall be prohibited from obtaining forced entry, conducting residence searches without consent of the client, making home visits during normal sleeping hours (generally 10:00 P.M. to 7:00 A.M.), or requiring that an individual be subjected to a lie detector test.

3. Rules on warning and waiver of rights are as follows:

i. When the questioning of an individual regarding a possible charge of fraud becomes accusatory in nature, the CWA representative shall read and explain the contents of Form PA-45, Warning and Waiver of Rights, to the individual, explaining his or her right to refrain from answering any question(s) and/or to terminate the interview at will, regardless of the fact that the individual may have already signed the waiver of rights statement.

ii. The CWA representative shall ask that the individual sign the waiver of rights statement on Form PA-45, indicating that he or she acknowledges his or her rights and agrees to discuss the matter without the presence of an attorney. The CWA representative shall witness the waiver by signing and dating the document. A copy of the signed document shall be given to the individual.

iii. If the individual refuses to sign the waiver, no further questioning shall occur at this time. If the individual requests the presence of an attorney, the CWA shall postpone the interview for a reasonable period of time so that the accused individual may arrange for legal representation. However, the investigation shall not be delayed pending the interview.

iv. The individual shall be advised of the opportunity, where available, to obtain legal counsel through Legal Services, the Legal Aid Society, or the lawyer referral service of the Office of the Public Defender.

10:81-15.2 Methods of determining IPV

(a) The CWA shall proceed against any individual member of an AFDC family, regardless of AFDC payment status, who it believes has committed IPV. The CWA may secure a finding of IPV either through an administrative disqualification hearing conducted by the Office of Administrative Law (OAL), or a court of appropriate jurisdiction. In proceeding against any such individual, the CWA shall coordinate the IPV investigation and any resultant hearing with any action being taken under the Food Stamp Program, when the factual issue(s) arises from the same or related circumstances. A finding of IPV may also be made if the accused signs either the

waiver of right to an administrative disqualification hearing (N.J.A.C. 10:81-15.4), or a disqualification consent agreement (N.J.A.C. 10:81-15.9).

(b) A referral for an administrative disqualification hearing or referral to a court of appropriate jurisdiction shall be initiated by the CWA whenever the CWA has sufficient documentary evidence to substantiate that an individual has intentionally committed one or more acts of IPV, as defined at N.J.A.C. 10:81-15.1, regardless of the current eligibility of the individual.

10:81-15.3 Referral for administrative disqualification hearing

(a) Referral for an administrative disqualification hearing shall be made:

1. When the facts of the case do not warrant prosecution through the court system;

2. When a case previously referred for prosecution is declined by the appropriate legal authority; or

3. When no action has been taken on a case which has been referred for prosecution and the county has decided to formally withdraw the referral.

(b) A referral for an administrative disqualification hearing shall not be made against an individual whose case is currently being referred for prosecution, or subsequent to any action taken against the accused individual by a court of appropriate jurisdiction.

(c) IPV cases which are referred to the prosecutor and/or a court of appropriate jurisdiction and are handled through prosecution, pre-trial intervention, or are plea-bargained shall not be subsequently referred for an administrative disqualification hearing.

(d) The CWA shall consolidate an individual's fair hearing with an administrative disqualification hearing based on the same or related circumstances, provided that the individual receives prior notice of the consolidation.

10:81-15.4 Waiver of right to administrative disqualification hearing

(a) The accused individual shall have the option of waiving his or her right to an administrative disqualification hearing. The CWA shall provide written notification of this option to the client only after ensuring that the evidence against the client has been reviewed by someone other than the eligibility worker assigned to that case and that such evidence warrants the scheduling of a disqualification hearing. A mandatory written notification, which informs the individual of the option of waiving his or her right to a disqualification hearing, shall include:

1. The date that the signed waiver must be received by the CWA to avoid the holding of a hearing and a signature block for the accused individual;

2. A statement explaining that the caretaker relative must likewise sign the waiver if the accused individual is not the caretaker relative;

3. An appropriately designated signature block for the caretaker relative;

4. A statement explaining the accused individual's right to remain silent concerning the charge(s), and that anything said or signed by the individual concerning the charge(s) can be used against him or her in a court of law;

5. A statement explaining that waiver of the individual's right to appear at a disqualification hearing may result in a disqualification penalty and a reduction in the assistance payment for the appropriate period, even if the accused individual does not admit to the facts as presented by the CWA;

6. A statement indicating that the accused individual shall be provided the opportunity to specify whether or not he or she admits to the facts as presented by the CWA; and

7. The telephone number and, if possible, the name of the person at the CWA to contact for additional information.

10:81-15.5 Administrative disqualification hearing procedures

(a) Administrative disqualification hearings will be conducted in accordance with the requirements of this section, and with those stipulated under N.J.A.C. 1:1 and 1:10. OAL will assign an administrative law judge (ALJ) to preside over the hearing.

(b) Administrative disqualification matters shall be transmitted by DFD to the OAL for the purpose of conducting a hearing pursuant to N.J.A.C. 1:1 and 1:10.

(c) The final decision shall be made by the Director of DFD based on the hearing record, and shall comply with Federal and State law and regulations.

(d) The hearing record shall be retained for a period of three years. This record shall be available to the AFDC family, or its representative, at any reasonable time for copying and/or inspection.

(e) Within 90 days of the date the individual is notified in writing that an administrative disqualification hearing has been scheduled, the hearing shall be conducted and a decision shall be rendered.

(f) The CWA shall provide advance written notice of the hearing to the individual suspected of IPV at least 30 days in advance of the date an administrative disqualification hearing has been scheduled. The notice shall be mailed by certified mail-return receipt requested. In the event that the individual refuses to accept delivery of the advance notice and the mail receipt notes that fact, the receipt will be accepted as proof of notice served. The certified letter shall be clearly marked "deliver to addressee only" in order to ensure that notice is served to the correct individual. A return receipt for certified mail which contains the signature of an individual other than the person addressed is insufficient evidence that proper advance notice was given. Letters sent by certified mail which are returned to the CWA with notations such as "unclaimed" or "undeliverable" offer no proof that advance requirements have been met. The advance notice shall contain at a minimum:

1. The date, time, and location of the hearing;

2. The charge(s) against the individual;

3. A summary of the evidence, and how and where the evidence can be examined;

4. A warning that the decision will be based solely on information provided by the CWA if the individual fails to appear at the hearing without good cause;

5. A statement that the individual, or his or her representative, will have 10 days from the date of the scheduled hearing to present good cause to DFD or the CWA for failure to appear, in order to receive a new hearing;

6. A warning that a determination of IPV will result in a six-month disqualifiation for the first violation, 12-month disqualification for the second violation, and permanent disqualification for the third violation, and a statement of which penalty the CWA believes is applicable to the case at the time of scheduling of the hearing;

7. A listing of the individual's rights as provided under N.J.A.C. 1:10;

8. A statement that the hearing does not preclude the State or Federal government from prosecuting the household member for IPV in a civil or criminal court action, or from collecting the overpayment;

9. If there is an individual or organization available that provides free legal representation, the notice shall advise the household member of the availability of that service;

10. A statement that the individual may request a postponement of the hearing provided that such request is made to the OAL at least 10 days in advance of the scheduled hearing;

11. An explanation that the individual may waive his or her right to appear at the administrative disqualification hearing as provided in N.J.A.C. 10:81-15.4;

12. A statement of the accused individual's right to remain silent concerning the charge(s) and that anything said or signed by the individual concerning the charge(s) may be used against him or her in a court of law; and

13. A statement which informs the household of its right to obtain, upon request, a copy of the State agency's published hearing procedures.

(g) The time and place of the hearing shall be arranged so that the hearing is accessible to the individual suspected of IPV.

(h) If the individual is found to have committed IPV but a determination is subsequently made by DFD that the individual or his or her representative had good cause for not appearing, the previous decision shall no longer remain valid. The individual has

10 days from the date of the scheduled hearing to present reasons to DFD indicating a good cause for failure to appear. A new hearing shall be conducted. The ALJ who originally ruled on the case may conduct a new hearing. The ALJ shall enter the good cause decision into the hearing record.

(i) Medical assessments, which may either corroborate or disprove an accused individual's statements, shall be obtained at CWA expense and made part of the record if the ALJ considers it necessary.

10:81-15.6 Participation while awaiting a hearing

(a) A pending administrative disqualification or court hearing shall not affect the individual's right to participate in the program. Since the CWA cannot disqualify an individual for IPV until the hearing or court decision establishes that the individual has committed IPV, the CWA shall determine the eligibility of the individual based on the individual's current circumstances.

(b) the CWA shall reduce or terminate the individual's assistance if the CWA has documentation which substantiates that the individual is ineligible or eligible for less assistance benefits, and the individual fails to request a fair hearing and continuation of benefits pending the hearing. This provision applies even if the same evidence leads to the suspicion of IPV and the scheduling of a disqualification hearing. For example, the CWA may have facts which substantiate that the individual failed to report a change in his or her circumstances even though the CWA has not yet demonstrated that the failure to report involved an act of IPV.

10:81-15.7 No further administrative appeal

No further administrative appeal procedure exists beyond the signing of a waiver of the right to a disqualification hearing by the accused individual, or an adverse decision following a disqualification hearing. The disqualification penalty cannot be reversed by a subsequent fair hearing decision. The individual, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

10:81-15.8 Court imposed disqualification

(a) CWAs are encouraged to refer for prosecution under State statutes those individuals suspected of committing IPV, particularly, if large amounts of assistance are suspected of being obtained through acts of IPV or if the individual is supsected of committing more than one act of IPV.

(b) The CWA shall confer with its legal representative to determine the types of cases which will be accepted for possible prosecution.

(c) The CWA shall also encourage prosecutors to recommend to the courts that a disqualification penalty be imposed in addition to any other civil or criminal penalties for such violations.

(d) If the court does not impose a disqualification period, the CWA shall impose the appropriate disqualification period, unless contrary to the court order.

10:81-15.9 Disqualification consent agreement

(a) An individual accused of IPV who is referred to a court of appropriate jurisdiction but for whom no determination of guilt is obtained due to the accused individual having met the terms of a court order, or who is not prosecuted due to the fact that the accused individual has met the terms of an agreement with the prosecutor, shall be allowed to sign a disqualification consent agreement. The CWA shall make arrangements with the county prosecutor to provide advance written notification to the individual of the consequences of consenting to disqualification as a result of deferred adjudication and to include the disqualification consent agreement in agreements between the prosecutor and the accused individual or in the court order.

(b) The advance notice and agreement shall include, at a minimum:

1. A statement of understanding for the accused to sign which states that the accused understands the consequences of consenting to IPV, along with a statement explaining that the caretaker relative must likewise sign the consent agreement if the accused individual is not the caretaker relative, with an appropriately designated signature block for that relative and/or the accused individual;

2. A statement indicating that signing the agreement will result in disqualification and a reduction in payment to the family during the period of disqualification, even though the accused individual was not found guilty of civil or criminal misrepresentaiton or fraud;

3. A warning statement indicating the disqualification penalties imposed for IPV under the AFDC Program. Those penalties include a six-month disqualification for the first violation, a 12-month disqualification for the second violation and permanent disqualification for the third violation. An additional statement must further explain the specific penalty imposed as a result of the accused individual having consented to disqualification; and

4. A statement of the fact that the remaining household members, if any, will be held responsible for repayment of the overpayment, unless the accused individual has already repaid the repayment as a result of meeting the terms of the agreement with the prosecutor or the court order.

(c) If the individual signs the disqualification consent agreement, he or she shall be disqualified in accordance with N.J.A.C. 10:81-15.11, unless contrary to the court order. If the court specifies a disqualification period or specifies a date for initiating disqualification, the CWA shall adhere to the court order. If an individual whose case has been terminated signs a consent agreement, the disqualification period shall be postponed until after a reapplication for AFDC assistance is approved.

10:81-15.10 Reversed IPV disqualifications

(a) In cases where the determination of guilty of IPV is reversed by a court of appropriate jurisdiction, the CWA shall reinstate the individual in the program if the family is otherwise eligible for AFDC benefits.

(b) The CWA shall restore any benefits to the eligible AFDC family that were lost as a result of the disqualification of the individual in accordance with the procedures specified in N.J.A.C. 10:82-2.19(b).

10:81-15.11 IPV disqualification penalties

(a) Individuals found to have committed IPV either through an administrative disqualification hearing or by a court of appropriate jurisdiction (not including pre-trial intervention), or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the program as follows:

1. For a period of six months for the first violation;
2. For a period of 12 months for the second violation; and
3. Permanent disqualification for the third violation.

(b) During the disqualification period, the CWA shall not take the individual's needs into account when determining the AFDC assistance unit's need and amount of assistance. Any resources and income of the disqualified individual will be considered in its entirety, available to the assistance unit.

(c) If an individual had previously been found guilty of committing AFDC fraud before (the effective date of N.J.A.C. 10:81-15), that finding shall not be considered as a previous IPV in determining the appropriate disqualification period to be applied in accordance with (a) above. The disqualification penalties shall be applicable to any finding of IPV which is established after (the effective date of N.J.A.C. 10:81-15).

(d) If a court fails to impose a disqualification period for an IPV, the CWA shall impose the appropriate disqualification penalty unless it is contrary to the court order.

(e) Any period for which a disqualification penalty is imposed shall remain in effect, without the possibility of an administrative stay, unless and until the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction. In no event shall the duration of the period of ineligibility be subject to review.

(f) In cases where a disqualification penalty and other sanctions or penalties imposed by the court apply, the IPV disqualification

penalties shall be in addition to, and cannot be substituted for, any other sanctions or penalties which may be imposed by law for the same offenses.

(g) IPV disqualification penalties only affect the individual concerned and cannot be combined with other sanctions under the AFDC program. Any outstanding IPV disqualification shall not be imposed until after any REACH, FDP or CSP penalty expires. For example, if the individual is serving a penalty for failure to participate in REACH or FDP, or failed to cooperate in obtaining child support, and the individual was to begin serving an IPV disqualification period, the disqualification shall be postponed until after the other program penalty is served.

10:81-15.12 Imposing disqualification periods

(a) If the individual is not eligible at the time the disqualification period is to begin, the period shall be postponed and becomes applicable upon reapplication by the individual for AFDC benefit if the individual is determined eligible for such benefits, or becomes applicable upon the expiration of a previously imposed program sanction at such time that the individual would normally resume receipt of benefits. However, once a disqualification period is imposed, the period of disqualification shall continue uninterrupted regardless of the eligibility of the individual.

(b) For an individual who signs a waiver of the right to an administrative disqualification hearing, the disqualification period shall begin no later than the first day of the second month which follows the date the individual received written notification of the disqualification.

(c) For an individual who signs a disqualification consent agreement, the disqualification period shall begin no later than the first day of the second month which follows the date of the notice, unless otherwise directed by the court.

(d) For an individual found guilty of IPV by an administrative disqualification hearing, the disqualification period shall begin with the first day of the second month which follows the date the individual received written notification of the hearing decision.

(e) For an individual found guilty of IPV by a court of appropriate jurisdiction, the disqualification period shall begin within 45 days of the date the disqualification was ordered or, if no disqualification period is specified by the court, within 45 days of the date the court found the individual guilty of civil or criminal misrepresentation or fraud.

(f) Whenever an individual is disqualified for IPV, the CWA shall provide written notice to the individual prior to the disqualification. The notice shall inform the individual of the decision and the reason for the decision. In addition, the notice shall inform the individual of the period of disqualification and of the amount of assistance the remaining eligible unit members will receive during the period of disqualification. In the event that the individual's disqualification resulted from a prior receipt of assistance, the notice shall advise that the disqualification will be postponed until after a reapplication for AFDC assistance is approved.

(g) When an individual with a previous IPV disqualification moves from one county or state to another, the receiving CWA shall take the previous disqualification into consideration when determining the appropriate penalty to be applied against that individual, if such action is required.

(h) When an individual currently serving an IPV disqualification moves from one county or state to another, the disqualification shall continue regardless of the individual's AFDC eligibility status in the receiving county or state.

10:81-15.13 CWA IPV administrative procedures

(a) The CWA must conduct an investigation of an allegation that an individual has committed IPV. The CWA is responsible for determining whether there is a basis in fact for believing that IPV may have been committed so that referral to the county prosecutor or other proper law enforcement official for legal action is justified. The action taken by the law enforcement official following referral determines what further legal action shall be pursued. Whether IPV has actually occurred is a question for the court. The CWA director may utilize the power of subpoena given him or her by N.J.S.A. 44:7-20 to secure testimony and records pertinent to the investigation and needed to determine true facts.

(b) Each CWA shall develop an operational method to carry out its responsibility which is best suited to its administrative structure and to local conditions and resources. There must be a clear allocation of duties and functions in the total process of investigation, reporting, evaluation, in making the decision to refer, and so forth. With respect to the function of investigation, the CWA may select one or a combination of the following plans:

1. The CWA may arrange for special investigation of cases of suspected fraud by another appropriate agency or official such as office of the county adjustor, the probation department or the office of the county prosecutor, without cost to the CWA.

2. The CWA may elect to have staff carry the responsibility for the necessary special investigation in instances of suspected IPV, relying upon consultation with CWA counsel for the technical aspects of establishing adequate evidence on which to base a decision.

3. Whatever administrative plan is adopted, there will be instances where discussion should be arranged with welfare board counsel and/or the county prosecutor's office as to the nature and conduct of the investigation.

4. Each CWA shall file a detailed description of the administrative plan with DFD and shall advise DFD of any subsequent proposed change in the plan before it becomes effective.

(c) When the investigation of any case of suspected IPV is completed, the CWA director, in consultation with counsel, shall be responsible for determining whether the matter should be referred to the county prosecutor or other proper law enforcement official.

(d) In cases where the CWA has completed an investigation based upon a belief that IPV has been committed, a Form PA-33, Investigation Initiation Sheet, shall be routed through the CWA director to DFD. The form shall be completed when the CWA determines that no fraud exists, when the case is disposed of through administrative action, or when the case is forwarded to the county prosecutor.

(e) Upon disposition of the case by law enforcement officials (county prosecutor or municipal court), a Form PA-34, Investigation Disposition Sheet, shall be completed and routed through the CWA director to DFD.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Manual of Requirements for Adoption Agencies Searches

Proposed Amendment: N.J.A.C. 10:121A-5.10

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

Authority: N.J.S.A. 9:3-37 et seq., 30:1A-1 et seq. and 30:4C-4(b).

Proposal Number: PRN 1993-413.

Submit comments in writing by September 1, 1993 to:

Richard Crane, Acting Chief
Bureau of Licensing
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 9:3-37 et seq., 30:1A-1 et seq. and 30:4C-4(b), the Department of Human Services is authorized to certify all private and public adoption agencies both within New Jersey and outside the State, that are involved in the placement of children for adoption in New Jersey. The proposed amendment constitutes a minor, though substantive, change to the existing rules, N.J.A.C. 10:121A, the Manual of Requirements for Adoption Agencies, which was recently readopted with amendments on November 25, 1992 and which will expire on November 25, 1997.

During the final review of recently adopted amendments to the Manual of Requirements, the Division discovered an error of omission that needs to be corrected. The manual specifies procedures for searches conducted by adoption agencies on behalf of adult adoptees, adoptive parents or birth parents who wish to contact each other. Adoption agencies are not required to conduct searches, but those that choose to do so must follow the procedures specified in the manual. The proposed amendment indicates that when certain additional search procedures are necessary to locate an individual, the adoption agency is required to document such search procedures.

Specifically, the manual requires at N.J.A.C. 10:121A-5.10(b) that the search must include a review of the agency's records for background information on the birth or adoptive family, such as names, addresses, Social Security numbers, occupations, military services, clubs, schools, marriages or deaths. The manual further requires at N.J.A.C. 10:121A-5.10(c) that, when the above information is available, the agency attempt to locate the individual by writing to the appropriate address or by checking real estate, tax or voter registration records or other pertinent sources. The manual also requires at N.J.A.C. 10:121A-5.10(d) that the agency document the initial search procedures specified in subsection (b); but, due to an oversight, it does not refer to documentation of the additional search procedures specified in subsection (c). The Division intended to require documentation of all search procedures used. The proposed amendment is designed to correct this oversight by requiring documentation of the search procedures in both subsections (b) and (c).

The proposed amendment at N.J.A.C. 10:121A-5.10(d) would require the adoption agency to document and maintain on file all of the procedures used in an adoption search, including the initial search information already specified in this section, and, if applicable, the additional search procedures. This proposed amendment would simply produce a file containing the information obtained from the additional search procedures specified in 10:121A-5.10(c)1 through 11. This proposed amendment will clarify the recordkeeping requirements for the adoption agencies.

Social Impact

The Division anticipates that the proposed amendment to this chapter will have a positive impact on adoption agencies, adult adoptees, birth parents and adoptive parents. The proposed amendment provides clarity on when it is necessary to document search procedures. The proposed amendment will help to ensure that all search procedures are properly documented.

Economic Impact

The Division does not anticipate that the proposed amendment will result in a significant economic impact for the adoption agencies that are regulated by the Division. While compliance with the proposed amendment will have certain administrative costs attached, it is not anticipated that such costs place any unreasonable burden on regulated agencies. In fact, adoption agencies providing the searches may recoup some or all of the administrative expenses by charging the consumer a fee for such services.

Regulatory Flexibility Analysis

The 34 in-State adoption agencies regulated by the Division are considered small businesses, as defined under N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. It is not appropriate or necessary to establish differential rules that would apply to larger or smaller entities, as all of the regulated entities are considered small businesses. Therefore, compliance with the proposed amendment is required, without variation, in order to ensure that the standards are consistently met.

While the proposed amendment impacts on the recordkeeping requirements for searches, the Division does not belive it to be burdensome. It merely calls for an agency to document certain procedures that are already required under a separate rule. There are no anticipated capital costs to agencies associated with complying with the proposed amendment, and it is unlikely that any adoption agency will need to engage professional services to meet the requirements of the proposed rule.

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

10:121A-5.10 Searches

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

(d) The agency shall document and maintain on file all the aspects of a search as specified in (b) **and** (c) above that were undertaken on behalf of the adult adoptees, birth parents or adoptive parents.

(e) (No change.)

CORRECTIONS

(a)

THE COMMISSIONER

Inmate Discipline

Inmate Prohibited Act; Sexual Assault

Proposed Amendment: N.J.A.C. 10A:4-4.1

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

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

Proposal Number: PRN 1993-400.

Submit comments by September 1, 1993 to:

William H. Fauver, Commissioner
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment modifies N.J.A.C. 10A:4-4.1(a) to add sexual assault to the list of prohibited acts as *.050. Presently, the existing list of prohibited acts does not include sexual assault; thus, sexual assault cannot be charged as a prohibited act. Less severe prohibited acts are charged such as .051 engaging in sexual acts with others or .052 making sexual proposal or threats to others. The addition of sexual assault to the list of prohibited acts will provide correctional facility administration the ability to apply the appropriate prohibited act when an inmate is charged with sexual assault. As an asterisked (*) offense, sexual assault shall be considered a major violation and upon a finding of guilt render the offender subject to more severe sanctions with the possibilities of transfer and/or prosecution.

Social Impact

In the day to day management of a correctional facility, the disciplinary procedures and sanctions imposed for violation of rules are among the most important tools by which the correctional facility administration is able to maintain institutional stability, safety and order. The proposed amendment of adding sexual assault to the prohibited acts will provide Disciplinary Hearing Officers and Adjustment Committees a greater flexibility in the types of sanctions which may be imposed on inmates for sexual assault violations. This added flexibility will enhance the maintenance of discipline and further contribute to the safe and orderly operation of the correctional facility.

Economic Impact

The proposed amendment will have no new or additional economic impact on the public or correctional facilities since various disciplinary charges are currently being imposed on inmates who commit sexual assaults. The amendment delineates which specific prohibited act to use when charging the inmate with this prohibited act. Additional costs are not necessary to implement or maintain this amendment.

Regulatory Flexibility Statement

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

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

10A:4-4.1 Prohibited acts

(a) An inmate who commits one or more of the following numbered prohibited acts shall be subject to disciplinary action and a sanction that is imposed by a Disciplinary Hearing Officer or

Adjustment Committee. Prohibited acts preceded by an asterisk are considered the most serious and result in the most severe sanctions (See N.J.A.C. 10A:4-5, Schedule of Sanctions For Prohibited Acts).

*.001-.008 (No change.)

***.050 Sexual Assault**

.051-*.803 (No change.)

(b) (No change.)

LABOR

(a)

DIVISION OF ADMINISTRATION

Audit Resolution Procedures

Proposed Readoption: N.J.A.C. 12:5

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

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 31 U.S.C. Sec. 7500 et seq. and C.F.R. 96.501 et seq.

Proposal Number: PRN 1993-417.

Submit written comments by September 1, 1993 to:

Linda Flores, Esquire
Special Assistant, Office of External and Regulatory Affairs
CN 110
Trenton, New Jersey 08625

The agency proposal for readoption follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 12:5, Audit Resolution Procedures, is scheduled to expire on September 19, 1993. The rules set forth procedures for the resolution of audit findings including, but not limited to, questioned costs and administrative deficiencies identified as a result of the audit of Federal grants, contracts and other agreements awarded by or on behalf of the New Jersey Department of Labor. The Department has reviewed these rules and determined them to be necessary, reasonable, adequate, efficient, understandable and responsive to the purpose for which they were originally promulgated. Accordingly, pursuant to 31 U.S.C. Sec. 7500 et seq., 29 C.F.R. 96.501 et seq., N.J.S.A. 34:1 et seq. and the New Jersey Department of Labor's (Department) general rulemaking authority, the Department is proposing for readoption the audit resolution procedures found at N.J.A.C. 12:5.

On October 19, 1984, Congress set forth the requirements for single audits at 31 U.S.C. Sec. 7500 et seq. On February 26, 1988, the Federal Department of Labor promulgated regulations at 29 C.F.R. Sec. 96.501 et seq. in order to interpret and implement the Federal statutory requirements found at 31 U.S.C. Sec. 7500 et seq. The regulations at 29 C.F.R. §96.501 are part of a broader Federal Department of Labor effort to streamline and standardize audit resolution procedures. (See 29 C.F.R. Part 96, Federal Register, Vol. 53, No. 38, p. 5966, February 26, 1988 for rights of agencies to establish procedures).

N.J.A.C. 12:5-1.1 sets forth the purpose and scope of the chapter.

N.J.A.C. 12:5-1.2 sets forth applicable definitions.

N.J.A.C. 12:5-1.3 specifies the audit resolution procedures. Under these provisions, the Controller is required to promptly review a final audit report and issue a written final determination within 180 days of the receipt of the report. To ensure that the procedures are completed within 180 days, the Department has imposed specific time requirements.

N.J.A.C. 12:5-1.3(a) requires the Controller to issue an initial determination within 60 days of receipt of a final audit report. The determination must set forth disallowances and/or proposed sanctions.

N.J.A.C. 12:5-1.3(b) requires any grantee, contractor or subrecipient who disagrees with the initial determination to request an informal review within 30 days. This subsection also requires the submission of any data and arguments in support of the position of the grantee, contractor or subrecipient within 30 days of the written request for an informal review. Moreover, the failure to comply with these timeframes renders the Controller's decision final.

N.J.A.C. 12:5-1.3(c) sets forth the timeframe for the Controller's final determination and the contents of the determination. Under this subsection the Controller must make a final determination within 180 days of the receipt of an audit. The final determination must indicate that the efforts to resolve matters informally contained in the initial determination have either been successful or unsuccessful; list those matters upon which the parties continue to disagree; list any modifications to the factual findings and conclusions set forth in the initial determination; list any sanctions and required corrective actions; and set forth appeal rights.

N.J.A.C. 12:5-1.3(d) sets forth the requirements for the grantee, contractor or subrecipient to appeal the Controller's final determination by requesting a formal hearing pursuant to the Administrative Procedure Act and the Uniform Administrative Rules Practice. The request must be made within 10 days from the date of receipt of the Controller's final decision.

Lastly, N.J.A.C. 12:5-1.3(e) provides that any failure by the Controller to issue decisions within the allotted timeframes will not relieve the grantee, contractor or subrecipient from liability for any audit disallowances and/or sanctions.

The audit resolution procedures provide clear guidance to both the Controller and any grantee, contractor or subrecipient for the prompt review and resolution of audit disputes. Because the Department believes the current text of the chapter is sufficient for the purposes of administering the audit resolution procedures, the rules are not being amended on readoption.

Social Impact

The rules proposed for readoption implement Federal law and regulations governing this area. The rules have a positive social impact on all parties involved in audit reviews and determinations because they clarify and streamline the audit resolution process.

Before the existing resolution process came into effect, grantees, contractors and subrecipients tended to exhaust all the allowable time before pursuing an appeal of the Controller's initial determination; this delay, in turn, would cause the matter to be decided beyond the 180 day cycle. Consequently, because of the length of time involved, the resolution process became more difficult.

The Department's experience over the last years has been positive. The audit resolution procedures have achieved their intended purpose of preventing delays in the conduct of audit reviews and issuance of final determinations. Therefore, the procedures and attendant timeframes contained in the proposed readoption will provide for timely and expeditious decisions.

Economic Impact

Readoption of the rules governing audits will have a positive economic impact on all parties involved because it will streamline the audit resolution process. The allocated timeframes will allow the Controller to conduct an efficient review of audits since review requests, data, and arguments will be submitted in a timely fashion. An efficient review and timely decision will also reduce costs to the State and the grantees, contractors and subrecipients because the resolution will occur at a time when the information needed to conduct the reviews and render determinations will be more readily available. The procedures also benefit grantees, contractors and subrecipients by allowing corrective actions to be implemented at an earlier point in time, thereby mitigating the adverse financial impact which may result by continuing an inappropriate or disallowed charge.

Regulatory Flexibility Analysis

Readoption of the audit resolution procedures will impact all small businesses that are awarded grants, contracts and other agreeements by, or on behalf of, the New Jersey Department of Labor. The procedures, along with the timeframes established therein, must be adhered to by small businesses; however, the rules are not burdensome. Small businesses will benefit by the readoption because they will receive timely decisions concerning audit disputes, thereby reducing the potential for carrying forward into future years disallowed costs or other charges. Finally, the rules proposed for readoption do not impose any new recordkeeping or bookkeeping requirements; small businesses will be able to avail themselves of the audit resolution procedures through the use of information already required as a condition of the award.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:5.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Notice of Pre-Proposal
Enforcement Service
Enhanced Motor Vehicle Inspection and Maintenance Program
Pre-Proposed New Rules: N.J.A.C. 13:20-43

Authorized By: Stratton C. Lee, Jr., Director, Division of Motor Vehicles

Authority: N.J.S.A. 39:8-1, 39:8-2, 39:8-4.1 and 39:8-10; 42 U.S.C. §7401 et seq.; and 40 C.F.R. §51.350 et seq.

Pre-proposal Number: PPR 1993-3.

A **public hearing** concerning the pre-proposal will be held on:
Friday, September 17, 1993 at 10:00 A.M. at:
Department of Treasury
War Memorial Building
John Fitch Way
Trenton, New Jersey 08625

Please note: One hour prior to the public hearing, DEPE and the Division of Motor Vehicles (DMV) personnel will be available at the War Memorial Building to answer questions on the pre-proposal. This question and answer period will **not** be part of the public record; however, the public is encouraged to ask questions in this highly technical pre-proposal and subsequently provide written or oral comment.

Submit written comments relevant to this pre-proposal on or before September 24, 1993 to:
Stratton C. Lee, Jr., Director
Division of Motor Vehicles
Attention: Legal Services Office
225 East State Street
CN 162
Trenton, New Jersey 08666

The agency pre-proposal follows:

Summary

Take notice that the Division of Motor Vehicles (Division) is considering new rules concerning enhanced motor vehicle inspection and maintenance. The new rules will implement the Federal Clean Air Act as amended (42 U.S.C. §7401 et seq.) by establishing an enhanced motor vehicle inspection and maintenance program for New Jersey that achieves the performance standard for enhanced programs established by the Federal Environmental Protection Agency at 40 C.F.R. §51.350 et seq. This enhanced inspection and maintenance program is required by Federal law for the purpose of reducing significantly motor vehicle-related emissions of volatile organic compounds, carbon monoxide and oxides of nitrogen which adversely impact on the air quality of this State. These new rules are required in order to satisfy the requirements of the Federal Clean Air Act that a state submit a State Implementation Plan (SIP) by November 15, 1993. Failure to submit a SIP may result in the withholding of Federal highway funds and the imposition of a Federal Implementation Plan on the State of New Jersey. The Federal EPA proposed rulemaking and final rule pertaining to inspection/maintenance program requirements are set forth at 57 Federal Register 31058 and 57 Federal Register 52950, respectively. The preambles to the proposed rulemaking and final rule contain a detailed discussion of the objectives and requirements of the Federal Clean Air Act Amendments of 1990.

The Division is proceeding by way of a pre-proposal because of the urgency in adopting regulations by the November 15, 1993 deadline. The Division realizes that in some respects these rules are being pre-proposed in anticipation of receiving more explicit statutory authority under legislation that is about to be introduced in the Legislature. Because of the narrow time constraints interested parties are encouraged to make all comments now.

The Department of Environmental Protection and Energy is proposing new rules elsewhere in this issue of the New Jersey Register for the establishment of new emission tests and testing standards for the enhanced inspection/maintenance program required to be implemented by Federal law.

Pre-proposed N.J.A.C. 13:20-43.1 contains the definitions applicable to the subchapter.

Pre-proposed N.J.A.C. 13:20-43.2 imposes an inspection requirement for motor vehicles registered or primarily operated in New Jersey, including privately owned or leased motor vehicles, motor vehicles operated on Federal installations, motor vehicles operated by Federal government agencies and rental motor vehicles. This section provides that motor vehicles in the affected categories shall be inspected in accordance with the procedures adopted by the Division and shall meet the emissions standards adopted by the Department of Environmental Protection and Energy. This section also provides an exemption from the inspection requirement for enumerated classes of motor vehicles (for example, farm tractors, construction equipment, historic motor vehicles, motorcycles, etc.). The section establishes procedures for the submission of reports to the Division by Federal installations and Federal government agencies concerning Federal motor vehicles which are subject to inspection in New Jersey. Provision is also made for the transmission of inspection reports to other states for out-of-State vehicles inspected in New Jersey. A per vehicle inspection fee is imposed to offset the costs incurred by the Division in providing the inspection for Federal vehicles and vehicles registered in other states. This section provides two alternatives for determining the frequency of inspection. Alternative A provides for biennial inspection of motor vehicles regardless of model year. Alternative B provides for the annual or biennial inspection of motor vehicles based on the model year of the vehicle. Motor vehicles are subject to biennial inspections for the first five years of existence. Annual inspections are required after five years. The remaining provisions of this section specify the various types of emissions tests that are to be conducted, identify the classes of motor vehicles that are subject to each test, specify the various safety equipment that is subject to inspection, specify the inspection reports to be provided to the operator after inspection, specify reinspection procedures for motor vehicles failing the initial inspection and establish procedures for motor vehicles that are temporarily out of this State and cannot be inspected in New Jersey prior to the expiration of the certificate of approval. These requirements bring New Jersey into substantial compliance with Federal regulations set forth at 40 C.F.R. §51.351 and §51.356. A subsection of this section is being reserved to address the subject of fleet inspection. The rules adopted by EPA appear to reduce emission credit for programs that contain a provision allowing for the self-inspection of fleets. In making a decision as to how these inspections should be handled in the most cost effective manner, comments are being solicited on that subject.

Pre-proposed N.J.A.C. 13:20-43.3 provides for the issuance of certificates of waiver for motor vehicles which fail to meet emission standards after qualifying repairs have been performed. Subsection (a) of this section sets forth the criteria which must be satisfied by the motor vehicle owner in order to qualify for the issuance of a certificate of waiver. The owner must spend at least $450.00 for emission-related repairs. The emission-related repairs must be performed by a Division-licensed motor vehicle repair facility which has been issued an emissions repair endorsement or by an owner of a motor vehicle who possesses nationally recognized certification for emission-related diagnosis and repairs. The emission-related repairs must be appropriate to the cause of the inspection failure. The owner must avail himself or herself of all available warranty coverage before expenditures can be counted towards the $450.00 minimum expenditure requirement. Subsection (b) provides that waivers may not be issued for tampering-related repairs and the cost of such repairs cannot be counted towards the $450.00 minimum expenditure requirement. Subsection (c) provides that a certificate of waiver is valid for only one inspection cycle. Subsection (d) prohibits the issuance of certificates of waiver unless motor vehicle owners comply with all of the requirements of the section. The section also provides that the Division prepare standardized forms for Denial of Warranty Coverage and Repair Receipts to be utilized in the administration of the waiver program. These requirements bring New Jersey into compliance with Federal regulations set forth at 40 C.F.R. §51.360.

Pre-proposed N.J.A.C. 13:20-43.4 establishes a program for on-road inspection of motor vehicles which are subject to inspection in New Jersey. Subsection (b) of this section provides that on-road inspection shall consist of safety and emission inspections. Subsection (c) specifies the equipment to be used in conducting the on-road emissions testing. Subsection (d) specifies that the emissions test standards adopted by the Department of Environmental Protection and Energy shall be utilized in conducting on-road inspections. Subsection (e) sets forth the criteria to be used in selecting motor vehicles for on-road inspection. Motor

vehicles subject to on-road inspection include motor vehicles with observable defects, motor vehicles which do not display approval certificates, motor vehicles which display expired approval certificates, motor vehicles without registration plates, motor vehicles which fail to meet minimum emission standards as determined by remote sensing devices, motor vehicles coming within a predetermined numerical sequence, or such other bases as established by Division supervisory personnel. Subsections (f) and (g) set forth procedures for motor vehicles which fail on-road inspection. The certificate of approval, if any, shall be removed from the vehicle and shall be replaced with an inspection rejection sticker. The owner of the motor vehicle must have the necessary repairs performed and return the vehicle for reinspection at an inspection station within the period of time specified on the rejection sticker. These requirements bring New Jersey into compliance with Federal regulations set forth at 40 C.F.R. §51.371.

Pre-proposed N.J.A.C. 13:20-43.5 establishes compliance procedures for owners of motor vehicles which are subject to a manufacturer's emission-related recall or an EPA remediation determination. Subsection (b) of this section specifies that the recall compliance procedures shall apply to all motor vehicles for which owner recall notification occurs after January 1, 1995. Subsection 9(d) provides that the Division shall notify owners or lessees of motor vehicles listed on an EPA report of unresolved recalls. The notice advises the owner or lessee that the vehicle must be presented to an authorized dealer for emission-related repairs and that proof of compliance must be submitted to the Division. Subsection (e) provides for a standardized Recall Compliance Form to be prescribed by the Division for use by authorized dealers. Subsection (f) specifies the information which is to be included in the Recall Compliance Form (for example, the VIN, make and model year of the vehicle, the recall campaign number, etc.). Subsections (g) and (h) provide for the suspension of the registration of a motor vehicle if compliance with the recall is not demonstrated after Division notification to the owner or lessee. The suspension is effective upon expiration of the vehicle's registration. These requirements bring New Jersey into compliance with Federal regulations set forth at 40 C.F.R. §51.370.

Pre-proposed N.J.A.C. 13:20-43.6 establishes registration application procedures for motor vehicles which are subject to safety and emission inspection whereby registration is not completed until the vehicle is presented for inspection. Subsection (a) of this section provides for the mailing of registration application requests to the owner's last address of record. The owner is required to complete the registration application request form and submit it and the statutory registration application fee to the Division. The Division then issues a registration application to the owner. Subsection (b) requires that the owner submit the registration application to an official inspection station for validation when he or she presents the motor vehicle for the safety and emission inspection. The registration application shall not be validated unless the motor vehicle is presented for inspection. Subsection (c) provides for the issuance of duplicate registrations applications if the original is lost, stolen or damaged prior to validation at an official inspection station. Subsection (d) provides for the issuance of duplicate registations if the original is lost, stolen or damaged after validation at an official inspection station. The Division shall not issue a duplicative registration unless it determines that the motor vehicle has been presented to an official inspection station for inspection. A duplicate registration application shall be issued in lieu of a duplicate registration if it is determined that a motor vehicle has not been presented for inspection. These requirements bring New Jersey into substantial compliance with Federal regulations set forth at 40 C.F.R. §51.361.

Pre-proposed N.J.A.C. 13:20-43.7 establishes registration denial and suspension procedures for motor vehicles which are not presented for inspection. Subsection (a) of this section provides for registration denial and suspension if the owner fails to present the vehicle for inspection by the expiration date of the vehicle registration. The motor vehicle must pass inspection or the owner must surrender the registration certificate and plates for the vehicle to the Division within the time period specified in the Division's notice of scheduled suspension to avoid the registration denial or suspension. Subsection (b) provides for registration denial and suspension if the owner fails to present the vehicle for reinspection by the expiration date appearing on the inspection rejection sticker issued after the initial inspection. Subsection (c) precludes the issuance of a registration application by the Division if the motor vehicle's registration is denied or suspended pursuant to this section. These requirements bring New Jersey into substantial compliance with Federal regulations set forth at 40 C.F.R. §51.361.

Pre-proposed N.J.A.C. 13:20-43.8 provides for the training and licensure of persons who perform motor vehicle emission inspections. Subsection (a) of this section requires that applicants for such licensure shall complete a training program which familiarizes them with the air pollution problem, its causes and effects; the purpose, function, and goal of the motor vehicle emission inspection program; emission inspection regulations and procedures; technical details of the emission test procedures and the rationale for their design; emission control device function, configuration, and inspection; emission test equipment operation, calibration, and maintenance; quality control procedures and their purpose; public relations; and personal safety and health issues related to the inspection process. Subsection (b) provides that the Division shall either administer the training program or approve, monitor and evaluate programs administered by third parties. The Division shall charge a fee of $100.00 for the approval of training programs administered by third parties. Subsection (c) specifies that an applicant must demonstrate his or her ability to properly conduct all test procedures in a hands-on test and attain a score of at least 80 percent correct answers on a written examination in order to satisfactorily complete a training program. Subsection (d) provides that a motor vehicle emission inspector license shall be valid for two years and requires the completion of refresher training and testing prior to renewal unless a more comprehensive skill examination and determination of inspector competency is used. Subsections (e) and (f) provide that licensed motor vehicle emission inspectors shall not have any financial relationship with enumerated motor vehicle-related businesses and shall not refer motor vehicle owners or operators to any particular motor vehicle repair service provider except as may be permitted by federal law. These requirements bring New Jersey into substantial compliance with Federal regulations set forth at 40 C.F.R. §51.367.

Pre-proposed N.J.A.C. 13:20-43.9 provides the regulatory authority for the Division to implement the requirements of the EPA rules regarding enforcement action against motor vehicle emission inspectors. This section provides for disciplinary action for violations of the motor vehicle inspection and maintenance program requirements, including removal from inspector duties and mandatory retraining and retesting for violations which directly affect emission reduction benefits. This section provides for a mandatory minimum suspension of six months for inspectors who fraudulently or willfully conduct an improper emission inspection for a motor vehicle that directly affects emission reduction benefits. This mandatory minimum suspension is required by Federal rule. Subsection (b) of this section provides the regulatory authority to impose immediate suspensions of motor vehicle emission inspector licenses for violations that directly affect emission reductions and compromise the integrity of the inspection system. These requirements bring New Jersey into substantial compliance with Federal regulations set forth at 40 C.F.R. §51.364.

Pre-proposed N.J.A.C. 13:20-43.10 provides quality assurance for the inspection and maintenance program by requiring any person licensed or authorized by the Division to perform inspections to cooperate fully with the Division and the Department of Environmental Protection and Energy in the conduct of any audits or reviews authorized by the Division or the Department. The rule provides that the Division, the Department of Environmental Protection and Energy or their authorized representatives, may conduct covert or overt audits of the performance of inspectors or inspection facilities and the equipment utilized by such persons at any times during which inspections are being performed or the facility is open for business. The Division or the Department of Environmental Protection and Energy may conduct audits or reviews at such frequencies as they deem appropriate to assure the integrity and performance of the inspection system. Subsection (b) of this section establishes standards for auditor training. These requirements bring New Jersey into compliance with Federal regulations set forth at 40 C.F.R. §51.363.

Pre-proposed N.J.A.C. 13:20-43.11 provides that N.J.A.C. 13:20-43 shall take effect upon publication of the notice of its adoption, but shall remain inoperative until January 1, 1995.

Social Impact

The pre-proposed new rules are required in order for the State to meet the Federal 1990 Clean Air Act Amendment's requirement that the state submit a comprehensive State Implementation Plan (SIP) by November 15, 1993. This SIP must contain the State plan for meeting the vehicle inspection/maintenance standards established by Federal statutes and regulations. This SIP will be determined incomplete if it does not contain all enabling legislation and rules necessary to effect the implementation of an enhanced vehicle inspection and maintenance

program. In such an event, the State will be subject to any of a number of penalties, including the likelihood that EPA will impose a Federal Implementation Plan of its own devising on this State. Accordingly, the pre-proposed rules that follow are comprehensive and make substantial changes to the vehicle inspection system currently in existence in order to satisfy Federal requirements.

The new inspection program will also incorporate an enhanced safety inspection component which will utilize upgraded equipment (for example, computerized brake test equipment) to perform the inspections.

The New Jersey Department of Environmental Protection and Energy's 1990 inventory analysis indicates that motor vehicle emissions constituted the following percentages of the pollutants in New Jersey's air: 67 percent of the carbon monoxide (CO), 38 percent of the oxides of nitrogen (NO_x), and 30 percent of the volatile organic compounds (VOC). The photochemical reaction of NO_x when combined with VOC results in what is commonly known as smog. Additionally, motor vehicle emissions are cited as a significant source of numerous toxic air pollutants, all of which have a negative effect on human health and the environment. In order to lower the levels of CO, NO_x, and VOC, as well as the air toxics generated by motor vehicles, the Federal Rules require that all geographic areas designated as being "serious," "severe" or "extreme" non-attainment areas implement an enhanced motor vehicle inspection and maintenance program. Eighteen of New Jersey's 21 counties have been designated as a severe non-attainment area by EPA. Key features of the enhanced inspection/maintenance program include effective identification of vehicles that have high emission levels, and requiring those high emitting vehicles to be repaired.

The Federal yardstick against which all enhanced inspection/maintenance programs, including the proposed New Jersey program, are measured is called the performance standard. That standard is set at "the performance achievable by annual inspection in a centralized testing operation." The Federal Clean Air Act Amendments and EPA Rules, however, do allow "[the] States [to] have flexibility to design their own programs if they can show that their program is as effective as the 'model' program used in the performance standard." The ultimate goal for serious, severe or extreme non-attainment areas, as stated by the Federal Environmental Protection Agency, is the achievement of a "24 percent overall emission reduction by 2000."

The inspection/maintenance program requirements outlined in 40 CFR Part 51 will result in New Jersey making major headway in achieving its environmental goal. However, in order to achieve that goal and in order to comply with Federal requirements there must be substantial changes for the motorist and the repair industry. Specifically, the enhanced emission test required by the Federal EPA will be significantly different from the emission tests currently conducted and will include tests to detect NO_x problems and vehicle evaporative emission system problems. One result of the use of an enhanced emission test is that more motorists will be required to make more repairs on vehicles for defects that are not identifiable under the current program, but will be identifiable under the new enhanced inspection/maintenance program. Identification and correction of these defects will significantly reduce mobile pollutants, thereby improving the quality of the air we breathe.

Another significant change will be the elimination of the option that currently exists for motorists to have their vehicles inspected at facilities which are also capable of repairing the vehicle if the vehicle should fail inspection. In order to meet the performance standard established by EPA for enhanced inspection/maintenance programs, facilities that perform inspections must be completely separate from those that perform repairs. To do otherwise, would result in New Jersey losing 50 percent credit and make it incapable of meeting the required performance standard. Those New Jersey drivers accustomed to having their vehicles inspected and repaired at a private inspection center will be required, instead, to have their vehicle tested at a test-only facility or centralized station and subsequently repaired by a separate repair facility. While independent test-only facilities will be permitted, it is anticipated that there will be far fewer test-only facilities than the number of private inspection centers that exist today and that almost all vehicles will be inspected at centralized inspection stations.

Under the new enhanced inspection/maintenance program, the tests that will be implemented take longer to perform than the current emission tests and will reduce the number of vehicles that each inspection lane can process. In order to eliminate the effect this would otherwise have on motorist waiting times and to compensate for the substantial decrease expected in private inspection centers, more centralized stations and test lanes must be constructed. Each of these lanes will require new equipment that is more expensive than the equipment used to perform the current inspection. In order to implement an effective, yet economical system, the proposed rules modify the current frequency of inspection.

As a part of the new enhanced inspection/maintenance program, the Division proposes to license all repair facilities that perform repairs on vehicles that have failed an emission test. Such licensing is necessary in order to satisfy the Federal requirement that the State monitor the performance of the repair industry, and afford the consumer information on the quality of repair work performed by individual shops. This aspect of the proposed rule will affect approximately 4,000 independently-owned auto repair businesses. Many of these businesses are already licensed as private inspection centers. All of these business will be afforded the opportunity to be licensed as repair facilities. While the Division is not proposing specific minimum equipment requirements for repair facilities at this time, in order to affect proper repairs so that a vehicle can pass the enhanced emissions test, these facilities may find it necessary to purchase diagnostic and testing equipment.

The Federal rules recognize that a number of vehicles may not, even after several repair attempts, be able to pass the required emissions tests. The Federal rules permit the State to issue waivers if, after all warranties have been exhausted, more than $450.00 has been spent on vehicle repairs. The 1990 Clean Air Act Amendments specify that a state may issue waivers only after the vehicle owner can prove denial of warranty coverage and provide documentation of at least $450.00 in emission related repairs. The $450.00 minimum expenditure is to be adjusted annually to reflect changes in the Consumer Price Index (CPI) since 1989. Under EPA rules, a vehicle waiver is valid for only one inspection cycle. The proposed rules implement these Federal requirements.

These rules also implement a registration denial system, required by the Clean Air Act Amendments, as the method for enforcing the inspection requirement. Under these rules, a vehicle cannot be registered in this State unless and until it is presented for inspection. If the vehicle is not presented for inspection, summonses can be issued for both operating an unregistered vehicle and for operating an uninspected vehicle.

Finally, the pre-proposed rules are designed to ensure uniform testing. All emission test results will be automatically determined by the test equipment, not by subjective judgment of the inspector. All failing vehicles will be subject to repair by licensed facilities, and will, if not repairable after denial of warranty coverage and at least $450.00 in emission repair expenditures, be eligible for an emissions waiver for one inspection cycle.

Economic Impact

The economic impact of the pre-proposed new rules will be substantial. It is estimated that implementation of a centralized emission inspection program will require New Jersey to make an initial capital investment of between $95 and $250 million depending on the types of emissions tests ultimately adopted. In order to assure an efficient system that provides convenient service to the motoring public of this State, the vehicle inspection network of 85 lanes that currently exists will need to be modified and expanded. This expansion results from the longer emission tests that must be implemented and the Federal rule-mandated elimination of approximately 4,000 test-and-repair stations that currently perform approximately 20 percent of the State's required vehicle inspections.

Each of the new lanes must be equipped with new, more sophisticated testing equipment that will cost more than the emissions analyzers currently utilized in the inspection system. To meet the requirements established by EPA pertaining to inspection test data and quality control data, substantial modifications must be made to the DMV computer system to completely automate the system and capture the data required. New quality control requirements established by EPA will also result in additional costs to assure the accuracy and effectiveness of the system.

Since the new inspection program will incorporate more sophisticated emission testing that will identify more problems with vehicles than can be identified under the current system and because the test will include both NO_x testing and evaporative emission testing, the Division anticipates that a greater percentage of vehicles will fail the emission test and will be in need of repair than under the current system. Therefore, the Division anticipates that more motorists will be required to spend money to repair failing vehicles than under the current system. However, relief will be available to some vehicle owners who will be able to obtain waivers as a result of their vehicle continuing to fail the emission test

after spending $450.00 or more on repairs. Such waivers are not available under the present inspection program. Vehicles for which waivers are granted will be permitted to operate for one inspection cycle.

The Federal rule requires testing facilities to maintain the separation of testing and repair functions. Revenues generated by inspections and reinspections performed at test and repair stations will therefore be lost. Those businesses currently licensed as private inspection centers will be permitted to seek licensure as repair facilities, provided they satisfy the "separation" requirement. These businesses will incur an increased licensing fee, as well as the increased costs of purchasing the testing equipment. In order to affect proper repairs, these facilities will have to purchase shop-grade testing equipment to ensure that a repaired vehicle can pass the emissions test. While not as costly as the more durable centralized lane-grade equipment, the purchase of shop-grade testing equipment will increase the cost of doing business for the repair facilities. These increased costs are likely to be passed, at least in part, onto the consumer. It is anticipated that these businesses will be positively affected by the increase in repair activity that is expected to result from the implementation of an enhanced motor vehicle inspection and maintenance program.

The individuals involved in the testing of vehicle emissions, whether employed by the State or a private business, will also be subject to licensing requirements. Specifically, the Federal rule requires that emissions inspectors undergo comprehensive training and both written and performance testing prior to issuance of a license. The State may suspend or revoke that license for noncompliance with procedures and policies. Inspectors whose licenses are suspended or revoked will not be allowed to perform emissions inspections.

Regulatory Flexibility Analysis

The pre-proposed new rules have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The pre-proposed new rules impose reporting, recordkeeping and compliance requirements on motor vehicle dealers, private businesses that choose to be licensed as private inspection facilities, repair facilities, Federal agencies and owners of motor vehicles which are subject to inspection in this State, some of which are small businesses as defined by the Regulatory Flexibility Act.

The compliance requirements for small businesses which own or lease motor vehicles are to present such motor vehicles for inspection and to have necessary repairs, including emission-related repairs, performed on those motor vehicles which fail to meet minimum safety and emissions standards. The reporting and recordkeeping requirements apply to authorized motor vehicle dealerships which perform emission-related repairs on motor vehicles which are subject to manufacturers' recalls. The dealership is required to complete a Recall Compliance Form upon completion of emission-related repairs which are necessitated by a manufacturer's recall program. The dealership is also responsible for returning the completed Recall Compliance Form to the owner or lessee of the motor vehicle and retaining a copy of said form at its place of business for a period of five years from the date the emission-related repairs were completed. Dealerships are now engaged in recall repairs, and the reporting and recordkeeping requirements imposed by the proposal are not viewed as overly burdensome. The reporting requirements also apply to licensed repair facilities which perform emission-related inspection repairs on motor vehicles that have failed inspection. The repair facility is required to complete an inspection repair report upon completion of emission-related inspection repairs. The repair facility is also responsible for returning the completed inspection repair report to the owner or lessee of the motor vehicle so that it may be presented at an inspection station upon reinspection of the motor vehicle. The Division will utilize the inspection repair reports to monitor the performance of repair facilities. Repair facilities are now engaged in inspection repairs and the reporting requirements imposed by the pre-proposed rules are not viewed as overly burdensome. Also, the Division or a third party provider approved by the Division will provide a technician hot line service which will be available to repair facilities for assistance in the diagnosis and repair of emission-related inspection repairs. The use of standardized forms ensures that the inspection data that is required by Federal statutes and rules can be assimilated into the Division's inspection data base.

The proposed new rules do not require small businesses to engage additional professional services nor do they necessitate capital or annual expenditures other than the cost of vehicle repairs. Motor vehicles owned or leased by small businesses are presently subject to inspection as are privately-owned motor vehicles and motor vehicles owned by large businesses. The compliance standards are therefore not viewed as overly burdensome. The inspection requirements imposed by the pre-proposed rules are required by Federal statutes and regulations and are intended to reduce motor vehicle-related emissions of air pollutants to meet Federal standards. It is for this reason that no differentiation in compliance, based on business size, is provided.

Persons that seek licensure as repair facilities for the purpose of performing repairs on motor vehicle inspection emission failures may incur significant capital equipment costs. These costs would include the need to purchase more sophisticated diagnostic equipment and also emission analyzer equipment to assure that a repaired vehicle will pass an inspection retest. Persons who seek licensure as private inspection facilities will also be required to incur substantial facility and equipment costs, the extent to which will depend upon the type of emission test ultimately adopted. These costs will be due to the need to obtain emission analyzers and computer equipment in order to perform inspections in accordance with these rules and the requirements of the Department of Environmental Protection and Energy and the Federal Environmental Protection Agency.

Full text of the pre-proposal follows:

SUBCHAPTER 43. ENHANCED MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM

13:20-43.1 Definitions

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

"ASM 5015" means an acceleration simulation mode whereby a motor vehicle is operated on a chassis dynamometer loaded to 50 percent of the load generated during maximum acceleration on a Federal Test Procedure (3.3 mph/sec.) at a speed of 15 miles per hour for purposes of measuring exhaust emissions.

"Certificate of approval" means a serially numbered document issued by or under the authority of the director that evidences a motor vehicle complies with the requirements of N.J.S.A. 39:8-1 et seq. and the rules of the Director regarding inspections.

"Certificate of waiver" means a serially numbered document evidencing that a vehicle has successfully passed a safety inspection but that the requirements of compliance with this subchapter and the rules adopted by the Department of Environmental Protection and Energy pertaining to emission inspection standards have been waived for one inspection cycle.

"Consumer Price Index" or "CPI" means, for any calendar year, the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

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

"Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety in the State of New Jersey.

"Division" means the Division of Motor Vehicles in the Department of Law and Public Safety in the State of New Jersey.

"Emission repair endorsement" means an endorsement issued on a motor vehicle repair facility license which evidences the Director's authorization for the facility to perform emission-related repairs on motor vehicles that have failed an emissions inspection required by the Director and which repairs may qualify for consideration in determining whether a certificate of waiver may be granted.

"EPA" means the United States Environmental Protection Agency.

"Federal test procedure" means a chassis dynamometer test which employs varying speeds and loads, developed by the Federal Environmental Protection Agency for purposes of measuring motor vehicle exhaust emissions.

"Gross vehicle weight rating" or "GVWR" means the value specified by a manufacturer as the loaded weight of a single or a combination (articulated) vehicle.

"Inspection station" means a facility authorized to perform the motor vehicle inspections required by this subchapter and operated

by, or under the authority of, or under contract with the Division of Motor Vehicles.

"Inspector" means an individual who performs safety inspections under the authority of the Division or who is licensed by the Division to perform motor vehicle emissions inspections.

"Model year" means the year used by the manufacturer to designate a vehicle model irrespective of the calendar year in which the vehicle was actually produced, so long as the actual period is less than two calendar years. In case of any dispute, the Director shall have sole discretion to determine the model year of a vehicle for purposes of these rules.

"Motor vehicle" means all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles.

"Motor vehicle repair facility" means any person, partnership or corporation licensed by the Division of Motor Vehicles to engage in the business of repairing motor vehicles.

"Omnibus" means all motor vehicles used for the transportation of passengers for hire, except commuter vans and vehicles used in ridesharing arrangements and school buses, if the same are not otherwise used in the transportation of passengers for hire.

"Registration" or "registration certificate" means:

1. With regard to a motor vehicle or vehicle which is not subject to the inspection requirements of N.J.S.A. 39:8-1 et seq., a document issued by the Division for that motor vehicle or vehicle which evidences that the motor vehicle or vehicle has been registered with the Division; or

2. With regard to a motor vehicle subject to the inspection requirements of N.J.S.A. 39:8-1 et seq., a registration application issued by the Division for a motor vehicle after it has been validated in a manner prescribed by the Director at an inspection station.

"Registration application" means:

1. With regard to a motor vehicle or vehicle which is not subject to the inspection requirements of N.J.S.A. 39:8-1 et seq., a form which is submitted to the Division to apply for vehicle registration; or

2. With regard to a motor vehicle subject to the inspection requirements of N.J.S.A. 39:8-1 et seq., a form issued by the Division, following receipt of a registration application request, that must be presented, along with the motor vehicle, to an inspection station in order to be validated to complete the registration of the motor vehicle.

"Registration application request" means a form prepared by the Division and which is submitted to the Division with regard to a motor vehicle that is subject to the inspection requirements of N.J.S.A. 39:8-1 et seq. in order to initiate the process of registering the vehicle.

"Remote sensing device" means an apparatus which remotely monitors motor vehicle emissions from an on-road, roadside, or other location.

"State" means a state of the United States or the District of Columbia.

13:20-43.2 Inspection requirements for motor vehicles; exempt motor vehicles; Federal motor vehicles; vehicles registered in other states; leased vehicles; test frequency; tests for emissions; inspection reports; reinspections

(a) Except as otherwise provided in (b) below, all motor vehicles, regardless of model year or fuel type, which are registered, required to be registered, or primarily operated in New Jersey shall be inspected in accordance with the procedures adopted by the Division and the emissions standards adopted by the Department of Environmental Protection and Energy.

(b) The following motor vehicles, some of which may be subject to inspection under other provisions of law or regulation, shall be exempt from the inspection requirements of this subchapter:

1. Historic motor vehicles registered pursuant to N.J.S.A. 39:3-27.4;

2. Motorcycles;

3. Farm tractors and traction equipment registered pursuant to N.J.S.A. 39:3-24;

4. Farm machinery and implements registered pursuant to N.J.S.A. 39:3-24;

5. Fire trucks having a GVWR of more than 10,000 pounds;

6. In-transit construction equipment registered pursuant to N.J.S.A. 39:4-30;

7. Diesel-powered motor vehicles, other than omnibuses and school buses, having a GVWR of more than 10,000 pounds that are required to be inspected by the owner of the vehicle;

8. Omnibuses having a seating capacity of 16 passengers or more and which are subject to inspection by the New Jersey Department of Transportation; and

9. Tactical military vehicles operated on Federal installations within this State.

(c) Motor vehicles that are operated on Federal installations located within New Jersey and motor vehicles operated by Federal government agencies in this State shall be inspected in accordance with the procedures adopted by the Division and the emissions standards adopted by the Department of Environmental Protection and Energy. Each Federal installation and each Federal government agency shall provide to the Division a report of motor vehicles operated on the Federal installation or maintained as part of the Federal fleet in this State. The report shall include:

1. The vehicle identification number (VIN) for the motor vehicle;

2. The license plate number issued by the Federal government agency for the motor vehicle;

3. The name and address of the Federal government agency supplying the report; and

4. The name, business address, and telephone number of the person preparing the report.

(d) The reports in (c) above shall be provided to the Division in such format and at such times as the Division shall prescribe. An inspection fee of $_____ per vehicle shall be paid to the Division for the inspection of Federal motor vehicles under this section. Payment of the inspection fee shall be made and shall accompany the reports submitted to the Division under this section.

(e) The Division shall provide to the operator of a Federally-plated or numbered motor vehicle which is presented for inspection in this State a report of inspection conducted under (c) and (d) above which shall include:

1. The VIN for the motor vehicle;

2. The license plate number issued by the Federal government agency for the motor vehicle;

3. HC results;

4. CO results;

5. CO_2 results;

6. NO_x results;

7. Pressure test results;

8. Purge test results; and

9. Safety inspection results.

(f) All motor vehicles owned, leased or operated by civilian or military personnel on Federal installations in New Jersey, whether such vehicles are registered in this State or in another jurisdiction, shall be inspected in accordance with the procedures adopted by the Division and the emissions standards adopted by the Department of Environmental Protection and Energy. This inspection requirement shall not apply to visiting agency, employee or military personnel vehicles so long as such visits do not exceed 60 calendar days per year.

(g) All motor vehicles registered in this State or in another jurisdiction that are available for lease or rent and are primarily operated in New Jersey shall be inspected in accordance with the procedures adopted by the Division and the emissions standards adopted by the Department of Environmental Protection and Energy.

(h) Owners, lessees or operators of motor vehicles registered in other jurisdictions may present their motor vehicles for inspection in this State. The inspection shall be in accordance with the procedures adopted by the Division and the emissions standards adopted by the Department of Environmental Protection and Energy.

(i) Owners, lessees or operators of the motor vehicles specified in (e), (f) and (g) above that are not registered in New Jersey, or those motor vehicles specified in (c) above that are not listed on the report required to be submitted by that subsection, shall apply for an inspection application at such locations as are specified by the Division and shall pay an inspection fee of $_____ per vehicle prior to presenting the vehicle for inspection. The inspection application shall contain the following:

1. The VIN for the motor vehicle;
2. The license plate number for the motor vehicle;
3. The name of the state in which the vehicle is registered; and
4. The name and address of the owner of the motor vehicle.

(j) The Division shall transmit a report of inspections conducted under (e), (f) and (g) above to the state of registration which report shall include:

1. The VIN for the motor vehicle;
2. The license plate number issued for the motor vehicle;
3. The name of the state in which the vehicle is registered;
4. HC results;
5. CO results;
6. CO_2 results;
7. NO_x results;
8. Pressure test results;
9. Purge test results; and
10. Safety inspection results.

(k) The inspection reports in (j) above shall be provided by the Division in such format and at such times as the Director shall determine.

(l) (Reserved)

(m) Motor vehicles shall be inspected according to the following rules:

ALTERNATIVE A

1. Motor vehicles shall be inspected on a biennial basis. Whenever title to a vehicle is transferred or a vehicle previously registered in a foreign jurisdiction is registered in this State, the vehicle shall be presented for inspection within 30 days from the date of issuance of the registration application. Following completion of the inspection required within 30 days of transfer of title, these vehicles shall be inspected on a biennial basis.

ALTERNATIVE B

1. Motor vehicles shall be inspected on a biennial basis if the date of initial registration application or subsequent registration application plus two years is less than the model year of the vehicle plus five years. If the registration application date or renewal application date plus two years is greater than the model year of the vehicle plus five years, motor vehicles shall be inspected on an annual basis.

2. All motor vehicles shall be inspected whenever title to the vehicle is transferred to a new owner or title is being transferred from a foreign jurisdiction. This inspection shall occur within 30 days from the date of issuance of the registration application to the owner. Following completion of the inspection required within 30 days of transfer of title, these vehicles shall be inspected on a biennial basis if the date of registration application or renewal application date plus two years is less than the model year of the vehicle plus five years. If the registration application date or renewal application plus two years is greater than the model year of the vehicle plus five years, these vehicles shall be inspected on an annual basis.

ALTERNATIVE A

(n) A short transient test shall be conducted on all gasoline-powered motor vehicles with model years 1986 and later, other than full-time four-wheel drive vehicles, having a GVWR of 10,000 pounds or less unless a particular design characteristic of the vehicle makes its operation on a dynamometer either impractical or hazardous in which case a two-speed idle emission test shall be administered. A two-speed idle test shall be conducted on all gasoline-powered motor vehicles with model years 1985 and earlier. All motor vehicles which are subject to a short transient or an idle test shall not exceed the emission levels established for such vehicles by the Department of Environmental Protection and Energy for hydrocarbons (HC), carbon monoxide (CO), or oxides of nitrogen (NO_x).

ALTERNATIVE B

(n) An ASM 5015 test shall be conducted on all gasoline-powered motor vehicles, other than full-time four-wheel drive vehicles, having a GVWR of 10,000 pounds or less unless a particular design characteristic of the vehicle makes its operation on a dynamometer either impractical or hazardous in which case a two-speed idle emission test shall be administered. All motor vehicles which are subject to an ASM 5015 test shall not exceed the emission levels established for such vehicles by the Department of Environmental Protection and Energy for hydrocarbons (HC), carbon monoxide (CO), or oxides of nitrogen (NO_x).

(o) A two-speed idle emission test shall be conducted on all gasoline-powered motor vehicles having a GVWR greater than 10,000 pounds and all gasoline-powered full-time four-wheel drive vehicles. All motor vehicles which are subject to a two-speed idle test shall not exceed the emission levels established for such vehicles by the Department of Environmental Protection and Energy for HC and CO.

(p) An evaporative system purge test shall be conducted on all post-1970 model year gasoline-powered light duty motor vehicles and light duty trucks that were originally equipped with an evaporative purge system when manufactured provided such vehicles are subject to either an ASM 5015 or short transient test, unless a particular design characteristic of the vehicle makes it impractical to administer such test. All motor vehicles which are subject to the purge test shall meet the standards for such test established by the Department of Environmental Protection and Energy. The evaporative system purge test shall not be conducted on full-time four wheel drive vehicles or a vehicle which has a particular design characteristic which makes its operation on a dynamometer either impractical or hazardous.

(q) An evaporative system integrity (pressure) test shall be conducted on all gasoline-powered 1971 and later model year light duty motor vehicles and light duty trucks equipped with evaporative emission control systems, unless a particular design characteristic of the vehicle makes it impractical to administer such test. Vehicles subject to the pressure test shall meet the standards for such test established by the Department of Environmental Protection and Energy.

(r) An inspection shall be conducted for the presence of the catalytic converter on all gasoline-powered 1975 and later model year light duty vehicles and light and heavy duty trucks which were manufactured with a catalytic converter. Motor vehicles shall fail inspection if the catalytic converter was a part of the original certified configuration for the motor vehicle and the catalytic converter is missing, modified, disconnected, or improperly connected.

(s) A motor vehicle safety equipment inspection shall be conducted on all motor vehicles subject to inspection. The following safety equipment may be subject to inspection:

1. Steering and suspension;
2. Glazing and vision obstruction;
3. Headlights;
4. Red rear lights;
5. Stop lights;
6. Parking lights;
7. Turn signals;
8. Hazard warning signals;
9. License plate light;
10. Reflectors;
11. Marker clearance lights;
12. Other lights;
13. Wiring and switching;
14. Horn;
15. Windshield wipers;
16. Wheels and tires;
17. Exhaust system;
18. Mirrors;
19. Service brake (operation and pedal reserve);

20. Parking brake (operation and pedal reserve);
21. Brake equalization;
22. Seat belts; and
23. Such other safety equipment as may be required to be inspected by the Director.

(t) The operator of each motor vehicle shall be provided with a motor vehicle inspection report and inspection report supplement, if issued, upon completion of an inspection. The inspection report form and inspection report supplement, if issued, shall include:
1. Inspection station number;
2. The type of test(s) performed;
3. The date of the inspection;
4. The inspection serial number;
5. The inspection certificate number;
6. Vehicle model year, make, and type;
7. Vehicle license plate number;
8. Fuel type;
9. Gross vehicle weight rating;
10. The vehicle identification number;
11. The odometer reading to the nearest 1,000 miles;
12. Category of inspection (that is, initial inspection, first reinspection, subsequent reinspection);
13. The pass/fail result of applicable visual inspections;
14. Results of the evaporative system functional tests;
15. Type of vehicle preconditioning performed;
16. Results of the safety inspection;
17. Emission inspection results and standards for the vehicle;
18. Instructions indicating that the report is to be returned to any inspection station upon reinspection;
19. A statement indicating the availability of warranty coverage as required in section 207 of the Federal Clean Air Act;
20. Instructions indicating that the motor vehicle must be repaired and returned to any inspection station for a reinspection;
21. Instructions for waiver applicants;
22. Advisory diagnostic information (Such information is required by Federal rules, is intended for informational purposes only and does not constitute any representation or warranty by this State or any inspector); and
23. Other information as the Division may require to enable it to determine compliance with this subchapter.

(u) The Division may provide inspection repair report forms to each licensed motor vehicle repair facility as may be required. A fee of $1.00 per report shall be charged by the Division. The inspection repair report shall contain the following: space to indicate repair by a licensed motor vehicle repair facility which has been issued an emission repair endorsement and the name, address, and license number of the repairer; space to indicate the cost of parts and labor for emission-related repair(s); and space to indicate the emission-related repair(s) performed. The motor vehicle repair facility shall provide all of the information requested on the inspection repair report upon completion of the emission-related repairs and shall present the completed inspection repair report to the owner or lessee upon delivery of the repaired vehicle to such owner or lessee. The Division shall also provide inspection repair reports as may be required to owners who possess nationally recognized certification for emission-related diagnosis and repairs. Inspection repair report forms shall be issued to such owners when the motor vehicle fails an initial inspection.

(v) Motor vehicles which fail inspection shall be reinspected at any inspection station after the vehicle has been repaired or adjusted. The operator of a motor vehicle that exceeded the exhaust emission standards during the vehicle's initial inspection shall present the previously issued vehicle inspection report(s) and a repair report completed by a licensed motor vehicle repair facility which has been issued an emission repair endorsement or by an owner possessing a nationally recognized certification who performed the emission-related repairs. All motor vehicles subject to a reinspection or that fail an on-road inspection under N.J.A.C. 13:20-43.4 for emission standards shall be subject to the entire inspection procedure for emissions for the vehicle model year (that is, functional testing and exhaust testing where applicable). If the motor vehicle passes the reinspection, the Division, or an authorized inspector, shall issue a certificate of approval for the motor vehicle indicating compliance. If the motor vehicle cannot pass the reinspection, the Division, or an authorized inspector, shall issue a vehicle inspection report indicating non-compliance. If the motor vehicle fails the reinspection for an emissions-related problem and the owner requests a waiver of compliance, the Division shall review the request and shall approve or deny the request in accordance with N.J.A.C. 13:20-43.3. Requests for waiver shall be presented at such locations as are designated by the Director and approved or denied only by such persons as designated by the Director.

(w) A certificate of approval shall be issued to motor vehicles which meet safety and emissions standards. The certification of approval shall be affixed to the windshield of the motor vehicle in the manner determined by the Director.

(x) An inspection rejection sticker shall be issued to motor vehicles which fail to meet minimum safety and/or emissions standards. The inspection rejection sticker shall be affixed to the windshield of the motor vehicle in a manner determined by the Director. The owner of a motor vehicle which has failed inspection shall have the necessary repairs made and shall present the vehicle for reinspection at an inspection station within the period of time indicated on the inspection rejection sticker.

(y) A motor vehicle which is registered in New Jersey that cannot be presented for inspection in this State prior to the expiration of the certificate of approval shall be deemed to be in compliance with the registration and inspection requirements of this State if the owner of such vehicle has been issued a current registration application for the vehicle and the vehicle is presented for inspection in the state in which it is temporarily located provided that such vehicle must be presented for inspection at a New Jersey inspection station within 30 days from the date on which the vehicle is returned to New Jersey. In order to avoid sanctions for failure to comply with the inspection requirements of this State, it shall be the responsibility of the owner of the vehicle to transmit to the Division proof that the vehicle has been inspected by another state's inspection program. Such proof shall consist of a report issued by the inspection program of such other state containing the license plate or VIN number of the vehicle inspected, the date and location of inspection, and the results of such inspection.

(z) The owner or lessee of a motor vehicle registered in New Jersey which cannot be presented for inspection in this or another State prior to the expiration of the certificate of approval because it is temporarily located in a state or region that does not have an inspection program shall notify the Division of the date upon which the motor vehicle will be returned to New Jersey. If a current registration application has been issued for the vehicle, the Division may issue a letter temporarily validating the registration application and extending the time period in which to have the vehicle inspected. The temporary validation and inspection extension shall be valid from its effective date to 30 days from the date upon which the owner or lessee advised that the motor vehicle will be returned to New Jersey.

13:20-43.3 Waivers; criteria for issuance; denial of warranty form; repair receipt form; waiver valid for one test cycle; waiver issuance

(a) A motor vehicle which fails to satisfy the appropriate emissions standards as set forth in the rules adopted by the Department of Environmental Protection and Energy shall be eligible for a certificate of waiver if the following requirements are satisfied:
1. The vehicle has failed to pass an emissions reinspection after all qualifying repairs have been completed;
2. The owner has provided written proof to the satisfaction of the Director that all available warranty repairs have been made to the motor vehicle or a written denial of warranty coverage from the manufacturer or authorized dealer in a form prescribed for these purposes by the Director;
3. Repairs were appropriate to the cause of the test failure;
4. Repairs were performed by a licensed motor vehicle repair facility which has been issued an emission repair endorsement or

by an owner who possesses nationally recognized certification for emission-related diagnosis and repairs;

5. Original repair receipts are submitted to the Division verifying that qualifying repairs have been performed; and

6. At least $450.00 in repairs has been spent excluding any repairs made under warranty coverage. The $450.00 minimum expenditure shall be adjusted in January of each year by the percentage, if any, by which the Consumer Price Index (CPI) for the preceding calendar year differs from the CPI for 1989.

(b) A waiver shall not be issued to a motor vehicle for tampering-related repairs. The cost of tampering-related repairs shall not be counted towards the cost limits in (a)6 above.

(c) A waiver shall be valid for only one inspection cycle.

(d) The Division, or its designee, shall issue a certificate of waiver to those motor vehicles satisfying all the requirements of this section. The certificate of waiver shall be affixed to the windshield of the motor vehicle in the manner determined by the Director.

13:20-43.4 On-road inspections; scope; inspection procedures; criteria for selecting vehicles; procedures upon failure

(a) On-road motor vehicle safety and emission inspection is intended to complement the safety and emission inspection otherwise required in the State of New Jersey by law or regulation.

(b) On-road inspection may consist of safety inspection, tailpipe emission inspection, inspection for the presence of the motor vehicle's catalytic converter, examination of the driver's license, motor vehicle registration certificate and insurance identification card, and such other tests as may be determined by the Director.

(c) On-road emission inspection procedures shall utilize the BAR 90 analyzer with portable dynamometer or such other emission inspection equipment approved by the Division after consultation with the Department of Environmental Protection and Energy.

(d) On-road emission inspection shall be conducted using the emission inspection standards set forth in rules adopted by the Department of Environmental Protection and Energy.

(e) The Division shall use the following criteria in determining which motor vehicles shall be subject to on-road safety and emisison inspection:

1. Motor vehicles with an observable defect(s);

2. Motor vehicles without a certificate of approval;

3. Motor vehicles with an expired certificate of approval;

4. Motor vehicles without a registration plate(s) and/or registration plate insert(s);

5. Motor vehicles which fail to meet minimum emission standards as determined by a remote sensing device;

6. Motor vehicles which correlate to a predetermined numerical sequence established by Division supervisory personnel for subjecting motor vehicles to on-road safety and emission inspection (for example, every fifth motor vehicle, every tenth motor vehicle, etc.); or

7. Such other bases as determined by Division supervisory personnel.

(f) If a motor vehicle subject to on-road inspection fails to meet minimum safety and/or emissions standards, the certificate of approval, if any, shall be removed from the windshield of the motor vehicle and an inspection rejection sticker shall be affixed to the windshield in a manner determined by the Director.

(g) The owner of a motor vehicle which has failed an on-road inspection shall have the necessary repairs made and present the vehicle for reinspection at an inspection station within the period of time indicated on the inspection rejection sticker.

13:20-43.5 Recall compliance procedures; purpose; applicability; notice to owner; recall compliance form; transfer of ownership; denial and suspension of registration; Federal vehicles

(a) Owners and lessees of motor vehicles which are included in either a "Voluntary Emissions Recall" as defined at 40 C.F.R. §85.1902(d), or in a remedial plan determination made pursuant to section 207(c) of the Federal Clean Air Act, shall present such vehicles to the manufacturer or authorized dealer for emission-related repairs and shall comply with the procedures set forth in this section.

(b) Recall compliance procedures set forth in this section shall apply to all motor vehicles for which owner recall notification occurs after January 1, 1995.

(c) The EPA or an entity approved by the EPA shall provide the Division with a list of VIN's with unresolved recalls.

(d) The Division shall provide written notice to an owner or lessee of a motor vehicle which is contained on an EPA list of vehicle identification numbers with unresolved recalls. The notice shall inform the owner or lessee of the following:

1. That the vehicle is subject to a recall notification;

2. That the vehicle must be presented to the manufacturer or authorized dealer for emission-related repairs; and

3. That proof of compliance with the recall notice must be submitted to the Division as a precondition to the Division's issuance of a registration application for the vehicle.

(e) The Division shall prescribe a Recall Compliance Form for use in demonstrating recall compliance in accordance with this section. The Recall Compliance Form shall be provided to an owner or lessee with the written notice required under (d) above. The owner or lessee shall submit the Recall Compliance Form to the manufacturer or authorized dealer when he or she presents the vehicle for emission-related recall repairs. The manufacturer or authorized dealer shall be responsible for providing the information required on the Recall Compliance Form. The manufacturer or authorized dealer shall provide the owner or lessee with the completed Recall Compliance Form. The owner or lessee of the vehicle shall submit the Recall Compliance Form to the Division. The manufacturer or authorized dealer shall maintain a copy of the Recall Compliance Form in its files for a period of five years from the date of completion of the emission-related repairs. The manufacturer or authorized dealer shall make available the completed Recall Compliance Form upon the request of the Director or his or her designee.

(f) The Recall Compliance Form shall include the following:

1. The VIN, make, and model year of the vehicle;

2. The recall campaign number;

3. The date emission-related repairs were completed;

4. The name, address and telephone number of the authorized dealer completing the emission-related repairs; and

5. The dealer license number, if the authorized dealer completing the emission-related repairs is located in New Jersey.

(g) Except as otherwise provided in this section, the Division shall deny the issuance, renewal, or validation of the registration of a motor vehicle and shall suspend the registration of a motor vehicle if the owner has not filed or caused to be filed with the Division and the Division has not received proof that recall emission-related repairs have been completed by the manufacturer or authorized dealer.

(h) The denial of the registration shall be effective on the first day following the expiration date of the vehicle's registration. The suspension of the registration shall be effective on the date specified by the Division in an order of suspension issued to the owner.

1. The Division shall not suspend a motor vehicle registration pursuant to this section if the owner has surrendered to the Division the registration certificate and registration plates issued thereto.

2. The Division shall not deny a motor vehicle registration pursuant to this section if the notice of unresolved recall required by above (d) is mailed or given to the owner or lessee of the vehicle in the six month period immediately preceding the expiration date of the motor vehicle's registration. If after notice is mailed or sent to the owner or lessee during the six month period and registration is issued, renewed or validated by the Division, no further registration for that motor vehicle shall be issued, renewed or validated unless proof of compliance with the recall notice is submitted to the Division.

13:20-43.6 Request for registration application; issuance of registration application; validation of registration application at official inspection station; duplicate registration application

(a) The Division shall mail registration application request forms to owners of motor vehicles subject to safety and emission inspection to the last addresses of the owners as they appear on the records of the Division. An owner of a motor vehicle shall complete the registration application request form and return it together with the statutory registration application fee to the Division or its authorized agent. The Division shall issue a registration application upon submission of the completed registration application request form and payment of the statutory registration application fee. The mailing of registration application request forms is performed by the Division as a matter of convenience to owners of motor vehicles. Failure of an owner to receive a form through the mail shall in no way abridge or eliminate the responsibility of the owner to make a proper and timely filing with the Division for a registration application.

(b) An owner shall submit the registration application to an official inspection station for validation. An official inspection station shall not validate the registration application unless the motor vehicle described on the registration application is presented for the safety and emission inspection. Validation shall be accomplished by electronic transmission to the Division's inspection database and by placement of a certificate evidencing inspection on the windshield of the motor vehicle in a manner prescribed by the Director.

(c) If a registration application is lost, stolen or damaged prior to submission to an official inspection station, an owner shall request from the Division a duplicate registration application and shall pay the fee established by law for the issuance of the duplicate registration application. An owner shall submit the duplicate registration application to an official inspection station for validation in accordance with (b) above.

(d) If a registration application which has been validated in accordance with (b) above is lost, stolen or damaged, an owner shall make application to the Division for a duplicate and shall pay the fee established by law for the issuance of the duplicate registration. The Division shall not validate the duplicate registration application unless it is satisfied that the motor vehicle described on the application for a duplicate registration has been presented to an official inspection station for the safety and emission inspection.

13:20-43.7 Registration denial; suspension of registration; motor vehicles not inspected by registration expiration date; motor vehicles which have failed inspection and have not been presented for reinspection

(a) Except as otherwise provided in this section, the Division shall deny the issuance, renewal or validation of the registration of a motor vehicle and shall suspend the registration of a motor vehicle if the owner has not presented the vehicle for inspection by the expiration date appearing on the vehicle registration certificate and windshield inspection sticker. The Division shall not suspend a motor vehicle registration pursuant to this subsection if the owner complies with either of the following requirements:

1. Surrenders or causes to be surrendered to the Division the registration certificate and registration plates issued thereto within the period of time provided in the Division's notice or;

2. Presents or causes the vehicle to be presented to the Division for inspection within the period of time provided in the Division's notice.

(b) Except as otherwise provided in this section, the Division shall formally deny or suspend the registration of a motor vehicle if the owner has not presented the vehicle for reinspection by the expiration date appearing on the inspection rejection sticker issued by the Division after failure of inspection. The Division shall not suspend a motor vehicle registration pursuant to this subsection if the owner complies with either of the following requirements:

1. Surrenders or causes to be surrendered to the Division the registration certificate and registration plates issued thereto within the period of time provided in the Division's notice; or

2. Presents or causes the vehicle to be presented to the Division for reinspection within the period of time provided in the Division's notice.

(c) The Division shall not issue a registration application to an owner of a motor vehicle if the registration for the vehicle is denied or suspended in accordance with this section.

13:20-43.8 Inspector training and licensing; training administration; testing; renewal of license; refresher training and testing; conflicts of interest

(a) Any person who performs an emission inspection required by this subchapter must be licensed by the Division prior to performing official emission inspections. In order to obtain licensure as a motor vehicle emission inspector, an applicant shall complete a training program that shall consist of acquiring an understanding of:

1. The air pollution problem, its causes and effects;

2. The purpose, function, and goal of the motor vehicle emission inspection program;

3. Emission inspection regulations and procedures;

4. Technical details of emission test procedures and the rationale for their design;

5. Emission control device function, configuration, and inspection;

6. Emission test equipment operation, calibration, and maintenance;

7. Quality control procedures and their purpose;

8. Public relations; and

9. Personal safety and health issues related to the inspection process.

(b) The Division shall either administer the training program or approve, monitor and evaluate the training programs administered by third parties. The Division shall charge a fee of $100.00 for the approval of training programs administered by third parties.

(c) An applicant for licensure as a motor vehicle emission inspector must complete inspector training and pass required tests prior to being licensed. The applicant must attain a score of at least 80 percent of correct responses on a written examination covering all aspects of the training. In addition, a hands-on test shall be administered in which the applicant demonstrates, without assistance, the ability to conduct a proper inspection, to properly utilize equipment and to follow other procedures adopted by the Division. Inability to properly conduct all emission test procedures shall constitute failure of the test.

(d) A motor vehicle emission inspector license shall be valid for two years. Refresher training and testing shall be required prior to renewal of the license, except that alternative approaches based on more comprehensive skill examination and determination of inspector competency may be used.

(e) No person licensed as an inspector shall, while in the employment of an inspection station, own, operate or be employed by any motor vehicle repair or service facility, motor vehicle parts sales business, or any motor vehicle sales or leasing business.

(f) No person licensed as an inspector, while in the employ of an inspection station, shall refer motor vehicle owners or operators to particular providers of motor vehicle repair service except as may be permitted by federal law.

13:20-43.9 Suspension or revocation of inspector license; retraining and retesting; suspension pending hearing

(a) A motor vehicle emission inspector license may be suspended or revoked for any of the following:

1. Fraudulently, willfully or negligently conducting an improper emission inspection of a motor vehicle;

2. Violation of any provision of this subchapter;

3. Violation of any procedure established by the Division for the conduct of emission inspections;

4. Fraudulently, willfully or negligently issuing an improper validation of a registration application;

5. Fraudulently, willfully or negligently issuing an improper certificate of approval; or

6. Other good cause.

(b) An inspector who fraudulently or willfully conducts an improper emission inspection of a motor vehicle that directly affects

emission reduction benefits shall be subject to a suspension of his or her inspector license for a period of at least six months. An inspector whose license is suspended under this section shall successfully complete refresher training and testing in accordance with N.J.A.C. 13:20-43.8(d) before such license is restored under this subchapter.

(c) A motor vehicle emission inspector license may be suspended immediately upon a charge of a violation that directly affects emission reduction benefits or compromises the integrity of the inspection system. If the Director determines that the public interest requires suspension of a license pursuant to this subchapter prior to hearing, the Director may do so, provided that notice containing the reasons for such suspension and the effective date of the suspension is provided to the licensee in person, or by certified or regular mail prior thereto and the licensee is afforded the opportunity to request in writing a hearing within ten days of the effective date of the suspension. When a licensee requests an administrative adjudication it shall be held as soon thereafter as practicable. If the Director determines it necessary to suspend a license prior to hearing and the licensee files a request for a hearing within the time prescribed by this section, the Director may hold a preliminary hearing to determine whether sufficient cause exists to continue such suspension until a plenary hearing can be conducted.

13:20-43.10 Quality assurance; auditor training

(a) Any person licensed or authorized by the Division to perform inspections required by this subchapter shall cooperate fully with the Division, the Department of Environmental Protection and Energy, or their authorized representatives, in the conduct of any audits or reviews authorized by the Division or the Department. All books, records, documents, papers, reports, or data relating to the performance of inspections required by this subchapter, in whatever form kept, shall be open to inspection by the Division or the Department of Environmental Protection and Energy at such times and at such locations as the Division or the Department may specify. The Division, the Department of Environmental Protection and Energy, or their authorized representatives, may conduct covert or overt audits of the performance of inspectors or inspection facilities and the equipment utilized by such persons at any times during which inspections are being performed or the facility is open for business. In conducting an audit or review, the Division, the Department of Environmental Protection and Energy, or their authorized representatives shall be given unfettered access to all areas of an inspection facility and to all equipment at such facility. The Division or the Department of Environmental Protection and Energy may conduct audits or reviews at such frequencies as they deem appropriate to assure the integrity and performance of the inspection system.

(b) Auditors shall be formally trained and knowledgeable in:

1. The use of analyzers;
2. Program rules and regulations;
3. The basics of air pollution control;
4. Basic principles of motor vehicle engine repair relating to emission performance;
5. Emission control systems;
6. Evidence gathering;
7. State administrative procedures laws;
8. Quality assurance practices; and
9. Covert audit procedures.

13:20-43.11 Operative date

This subchapter shall take effect upon publication of the notice of its adoption, but shall remain inoperative until January 1, 1995.

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Pre-race Blood Gas Analyzing Machine Testing Program

Pre-race Guarded Quarantine; Punishment for Failure to Cooperate

Proposed New Rules: N.J.A.C. 13:71-23.3B and 23.3C

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

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

Proposal Number: PRN 1993-418.

Submit written comments by September 1, 1993 to:

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

The agency proposal follows:

Summary

The primary objective of proposed new rule N.J.A.C. 13:71-23.3B is to codify a pre-race guarded quarantine procedure in connection with the blood gas analyzing machine testing program (see N.J.A.C. 13:71-23.3A). Proposed new rule N.J.A.C. 13:71-23.3C provides that the failure of any person subject to the jurisdiction of the Racing Commission ("Commission") to cooperate in connection with an authorized blood gas analyzing machine testing program may, in addition to the horse being scratched from competition, be subject to fine or licensure suspension, or both.

On January 19, 1993, at 25 N.J.R. 269(a), the Commission caused to be published for public comment in the New Jersey Register proposed new rule N.J.A.C. 13:71-23.3A, Pre-race blood gas analyzing machine testing program. On March 17, 1993, pursuant to N.J.S.A. 5:5-30, and in accordance with the applicable provisions of the Administrative Procedures Act, the Commission voted to adopt the new rule as proposed in the notice so published. The notice of adoption was published in the New Jersey Register on April 19, 1993 at 25 N.J.R. 1775(b).

N.J.A.C. 13:71-23.3A authorizes a licensed racetrack association, with the prior approval of the New Jersey Racing Commission and subject to any imposed conditions, to adopt a track rule conditioning the acceptance of the entry of a horse in a race upon its registering on a blood gas analyzing machine levels of bicarbonate (HCO3), sodium (Na) and pH below those designated in the approved track rule.

The judges, pursuant to N.J.A.C. 13:71-23.3A, may cause a horse to be scratched only where two tests conducted utilizing the blood gas analyzing machine register readings for the horse at or in excess of each of the three levels (bicarbonate, sodium and pH) as set forth in the Commission approved track rule. However, in the event that any owner, trainer or licensed representative thereof refuses to cooperate in connection with the testing of a horse at a track association where such a testing program is in place, the rule also permits the judges to order the horse scratched.

N.J.A.C. 13:71-23.3A further establishes a procedure to be followed in the event a Commission licensed owner or trainer of a particular horse claims that the action levels stated within the track rules are physiologically normal for the horse. Where such a claim is made, the owner or trainer may request that the track association, at the sole expense of the requesting licensee, place the horse in guarded quarantine for a minimum period of 48 hours. During such period, the horse is to be periodically re-tested utilizing the blood gas analyzing machine. In the event the judges are satisfied that the levels calling for the scratching of a horse are physiologically normal for that particular horse, the judges may permit the horse to subsequently race notwithstanding the implemented track rule. In the event of such a determination, the judges may require that the horse re-establish that such levels are physiologically normal to it, pursuant to the quarantine procedure described *infra.*, but no earlier than 35 days after the last quarantine period for said horse and at the sole expense of the track association.

N.J.A.C. 13:71-23.3B, presently proposed, would require that a trainer who has experienced one scratch (where the levels are not determined

as physiologically normal for the horse) over any 12-month period, as a result of blood gas analyzing machine testing, place that horse subsequently scheduled to compete in pre-race guarded quarantine at the track association sponsoring the race. This quarantine would be required for a six-month period, for a minimum of six hours prior to each race, at the sole expense of the trainer.

N.J.A.C. 13:71-23.3B would further require that a trainer who has experienced two scratches (where the levels are not determined as physiologically normal for the horses) over any 12-month period, as a result of blood gas analyzing machine testing, place all of his horses subsequently scheduled to compete in pre-race guarded quarantine at the track association sponsoring the race. This quarantine would be required for a six-month period, for a minimum of six hours prior to each race, at the sole expense of the trainer. Where pre-race quarantine is required, and where during such period the trainer experiences another scratch (third or more) of a horse pursuant to the program, the six-month pre-race guarded quarantine is to be extended by the judges.

Where a single horse has occasioned one incident of being scratched during any 12-month period, and the related blood gas levels have not been determined as physiologically normal in such instance, proposed new rule N.J.A.C. 13:71-23.3B would further require that the horse be placed in pre-race guarded quarantine for a six-month period irrespective of who the trainer is. Thus, if Trainer A has the horse scratched once during 12 months and then transfers the horse to Trainer B, the horse is nonetheless subject to quarantine at the expense of current Trainer B. Trainer A, despite the transfer of the horse, would have the scratch count as one scratch for purposes of the applicability of N.J.A.C. 13:71-23.3B(6). Trainer B, assuming he has not occasioned two scratches of his own horses, would only have to submit the horse acquired from Trainer A to pre-race quarantine. However, if the horse is again scratched during the six-month pre-race quarantine period and while under the care of Trainer B, the quarantine period as to it would be extended. If this latter scratch would constitute the second scratch of a horse under the care of Trainer B, Trainer B would be required to subject all of the horses trained by him or her to pre-race guarded quarantine as described above (assuming, of course, that neither scratch was based upon levels determined physiologically normal for the respective horse).

N.J.A.C. 13:71-23.3C, also proposed at this time, provides that in addition to having the horse scratched from competition for failing to cooperate with N.J.A.C. 13:71-23.3A or 23.3B, the judges may impose fines and/or suspensions consistent with N.J.A.C. 13:71. This proposed new rule further provides that the prior record of any license for similar acts of non-cooperation with N.J.A.C. 13:71-23.3A or 23.3B may be considered in determining the extent of punishment to be imposed. With the exception of such instances of non-cooperation, no adverse action as to the licensure of individuals is contemplated by the proposed new rules.

Social Impact

The proposed new rules will not impact upon society as a whole. However, the Commission is of the view that these rules will advance the integrity of the State's standardbred racing industry since they, by regulation, serve to insure that horses with abnormally excessive chemical imbalances in their systems do not participate in race events within this State, and since they serve to deter such events. The proposed rules further serve to promote the public perception of the sport in that they respond to an increasing concern to the wagering public, the horsemen and aspects of the scientific community.

Economic Impact

It is anticipated that proposed new rule N.J.A.C. 13:71-23.3B will have a limited impact on the horsemen. Where a trainer occasions two scratches (where the applicable levels are not determined as physiologically normal for the horses) as a result of blood gas analyzing machine testing, the rule would require that all of his horses be subject to pre-race guarded quarantine at his sole expense, for a six-month period of time. This period is subject to extension if the trainer experiences a subsequent scratch of one of his horses, pursuant to the blood gas machine analyzing testing program and during the ordered quarantine period. Further, where a single horse has occasioned one incident of being scratched during a 12-month period, the proposed rule would require that the horse be placed in pre-race guarded quarantine irrespective of who the trainer is. In this and all instances, the current trainer of the horse would be responsible for all related costs.

N.J.A.C. 13:71-23.3A provides that any owner, trainer or licensed representative thereof who refuses to cooperate in connection with the testing of a horse shall have the horse scratched from competition. Proposed new rule N.J.A.C. 13:71-23.3C, in addition to providing for the scratching of a horse from competition for failure to cooperate with the procedures set forth in N.J.A.C. 13:71-23.3A and 23.3B (as proposed), provides that the non-cooperating person may additionally be subject to a fine and/or suspension of license. In addition to the economic consequences of a horse being scratched in such a case (ineligibility to compete for purse money and possible loss of entry fees), the imposition of a fine and/or suspension of licensure would have economic ramifications to the affected person.

Regulatory Flexibility Analysis

The proposed new rules do not impose reporting or recordkeeping requirements. Compliance requirements are imposed on track associations and judges, neither of which are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Track associations employ more than 100 people, and judges are individuals.

The proposed new rules do impose requirements as described in the Summary above on licensed trainers, some of which are small businesses. In addition, the refusal of a licensed trainer or any licensee to cooperate with the testing program may result in the scratch of the horse and may result in the imposition of a fine, suspension of license, or both. The cost to an owner or trainer of a scratched entry can vary greatly, depending on the horse and race. However, in the case of N.J.A.C. 13:71-23.3A, a scratch is dependent on the owner's or trainer's compliance. In the case of N.J.A.C. 13:71-23.3B, a scratch is dependent on the compliance of the owner's trainer.

Since the purpose of these rules is to advance the integrity of the State's racing industry through codification of an experimental program, and to deter acts or occurrences detrimental thereto, uniform application of its requirements is needed to most effectively meet that objective. Therefore, no exemptions from or differentiation in requirements are provided based on business size.

Full text of the proposed new rules follows:

13:71-23.3B Pre-race blood gas analyzing machine testing program: pre-race guarded quarantine

(a) Where a trainer, during any 12 month period, has had any single horse under his custody, care and control scratched from racing in accord with the procedures set forth in N.J.A.C. 13:71-23.3A, and where the levels of bicarbonate, sodium and pH have not been determined as physiologically normal for the horse in such instance, that horse subsequently scheduled to participate in a race under the custody, care and control of said trainer shall be placed under pre-race guarded quarantine. The track association sponsoring the race shall make such pre-race guarded quarantine available, at the sole expense of the trainer, for a length of time to be determined by the judges but in no event less than six hours prior to the start of the first race of the program.

1. Any pre-race guarded quarantine required by this subsection shall continue as to the affected horse for six months following the date of the scratch of the horse.

(b) Where a trainer, during any 12 month period, has had any horse or horses under his custody, care and control scratched from racing on two occasions in accord with the procedures set forth in N.J.A.C. 13:71-23.3A, and where the levels of bicarbonate, sodium and pH have not been determined as physiologically normal for the horse in either of such instance, all horses subsequently scheduled to participate in a race under the custody, care and control of that trainer shall be placed under pre-race guarded quarantine. The track association sponsoring the race shall make such pre-race guarded quarantine available, at the sole expense of the trainer, for a length of time to be determined by the judges but in no event less than six hours prior to the start of the first race of the program.

1. Any pre-race guarded quarantine required by this subsection shall continue as to the affected trainer for six months following the date of the second scratch of a horse or horses under his custody, care and control, and without regard to whether those scratched horses have been transferred to a new trainer. However, if during the six-month period any additional horse under the custody, care and control of the trainer is scratched in accord with the procedures set forth in N.J.A.C. 13:71-23.3A, and where the levels of

bicarbonate, sodium and pH have not been determined as physiologically normal for the horse, the judges shall order that the six-month pre-race guarded quarantine period as to all of the trainer's horses be extended for a length of time which they deem appropriate.

(c) Where a single horse, during any 12 month period, has been scratched from racing in accord with the procedures set forth in N.J.A.C. 13:71-23.3A, and where the levels of bicarbonate, sodium and pH have not been determined as physiologically normal for the horse, the horse shall be placed under pre-race guarded quarantine even where the horse has been transferred to a new trainer. The track association sponsoring the race shall make such pre-race guarded quarantine available, at the sole expense of the current trainer, for a length of time to be determined by the judges but in no event less than six hours prior to the start of the first race of the program.

1. Any pre-race guarded quarantine required by this subsection shall continue as to the affected horse for six months following the date of the scratch of the horse. However, where during the pendency of such six-month period the horse is under the custody, care and control of the new trainer and the horse is again scratched in accord with the procedures set forth in N.J.A.C. 13:71-23.3A, and where the levels of bicarbonate, sodium and pH have not been determined as physiologically normal for said horse, the judges shall order that the six-month pre-race guarded quarantine period for the horse be extended for a length of time which they deem appropriate. Where such an event, during any 12 month period, constitutes the second incident of any horse or horses under the custody, care and control of the present trainer of said horse being scratched in accord with the procedures set forth in N.J.A.C. 13:71-23.3A, the provisions of (b) above shall apply as to that current trainer.

13:71-23.3C Pre-race blood gas analyzing machine testing program: punishment for failure to cooperate

In the event any owner, trainer, licensed representative of same, or any person subject to the jurisdiction of the Racing Commission, fails to cooperate in connection with a blood gas analyzing machine testing program authorized pursuant to N.J.A.C. 13:71-23.3A, or with regard to any procedures set forth in or implemented pursuant to N.J.A.C. 13:71-23.3A or 23.3B, in addition to ordering the horse scratched from competition, the judges may, consistent with this chapter, impose fines or suspensions, or both, on the non-cooperating person. In determining the length of suspension or amount of the fine, the judges may consider prior violations of N.J.A.C. 13:71-23.3A or 23.3B.

OTHER AGENCIES

(a)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Official Zoning Map

Proposed Amendment: N.J.A.C. 19:4-6.28

Authorized By: Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.
Authority: N.J.A.C. 13:17 et seq., specifically 13:17-6(i) and 19:4-6.27.
Proposal Number: PRN 1993-414.

A **public hearing** concerning this proposed amendment will be held on Wednesday, August 18, 1993 at or after 7:30 P.M. at:

Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Submit written comments by September 1, 1993 to:

Thomas R. Marturano, Acting Chief Engineer
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

The agency proposal follows:

Summary

The proposed amendment to the Hackensack Meadowlands Development Commission Official Zoning Map consists of a change in zoning designation of Block 286, Lots 38, 39, and 40, in Kearny, New Jersey, from SU-3 Specially Planned Area to Light Industrial & Distribution "B".

Social Impact

The tract in question consists of three lots and is 7.8 acres in size. If rezoned, light industrial uses would be permitted. These uses would reflect the existing development of the site and the surrounding land uses. G & S Motors Equipment Company, Inc. operates a transformer disposal and rebuilding facility on Lot 38. The two remaining lots are vacant. If this area is rezoned, the new designation would reflect the existing development of the site and would allow expansion and growth.

Economic Impact

The proposed rezoning of the subject site will permit development of the property consistent and compatible with adjacent lands. Development of this site will not cause undue hardship to the Town of Kearny, New Jersey.

Regulatory Flexibility Statement

The effect of this proposed amendment would be to rezone properties in the Town of Kearny. The amendment will have no impact on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., other than the uses that would be permitted in the rezoned property. There being no regulation over small businesses in any other manner, no regulatory flexibility analysis is required.

19:4-6.28 Official Zoning Map

Change the zoning designation of Block 286, Lots 38, 39, and 40, in the Town of Kearny, from SU-3 Specially Planned Area to Light Industrial & Distribution "B."

OFFICE OF ADMINISTRATIVE LAW NOTE: The Official Zoning Map is not reproduced herein, but may be viewed at the following locations:

Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Office of Administrative Law
Quakerbridge Plaza, Building 9
Quakerbridge Road
Trenton, New Jersey 08625

(b)

ELECTION LAW ENFORCEMENT COMMISSION

Candidate Committee, Joint Candidates Committee and Political Committee Establishment and Reporting

Proposed Amendments: N.J.A.C. 19:25
Proposed Repeals and New Rules: N.J.A.C. 19:25-4 and 6
Proposed New Rules: N.J.A.C. 19:25-8
Proposed Repeal: N.J.A.C. 19:25-9

Authorized By: Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.
Authority: N.J.S.A. 19:44A-6.
Proposal Number: PRN 1993-405.

A **public hearing** on this proposal will be held on Tuesday, August 17, 1993, at 10:00 A.M. at:

Monmouth County Library
125 Symmes Drive
Manalapan, New Jersey

Submit written comments by September 1, 1993 to:

Gregory E. Nagy, Esq., Legal Director
Election Law Enforcement Commission
CN-185
Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

The Election Law Enforcement Commission (hereafter, the Commission) proposes new rules, amendments and repeals concerning the establishment of candidate committees, joint candidates committees, political committees, continuing political committees, political party committees and legislative leadership committees. Also, the reporting requirements for candidate committees, joint candidates committees and political committes are being proposed.

This proposal is the initial step in the implementation of statutory changes made by Chapter 65 of the Laws of 1993, which was signed into law on March 8, 1993, and became effective on April 7, 1993, and which made comprehensive amendments to "The New Jersey Campaign Contributions and Expenditures Reporting Act," N.J.S.A. 19:44A-1 et seq. (hereafter, "the Act"). The Commission anticipates making these changes effective by the date of the November 2, 1993 general election. While the proposed amendments, repeals and new rules implement only some of the statutory amendments achieved by Chapter 65 of the Laws of 1993 (hereafter, "the 1993 amendments"), the Commission expects that within the next several months it will be proposing further amendments affecting reporting by continuing political committees, political parties and legislative leadership committees, and will be proposing regulations to implement contribution limits and other provisions of the 1993 amendments.

Among the principal changes in this proposal are:

1. A candidate must establish a candidate committee, a joint candidates committee, or both, upon receiving contributions or making expenditures in an election, and the candidate must certify that he or she has not established and will not establish or control any political committee or continuing political committee, see N.J.A.C. 19:25-4.1 and 4.2.

2. A political committee must be established by a group of persons expending more than $1,000 in an election, and the political committee must file a registration statement which, among other information, must provide the names and addresses of persons controlling the political committee, see N.J.A.C. 19:25-4.4. Similarly, a continuing political committee must be established by a group expending more than $2,500 to aid or promote candidates in a calendar year and which may be expected to make contributions or expenditures in subsequent calendar years, and the continuing political committee must file a registration statement similar to the one required of a political committee, see N.J.A.C. 19:25-4.5.

3. The President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly, and the Minority Leader of the General Assembly may each establish a legislative leadership committee to receive contributions and make expenditures to promote candidates, and shall appoint such members and adopt such bylaws as they deem appropriate. Within 10 days after the establishment of the legislative leadership committee, it must file a registration statement and designate its organizational depository, see N.J.A.C. 19:25-4.7.

4. A political party committee must designate on or before July 1 an organizational treasurer and organizational depository, see N.J.A.C. 19:25-4.6.

In addition, subchapter 5 generally sets forth the requirements for the appointment of campaign officers and designation of depositories. In regard to depositories, a new section permits the establishment of a depository for investing campaign organizational funds in a recognized investment institution authorized by law to transact business in the State, see N.J.A.C. 19:25-5.2(b).

Subchapter 6 concerns the receipt and use of funds. All funds received by a committee must be deposited, not merely those funds that come within the statutory definition of the term "contributions," see N.J.A.C. 19:25-6.1. Also, funds may be transferred within 10 days after receipt to another committee without deposit, see N.J.A.C. 19:25-6.2. The permissible uses to which campaign funds can be put are prescribed in N.J.A.C. 19:25-6.5.

Subchapter 7 sets forth recordkeeping requirements. A new subsection (c) has been added to N.J.A.C. 19:25-7.1 requiring that the record of any expenditure make a notation or reference to the specific permissible use of funds applicable to the expenditure.

Subchapter 8 contains the reporting requirements for candidate committees, joint candidates committees and political committees. Within five months after the establishment of such a committee, it must begin filing "election fund reports" pursuant to N.J.A.C. 19:25-8.1. "Election fund reports" means either the election-cycle reports provided for in N.J.A.C. 19:25-8.2, or quarterly reports provided for in N.J.A.C. 19:25-8.3. A candidate committee, or joint candidates committees, spending under the threshold amounts in an election, may file a certified statement in lieu of "election fund reports," see N.J.A.C. 19:25-8.4. A candidate committee, or a joint candidates committee, must continue filing reports from one election to another until such time as the committee is dissolved and terminates its reporting requirements pursuant to N.J.A.C. 19:25-8.7. Political committees receiving or expending more than $1,000 in an election must also file reports, see N.J.A.C. 19:25-8.8.

Subchapter 8 also contains provisions for the reporting of contributions received by a candidate committee immediately before an election, see N.J.A.C. 19:25-8.6. A political committee must also report such contributions received immediately before an election (see N.J.A.C. 19:25-8.9), but in addition must make reports of any expenditure of over $500.00 made immediately before an election, see N.J.A.C. 19:25-8.10. Finally, the time and place of filing committee reports is described in N.J.A.C. 19:25-8.12.

Social Impact

The proposed new rules and amendments will affect candidates, treasurers, and all other persons with responsibility for handling and reporting campaign contributions and expenditures under the Act, and are intended to implement the 1993 statutory amendments made to the Act. This proposal is only a partial implementation of the 1993 amendments. Further new rules and amendments will be proposed at a later date to implement statutory amendments to the reporting requirements of continuing political committees, political party committees, and legislative leadership committees, and to implement limits on contributions to these entities mandated by the 1993 amendments.

A significant legislative change being implemented in the proposed amendments and new rules is the requirement that political committees and continuing political committees file registration statements that disclose information about the persons that have established and are exercising control over those entities, as well as a statement of the economic, political or other particular interests and objectives of the committee. The Commission believes that this statutory requirement, being implemented by this proposal, will substantially enhance the public policy and disclosure purposes of the Act. A political committee, or continuing political committee, must provide honest registration statement information concerning its organization and purposes that has not been previously available. Therefore, persons being solicited to make contributions to such entities, or candidates receiving donations or contributions from such committees, will have a means for determining what the nature and purposes of the committee are. A registration statement filed by a political committee, or continuing political committee, is a public document that is available to any person seeking to inspect it.

Another significant legislative change being implemented by this proposal concerns the permissible use of campaign funds. Prior to the enactment of the 1993 amendments, there was no statutory direction on what uses were permissible for campaign funds raised by candidates and remaining unspent. The 1993 amendments provide six specific permitted uses of campaign funds, and prohibits the use of campaign funds for any other purpose, see P.L. 1993, c.65, section 17. The permitted uses are payment of campaign expenses; donations to charities; transmittal to other candidates; payment of overhead and administrative expenses; pro-rata repayment of contributors; and payment of ordinary and necessary expenses of holding an elected position provided that those expenses do not arise from furnishings, staffing or operations of an office, see N.J.A.C. 19:25-6.5.

The 1993 amendments made significant changes in the method of reporting by candidates, and these changes are reflected by the proposed new rules in subchapter 8. Most significantly, a candidate is no longer permitted to maintain an unlimited number of political committees or continuing political committees. The candidate may establish a candidate committee, a joint candidates committee, or both, but the candidate cannot establish or control any additional committee, see P.L. 1993, c.65, section 9(h). Therefore, all contributions received or otherwise controlled by a candidate will be disclosed by either a candidate committee established by the candidate, or a joint candidates committee in which the candidate is participating, or both. The candidate must certify that the candidate has not and will not establish or participate in the management or control of any political committee, or continuing political committee, see N.J.A.C. 19:25-4.1(c) and 4.2(c). The Commission believes that limiting candidates to no more than two reporting committees will facilitate disclosure of campaign activity.

The timing of campaign reporting and disclosure has also been enhanced. A candidate committee, or a joint candidates committee, must file an initial campaign report no later than five months after its establishment, see N.J.A.C. 19:25-8.1(c). Under prior law, a candidate was not required to file a campaign report until 29 days prior to an election. Therefore, pursuant to this amendment, it will no longer be possible for a candidate who begins receiving contributions months, or even years, before an election to withhold disclosure of the sources of those contributions until a date that is 29 days prior to the election.

Finally, the 1993 amendments replace the 60-day postelection reports with a quarterly reporting obligation. Therefore, a candidate committee that is continuing to function in a period between elections will not be required to file reports as often as every two months, but rather every three months.

Economic Impact

The Commission does not anticipate any significant economic impact on candidates or other filing entities, other than those that already exist under present law and regulations. There may be some minimal costs associated with the preparation and filing of registration statements that are required by the 1993 amendments for political committees and continuing political committees.

Regulatory Flexibility Analysis

The Commission's proposed amendments and new rules do not impose any recordkeeping, reporting, or other compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While it is conceivable that small businesses may be employed to provide goods or services to candidates, treasurers or committees, the reporting and recordkeeping requirements generated by the proposed amendments are solely on those candidates, committees, or treasurers purchasing such goods and services.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 19:25-4, 6 and 9.

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

19:25-1.7 Definitions

The following words and terms, when used in this chapter and in the interpretation of the act, shall have the following meanings unless a different meaning clearly appears from the context.

...

"Candidate" means:

1. [an] **An** individual seeking [or having sought] election to a public office of this State or of a county, municipality or school district to any election[.]; **and**

2. [an] **An individual who shall have been elected or failed of election to an office, other than a party office, for which he sought election and who receives contributions and makes expenditures for any of the purposes authorized by N.J.S.A. 19:44A-11.2.**

[It] **This definition** does not include an individual seeking Federal elective office, or State, county or municipal political party office.

"Candidate committee" means a committee established by a candidate pursuant to N.J.S.A. 19:44A-9(a) for the purpose of receiving contributions and making expenditures.

"Commission" means the New Jersey Election Law Enforcement Commission.

"Continuing political committee" includes [the State committee or any county or municipal committee of a political party. It also includes] any group of two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association, including a political club, political action committee, civic association or other organization, which in any calendar year contributes or expects to contribute at least $2,500[.00] to aid or promote the candidacy of an individual, or the candidacies of individuals, for elective public office, or the passage or defeat of a public question or public questions, and which may be expected to make contributions toward such aid or promotion or passage or defeat during a subsequent election, provided that the group, corporation, partnership, association or other organization has been determined by the commission to be a continuing political committee in accordance with [N.J.A.C. 19:25-4] **N.J.S.A. 19:44A-8(b).**

"Contribution" includes every loan, gift, subscription, advance or transfer of money or other thing of value, including any item of real property or personal property, tangible or intangible (but not including services provided without compensation by individuals volunteering a part or all of their time on behalf of a candidate, committee or organization), made to or on behalf of any candidate **committee, joint candidates committee**, political committee, [or] continuing political committee, **political party committee or legislative leadership committee** and any pledge or other commitment or assumption of liability to make such transfer. For purposes of reports required under the provisions of the act, [such] any **such** commitment or assumption shall be deemed to have been a contribution upon the date when such commitment is made or liability assumed. As set forth in N.J.A.C. 19:25-3.1, funds or other benefits received solely for the purpose of determining whether an individual should become a candidate are not contributions.

...

"Expenditure" includes every transfer of money or other thing of value, including any item of real or personal property, tangible or intangible, made by any candidate **committee, joint candidates committee**, political committee, [or] continuing political committee, **political party committee, or legislative leadership committee** and any pledge or other commitment or assumption of liability to make such transfer. For purposes of reports required under the provisions of the act, any such commitment or assumption shall be deemed to have been an expenditure upon the date when such commitment is made or liability assumed. As set forth in N.J.A.C. 19:25-3.1, payments or commitments made solely for the purpose of determining whether an individual should become a candidate are not expenditures.

1. Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication is not an expenditure, unless the facility is owned or controlled by [any continuing political committee, political committee or candidate,] **a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee** in which case the cost for a news story which represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcasting facility, and which is part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening areas, is not an expenditure.

"File" or "filed" means deposited in the office of the Commission designated in N.J.A.C. 19:25-2.1.

"Joint candidates committee" means a committee established pursuant to N.J.S.A. 19:44A-9(a) by at least two candidates for the same elective public offices in the same election in a legislative district, county, municipality or school district, but not more candidates than the total number of the same elective public offices to be filled in that election, for the purpose of receiving contributions and making expenditures. For the purposes of this definition, the offices of member of the Senate and members of the General Assembly shall be deemed to be the same elective public offices in a legislative district.

"Legislative leadership committee" means a committee established, authorized to be established, or designated by the President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly, or the Minority Leader of the General Assembly pursuant to N.J.S.A. 19:44A-10.1 for the purpose of receiving contributions and making expenditures.

...

"Political committee" means any group of two or more persons acting jointly, or any corporation, partnership or any other incorporated or unincorporated association which is organized to or does aid or promote the nomination, election or defeat of any candidate or candidates for public office, or which is organized to, or does aid or promote the passage or defeat of a public question in any election. A club organized to promote the candidacy of one or more candidates or aid or defeat the passage of a public question,

without a term of existence substantially longer than the campaign, is a political committee. Political committee does not include:

1. A **candidate committee, joint candidates committee,** ["]continuing political committee,[" as defined above] **a political party committee, or a legislative leadership committee.**

2. A contributor not involved in fund raising or other election-related activity does not become a political committee solely by virtue of having made a contribution [with respect] to a candidate [or public question] **committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee.**

3.-5. (No change.)

"Political party committee" [includes every State, county or municipal committee of a political party. Political party committees are continuing political committees for the purpose of the quarterly reporting requirements of the act] **means the State committee of a political party, as organized pursuant to N.J.S.A. 19:5-4; any county committee of a political party, as organized pursuant to N.J.S.A. 19:5-3; or any municipal committee of a political party, as organized pursuant to N.J.S.A. 19:5-2.**

. . .

["Surplus campaign funds" means amounts received by contributions to a candidate, political committee, or continuing political committee serving as the campaign committee of a candidate, and remaining after the filing of the final report or, if no final report has been filed, after the termination of the candidacy.]

"Testimonial affair" means an affair of any kind [of] **or** nature including, without limitation, cocktail parties, breakfasts, luncheons, dinners, dances, picnics or similar affairs directly or indirectly intended to raise campaign funds on behalf of a person who holds, or who is or was a candidate for nomination or election to public office in this State, or is directly or indirectly intended to raise funds on behalf of any [continuing political committee or a political committee] **candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, and legislative leadership committee.**

[19:25-2.2 (Reserved)]

Recodify existing 19:25-2.3 through 2.6 as **2.2 through 2.5** (No change in text.)

19:25-3.1 Exemption for activities conducted solely for the purpose of determining whether an indiviudal will become a candidate; "Testing the Waters"

(a) Funds or other benefits received and payments made solely for the purpose of determining whether an individual should become a candidate are not contributions or expenditures. Activities contemplated under this exemption include, but are not limited to, expenses incurred for: conducting a poll, telephone calls and travel, **or similar activity undertaken** to determine whether an individual **who has not established and is not maintaining a candidate committee or joint candidates committee** should become a candidate. [An individual or a committee acting on that individual's behalf shall keep written records of all such funds received and payments made for a period of not less than four years after the transaction to which they relate occurred or four years after the date of the election to which they are relevant, whichever is longer.]

(b) If the individual subsequently becomes a candidate, the funds received and payments made are contributions and expenditures subject to the limitations, prohibitions and requirements of the act. Such contributions and expenditures must be reported with the first report filed by the candidate **committee or joint candidates committee** [or the campaign committee of the candidate], regardless of the date the funds were received or the payments made. [This exemption does not apply to funds received or payments made for general public political advertising; nor does this exemption apply to funds received or payments made for activities designed to amass campaign funds that would be spent after the individual becomes a candidate.]

(c) This section is not applicable to:

1. A candidate who has established and is maintaining a candidate committee or joint candidates committee;

2. Funds received or payments made for general public political advertising; and

3. Funds received or payments made for activities designed to amass campaign funds that would be spent after the individual becomes a candidate.

(d) In no instance shall permissible activities conducted solely for the purpose of determining whether an individual will become a candidate be confined or limited on the basis of the total funds received or payments made for such purpose.

19:25-3.2 Recordkeeping for a prospective candidacy

(a) Any prospective candidate, or any person or group acting on behalf of the possible candidacy of a prospective candidate, receiving funds or other benefits and making payments for the purpose of determining whether that prospective candidate should become a candidate shall make and maintain written records of all such funds or other benefits received and of all payments made for that purpose.

(b) The records required by (a) above shall be maintained for a period of not less than four years after the transaction to which they relate occurred, or four years after the date of the election to which they relate, whichever is longer.

SUBCHAPTER 4. ESTABLISHMENT OF REPORTING COMMITTEES

19:25-4.1 Establishment of a candidate committee

(a) A candidate or elected officeholder shall establish a candidate committee by appointing a treasurer and opening a depository for the purpose of receiving contributions and making expenditures no later than the date on which that candidate first receives any contribution or makes or incurs any expenditure in connection with an election, unless the candidate has already established a candidate committee which continues under an obligation to file reports. In the event a prior candidate committee exists, no additional candidate committee may be established.

(b) No later than 10 days after establishing a candidate committee, or no later than 29 days before the election, whichever occurs first, a candidate shall file a certificate of organization and designation of campaign depository containing the following information:

1. The full name of the candidate committee, which name must contain the name of the candidate and the office sought;

2. The name, mailing address and telephone number of the person appointed as chairperson;

3. The name, mailing and resident address and telephone number of the person appointed as treasurer; and

4. The name, mailing address and telephone number of the bank at which the campaign depository has been established, the account name and number, and the names, mailing addresses and telephone numbers of all persons authorized to sign checks or otherwise make transactions.

(c) The certificate of organization and designation of campaign depository shall be certified as true and correct by the candidate, chairperson, and treasurer. The candidate shall further certify that the candidate has not, and will not during the existence of the candidate committee, establish, authorize the establishment of, maintain, or participate directly or indirectly in the management or control of any political committee or continuing political committee.

(d) The candidate shall file an amendment to the certificate of organization and designation of campaign depository no later than three days after any of the information required in (b) above changes.

19:25-4.2 Establishment of a joint candidates committee

(a) Two or more candidates seeking the same elective public offices in the same election shall establish a joint candidates committee for the purpose of receiving joint contributions and making joint expenditures no later than the date on which any of those candidates receives any joint contribution or makes or incurs any joint expenditure in connection with an election, unless the candidates have already established a joint candidates committee which

continues under an obligation to file reports. In the event a prior joint candidates committee exists, no additional joint candidates committee may be established.

(b) No later than 10 days after establishing a joint candidates committee, or no later than 29 days before the election, whichever occurs first, the joint candidates committee shall file a certificate of organization and designation of campaign depository containing the following information:

1. The full name of the joint candidates committee, which name must contain the surname of each of the joint candidates and the office sought or, in the case of a joint committee including candidates for State Senate and State Assembly, the offices sought;

2. The name, mailing address and telephone number of the person appointed as chairperson;

3. The name, mailing and resident address and telephone number of the person appointed as treasurer; and

4. The name, mailing address and telephone number of the bank at which the campaign depository has been established, the account name and number, and the names, mailing addresses and telephone numbers of all persons authorized to sign checks or otherwise make transactions.

(c) The certificate of organization and designation of campaign depository shall be certified as true and correct by each of the joint candidates, by the chairperson, and by the treasurer. Each joint candidate shall further certify that the joint candidate has not and will not during the existence of the joint candidates committee establish, authorize the establishment of, maintain, or participate directly or indirectly in the management or control of any political committee or continuing political committee.

(d) The joint candidates committee shall file an amendment to the certificate of organization and designation of campaign depository no later than three days after any of the information required in (b) above changes.

19:25-4.3 Individual seeking multiple offices

An individual who is a candidate for two or more offices in an election shall establish separate candidate committees, or separate joint candidates committees, or both, for each office sought.

19:25-4.4 Establishment of a political committee

(a) Any group of two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association, which is organized to, or does, aid or promote the nomination, election or defeat of any candidate or candidates in an election, or which is organized to, or does, aid or promote the passage or defeat of a public question or questions in an election, and which raises or expends $1,000 or more for those purposes, shall establish a political committee by appointing a treasurer and establishing a depository no later than the date on which the political committee first receives any contribution or makes or incurs any expenditure that when combined with other contributions received in an election, or expenditures made or incurred in an election, totals $1,000 or more.

(b) No later than 10 days after a political committee is established, the political committee shall file a registration statement and designation of campaign depository containing the following information:

1. The full name of the political committee and identifying title, if different;

2. The mailing address of the political committee, and the name and resident address of a resident of New Jersey who is designated by the committee as the agent of the political committee to receive service of legal process;

3. The name, mailing address and telephone number of the person appointed as chairperson;

4. The name, mailing and resident address and telephone number of the person appointed as treasurer;

5. The name, mailing address and telephone number of the bank at which the campaign depository has been established, the account name and number, and the names, mailing addresses and telephone numbers of all persons authorized to sign checks or otherwise make transactions;

6. The general organizational category or affiliation of the political committee, including but not limited to: supporting or opposing a candidate or public officeholder, or support of or affiliation with a business, union, professional or trade association, ideological group, civic association, or other entity; and

7. A descriptive statement prepared by the organizers or officers that identifies:

i. The names and mailing address of the persons having control over the affairs of the political committee, including, but not limited to, persons in whose name or at whose direction or suggestion the committee solicits funds or makes contributions;

ii. The names and mailing addresses of persons not previously identified under (b)7i above who, directly or through an agent, participated in the initial organization of the committee;

iii. In the case of any identified person who is an individual, the occupation of that individual, home address, and name and mailing address of the individual's employer;

iv. In the case of any identified person that is a corporation, partnership, unincorporated association, or other organization, the name and mailing address of the organization; and

v. The economic, political or other particular interests and objectives which the political committee has been organized to or does advance.

(c) The registration statement and designation of campaign depository shall be certified as true and correct by the chairperson and treasurer, and they shall further certify that no candidate has established, authorized the establishment of, maintained or participated directly or indirectly in the management or control of the political committee, and no candidate shall be permitted to do so during the existence of the political committee.

(d) The political committee shall file an amendment to the registration statement and designation of campaign depository no later than three days after any of the information required in (b) above changes.

(e) A political committee shall file a registration statement and designation of campaign depository for each election in which it raises or expends $1,000 or more to aid or promote the nomination, election or defeat of a candidate or candidates, or the passage or defeat of a public question.

(f) A political committee which expects to raise or expend funds in each of two or more successive elections may apply to the Commission to be certified as a continuing political committee.

19:25-4.5 Establishment of a continuing political committee

(a) Any group of two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association, including a political club, political action committee, civic association or other organization, which in any calendar year contributes or expects to contribute at least $2,500 to aid or promote a candidate or candidates, or to aid or promote the passage or defeat of a public question or questions, and which may be expected to make contributions or expenditures in subsequent calendar years, shall become eligible to be certified by the Commission as a continuing political committee by appointing an organizational treasurer and organizational depository no later than the date on which the prospective continuing political committee first receives any contribution or makes or incurs any expenditure that when combined with other contributions received or expenditures made in a calendar year totals $2,500 or more.

(b) No later than 10 days after a prospective continuing political committee becomes eligible to be certified, the prospective continuing political committee shall file a registration statement and designation of organizational depository containing the following information:

1. The full name of the prospective continuing political committee, and identifying title, if different;

2. The mailing address of the continuing political committee, and the name and resident address of a resident of New Jersey who is designated by the committee as the agent of the prospective continuing political committee to receive service of process;

3. The name, mailing address and telephone number of the person appointed as chairperson;

4. The name, mailing and resident address and telephone number of the person appointed as organizational treasurer;

5. The name, mailing address and telephone number of the bank at which the organizational depository has been established, the account name and number, and the names, mailing addresses and phone numbers of all persons authorized to sign checks or otherwise make transactions;

6. The general organizational category or affiliation of the prospective continuing political committee, including, but not limited to: supporting or opposing a candidate or public officeholder, or support of or affiliation with a business, union, professional or trade association, ideological group, civic association, or other entity; and

7. A descriptive statement prepared by the organizers or officers that identifies:

i. The names and mailing address of all the persons having control over the affairs of the prospective continuing political committee, including but not limited to persons in whose name or at whose direction or suggestion the committee solicits funds or makes contributions;

ii. The names and mailing addresses of persons not previously identified under (b)7i above who, directly or through an agent, participated in the initial organization of the committee;

iii. In the case of any identified person who is an individual, the occupation of that individual, home address, and name and mailing address of the individual's employer;

iv. In the case of any identified person that is a corporation, partnership, unincorporated association, or other organization, the name and mailing address of the organization; and

v. The economic, political or other particular interests and objectives which the prospective continuing political committee has been organized to or does advance.

(c) The registration statement and designation of organizational depository shall be certified as true and correct by the chairperson and organizational treasurer, and they shall further certify that no candidate has established, authorized the establishment of, maintained or participated directly or indirectly in the management or control of the continuing political committee, and no candidate shall be permitted to do so during the existence of the continuing political committee.

(d) The Commission shall certify a continuing political committee upon the satisfactory completion and filing of the registration statement and designation of organizational depository.

(e) The political committee shall file an amendment to the registration statement and designation of organizational depository no later than three days after any of the information required in (b) above changes.

19:25-4.6 Designation by a political party committee

(a) A political party committee shall designate on or before July 1 in each year an organizational treasurer and an organizational depository.

(b) No later than 10 days after designating an organizational treasurer and organizational depository, a political party committee shall file a designation of organizational depository containing the following information:

1. The full name of the political party committee, which shall include the name of the political party to which the committee is affiliated;

2. The name, mailing address and telephone number of the person appointed as chairperson;

3. The name, mailing and resident address and telephone number of the person appointed as organizational treasurer; and

4. The name, mailing address and telephone number of the bank at which the organizational depository has been established, the account name and number, and the names, mailing addresses and telephone numbers of all persons authorized to sign checks or otherwise make transactions.

(c) The designation of organizational depository shall be certified as true and correct by the chairperson and treasurer.

(d) The political party committee shall file an amendment to the certificate of organization and designation of organizational depository no later than three days after any of the information required in (b) above changes.

19:25-4.7 Establishment of a legislative leadership committee

(a) The President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly, and the Minority Leader of the General Assembly may each establish, authorize the establishment of, or designate a State political party committee as a legislative leadership committee for the purpose of receiving contributions and making expenditures to aid or promote candidates, or to aid or promote the passage or defeat of public questions.

(b) The President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly, and the Minority Leader of the General Assembly, or the person authorized by any of them to establish a legislative leadership committee, shall appoint such members and adopt such bylaws for the maintenance of the committee as is deemed appropriate.

(c) Each legislative leadership committee shall appoint an organizational treasurer and designate an organizational depository no later than the date on which it first receives any contribution, or makes or incurs any expenditure. If a State political party committee is designated to serve as a legislative leadership committee, an organizational depository separate from the organizational depository of the State political party committee shall be established and be designated as a depository solely for receiving funds and making expenditures of the legislative leadership committee.

(d) No later than 10 days after a legislative leadership committee is established, the legislative leadership committee shall file a registration statement and designation of organizational depository containing the following information:

1. The full name of the legislative leadership committee, which name must contain the name of the legislative leader who established it or authorized establishment of it;

2. The mailing address of the legislative leadership committee and the name and resident address of a resident of New Jersey who shall have been designated by the committee as its agent to accept service of legal process;

3. The name, mailing and resident address and telephone number of the person appointed as organizational treasurer;

4. The name, mailing address and telephone number of the bank at which the organizational depository has been established, the account name and number, and the names, mailing addresses and telephone numbers of all persons authorized to sign checks or otherwise make transactions;

5. The political party affiliation of the legislative leadership committee, and a statement of the interests which are shared by leadership, members, or financial supporters; and

6. A copy of the bylaws adopted by the legislative leadership committee or, if none have been adopted, a statement to that effect.

(e) The registration statement and designation of organizational depository shall be certified as true and correct by the legislative leader who established, or authorized establishment of, the legislative leadership committee, and by the organizational treasurer.

(f) Within 30 days after a legislative leadership committee is established, the organizational treasurer shall file and certify as true and correct a written notice of the membership containing the names, mailing addresses and telephone numbers of the chairperson, the vice-chairperson, and all other members of the committee.

(g) The legislative leadership committee or its organizational treasurer shall file an amendment to the registration statement and designation of organizational depository, or to the written notice of membership, within three days of the occurrence of any change in any of the information required by (d) or (f) above.

[SUBCHAPTER 5. APPOINTMENT OF TREASURERS AND DEPOSITORIES

19:25-5.1 General provisions

(a) Any person 18 years of age or over may serve as campaign treasurer for any candidate or committee. A candidate may serve as his own campaign treasurer.

(b) The same person may serve as treasurer or campaign treasurer for any number of candidates or committees.

(c) Any bank authorized by law to transact business in the State of New Jersey may be designated as an organizational depository or campaign depository. The same bank may serve as organizational depository or campaign depository for any number of candidates or committees. A bank located outside of the territory of the State of New Jersey may be designated as an organizational depository, but not as a campaign depository, if such out-of-state designation is made for a legitimate business purpose and, for auditing and enforcement purposes, the treasurer consents to accept service of process or a subpoena at an address within this State or by regular mail at an address outside of the territory of this State. Where the depository established by a political committee is used principally for the purposes of making contributions to Federal or out-of-state candidates, such political committee may designate a bank located outside of the territory of the State of New Jersey as its campaign depository if such out-of-state designation is made for a legitimate business purpose and, for auditing and enforcement purposes, the treasurer of the political committee consents to accept service of process or a subpoena at an address within this State or by regular mail at an address outside of the territory of this State.

19:25-5.2 Appointment by candidates

Each candidate receiving contributions or making expenditures in an election shall appoint a campaign treasurer and shall designate a campaign depository. Notification of the designation of the campaign treasurer and the campaign depository shall be made by the candidate filing notice of the name and address of such campaign treasurer and such depository with the commission no later than the 10th day after the candidate, or any political committee or continuing political committee which the candidate had authorized to act on the candidate's behalf, receives any contributions on behalf of the candidacy, or incurs an expenditure on behalf of the candidacy, whichever occurs first.

19:25-5.3 Appointment by a political committee

Each political committee must appoint a campaign treasurer and designate a campaign depository no later than the date on which it first receives any contribution or makes or incurs any expenditure in furtherance or aid of the election or defeat of any candidate, or to aid the passage or defeat of any public question. Not later than the 10th day after the initial designation of the campaign depository, the committee shall file notice of the name and address of the depository and campaign treasurer with the commission.

19:25-5.4 Appointment by a political party

Each political party committee must designate an organizational treasurer and an organizational depository on or before July 1 of each year. Not later than the 10th day after the designation of an organizational depository, the committee shall notify the commission by filing the name and address of that depository and treasurer with the commission.

19:25-5.5 Appointment by a continuing political committee

Each continuing political committee must appoint an organizational treasurer and designate an organizational depository not later than the date on which it first receives any contribution or makes or incurs any expenditure in furtherance or aid of the election or defeat of any candidate, or to aid the passage or defeat of any public question. Not later than the 10th day after the initial designation of an organizational treasurer and depository, the committee shall file notice of the name and address of the organizational depository and treasurer with the commission.

19:25-5.6 Filing of notification with the commission

Each candidate or committee shall file the name and address of the treasurer, campaign treasurer or organizational treasurer and campaign depository or organizational depository with the commission, on a form designated by the commission.

19:25-5.7 Deputy treasurers and additional depositories

(a) A campaign treasurer of a candidate may appoint deputy campaign treasurers and may designate additional campaign depositories as may be required. The candidate shall file the names and addresses of deputy campaign treasurers and additional campaign depositories with the commission not later than the fifth day after their appointment.

(b) An organizational treasurer of a political party committee or other continuing political committee and a campaign treasurer of a political committee may appoint deputy organizational or campaign treasurers and may designate additional organizational or campaign depositories as may be required. Such committees shall file the names and addresses of deputy treasurers or campaign treasurers and additional depositories or campaign depositories with the commission not later than the fifth day after their appointment or designation, respectively.]

SUBCHAPTER 5. APPOINTMENT OF CAMPAIGN OFFICERS AND DEPOSITORIES

19:25-5.1 Qualifications of campaign or committee officers

(a) Any competent person 18 years of age or older may serve as a campaign treasurer, deputy campaign treasurer, organizational treasurer, deputy organizational treasurer, committee chairperson, committee vice-chairperson, or committee member provided that person maintains a resident address within the State of New Jersey, or alternatively files a consent to service of legal process within the State of New Jersey as set forth in (c) below.

(b) A candidate may serve as his or her own campaign or deputy campaign treasurer, or as committee chairperson, vice-chairperson or member.

(c) Notwithstanding (a) above, no person serving as the chairperson of a political party committee or a legislative leadership committee shall be eligible to be appointed to or serve as:

1. Chairperson, treasurer, or deputy treasurer of a candidate committee or joint candidates committee, other than a candidate committee or joint candidates committee established to further the election of that person as a candidate;

2. Chairperson, treasurer, or deputy treasurer of a political committee; or

3. Chairperson, organizational treasurer, or deputy organizational treasurer of a continuing political committee.

(d) Any person appointed to serve, or serving, in any capacity specified in (a) above and not maintaining a resident address within the State of New Jersey shall file a consent to service of legal process at an address within this State within three days of appointment, or within three days of abandoning a resident address within this State.

19:25-5.2 Qualifications of depositories

(a) Any bank authorized by law to transact business in the State of New Jersey may be designated as a campaign or organizational depository, and may serve as campaign or organizational depository for any number of candidates or committees, except that any bank designated as a campaign depository by a candidate committee, or joint candidates committee, shall be located within the boundaries of any county in which the campaign is conducted.

(b) For the limited purpose of establishing a depository for investing campaign or organizational funds, a recognized investment institution authorized by law to transact business in the State of New Jersey may be designated as a depository, provided that the invested funds are not used for the benefit of any person or enterprise in which the candidate, or a campaign or committee official, has an economic interest.

(c) Notwithstanding (a) above, a bank or investment institution located outside the State of New Jersey may be designated as an organizational depository provided that the bank or investment institution files a consent to service of legal process at an address within this State prior to accepting or receiving any organizational funds.

19:25-5.3 Names of depositories

(a) A campaign or organizational depository shall bear a name that conforms to the following requirements:

1. A campaign depository designated by a candidate committee shall be named "Election Fund of (name of candidate)";

2. A campaign depository designated by a joint candidates committee shall be named "Election Fund of (surnames of each of the joint candidates)";

3. A campaign depository designated by a political committee shall be named "Election Fund of (name of political committee)";

4. An organizational depository designated by a continuing political committee shall be named "Election Fund of (name of continuing political committee)";

5. An organizational depository designated by a political party committee shall be named "Election Fund of (name of political party committee)"; and

6. An organizational depository designated by a legislative leadership committee shall be named "Election Fund of (name of legislative leadership committee)".

19:25-5.4 Deputy treasurers and additional depositories

(a) A campaign treasurer of a candidate committee or joint candidates committee may appoint deputy campaign treasurers, and may designate additional campaign depositories, which depositories shall be located within the boundaries of any county in which the campaign is conducted.

(b) A campaign treasurer of a political committee, or an organizational treasurer of a political party committee, a continuing political committee, or a legislative leadership committee, may appoint deputy campaign or organizational treasurers, and may designate additional campaign organizational depositories.

(c) A campaign or organizational treasurer appointing deputy treasurers or additional depositories shall no later than five days after such appointment or designation file a notice, certified as true and correct by such campaign or organizational treasurer, containing the following information:

1. The name of the committee;

2. The name of the campaign or organizational treasurer;

3. The name, mailing and resident address and phone number of each person appointed deputy campaign or deputy organizational treasurer; and

4. The name, mailing address and phone number of the bank at which each additional campaign or organizational depository has been established, the account number of each additional depository, and the names, mailing addresses and phone numbers of all persons authorized to sign checks or otherwise made transactions for each depository.

19:25-[5.8]**5.5** Removal or resignation of treasurers

In the case of the death, resignation or removal of a campaign treasurer or organizationl treasurer, the candidate or committee shall notify the commission of such event within [ten] **10** days of its occurrence. The candidate or committee shall appoint a successor as soon as practicable **but in no case more than 20 days after such death, resignation or removal** and shall notify the commission of the appointment of the successor and file his or her name and address with the commission within three days of such appointment.

SUBCHAPTER 6. RECEIPT AND USE OF FUNDS

19:25-6.1 Receipt and deposit of funds

(a) Funds received by a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee shall be delivered to the campaign or organizational treasurer and deposited by that treasurer in the campaign or organizational depository within 10 days of receipt by the committee, unless transferred prior to deposit pursuant to N.J.A.C. 19:25-6.2.

(b) The date of receipt by a committee of any funds is the date on which a campaign or organizational treasurer, or any other person so authorized, receives funds on behalf of the candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee.

19:25-6.2 Transfer of funds without deposit

(a) A campaign or organizational treasurer may transfer funds (without depositing them) to a duly designated campaign or organizational treasurer of another candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee. Such a transfer of funds without deposit must be made within 10 days of receipt of the funds being transferred, and must be authorized by the candidate, candidates or committee which designated the treasurer.

(b) Any amount transferred pursuant to (a) above shall not be in excess of the amount that a candidate may contribute to another candidate in any election pursuant to N.J.S.A. 19:44A-11.3, except that this subsection shall not be construed to prohibit a county or municipal political party committee from transferring funds as authorized in (a) above.

(c) A campaign or organizational treasurer making any transfer pursuant to this section shall make a written record of all non-deposited funds so transferred, identifying those funds as to source and amount in the same manner as deposited funds, and a copy of that written record shall be included in the next campaign or quarterly report filed by the entity that made the transfer.

19:25-6.3 Receipt of transferred funds

A candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee receiving any transfer of undeposited funds shall deliver those funds to its organizational or campaign treasurer for deposit in its campaign or organizational depository within 10 days of receipt.

[SUBCHAPTER 7. USE OR TRANSMITTAL OF DEPOSITED FUNDS; SURPLUS CAMPAIGN FUNDS]

19:25-[7.1]**6.4** Expenditures through [campaign] treasurer

(a) No expenditure of money or other thing of value, nor obligation therefor, including, but not limited to, expenditures, loans or obligations of a candidate [himself] or of [his] **the candidate's** family, shall be made or incurred, directly or indirectly, [to support or defeat a candidate in any election, or to aid the passage or defeat of any public question,] **by a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee** except through:

1. The duly appointed campaign treasurer or deputy campaign treasurers of the candidate **committee, joint candidates committee, or political committee**;

2. The duly appointed organizational treasurer or deputy organizational treasurers of a politcal party committee, [or other] continuing political committee[;], **or legislative leadership committee.**

[3. The duly appointed campaign treasurer or deputy campaign treasurers of a political committee.]

(b) Any expenditure by a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee shall be made from the organizational or campaign depository established by the committee, except that nothing in this section shall be construed to prohibit an expenditure to establish a petty cash fund not to exceed $100.00 to be used for occasional and incidental expenses, or an expenditure not to exceed $100.00 to reimburse a candidate or campaign or organizational officer who has personally incurred an occasional and incidental expense on behalf of the committee.

[19:25-7.2 Use of funds; general

Funds so deposited may be used in accordance with the provisions of the act and of these regulations for any lawful purpose. Such funds shall not be converted to any personal use by the candidate or any other person.

19:25-7.3 Transmittal of deposited funds to another candidate, political committee, or continuing political committee

Funds received by contributions to a candidate, political committee, or continuing political committee may be transferred before or after deposit to another candidate, political committee, or continuing political committee for any lawful purpose of such other candidate

or committee, provided there is no express or implied prohibition by the original contributor against such transmittal.]

19:25-[7.4]**6.5** Use or disposition of [surplus] campaign funds[, including surplus campaign funds of gubernatorial candidates who elect not to seek public funding]

[(a) Surplus campaign funds shall not be converted to any personal use by the candidate or any other person.

(b) The Act does not prohibit the use of surplus campaign funds for any of the following purposes or any other lawful purpose not involving conversion for personal use:]

(a) All contributions received by a candidate, candidate committee, joint candidates committee or legislative leadership committee shall be used only for the following purposes:

1. The payment of [outstanding] campaign expenses, **which may be any expense incurred or expenditure made by a candidate, candidate committee, joint candidates committee or legislative leadership committee for the purpose of paying for or leasing items or services used in connection with an election campaign, other than those items or services which may reasonably be considered to be for the personal use of the candidate, any person associated with the candidate, or any of the members of a legislative leadership committee;**

2. The making of donations to any charitable organization described in section 170(c) of the Internal Revenue Code of 1954, as amended or modified, or non-profit organization which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954;

[2.]**3.** Transmittal to another candidate, **candidate committee, joint candidates committee,** political committee, [or] continuing political committee, **legislative leadership committee, or political party committee** for the lawful [purpose of] **use of** such other candidate or committee;

4. The payment of the candidate committee's, joint candidates committee's or legislative leadership committee's overhead and administrative expenses related to its operation;

[3.]**5.** The pro-rata repayment of contributors, except that contributors of less than [$100.00] **$200.00** may be excluded from repayment; **or**

6. The payment of ordinary and necessary expenses of holding public office, provided that no funds received by a candidate, candidate committee, or joint candidates committee be used by any candidate or committee for the payment of the expenses arising from the furnishing, staffing or operation of an office used in connection with the candidate's or former candidate's official duties as an elected public official.

[4. The repayment of loans made by a candidate to his campaign where the loan is documented and reported as such at the time it is made;

5. Donation to any organization described in section 170(c) of the Internal Revenue Code of 1954;

6. Retention by a candidate, political committee, or continuing political committee serving as the campaign committee of a candidate, in a separate campaign account established pursuant to N.J.S.A. 19:44A-12 for a future election campaign of such candidate, political committee, or continuing political committee serving as the campaign committee of a candidate.]

(b) Any funds remaining upon the death of a candidate in the campaign depository of the deceased candidate's candidate committee, or joint candidates committee, shall be used for one or more of the purposes set forth in (a) above by the committee's treasurer, or by whomever has control of the depository upon the death of the candidate.

[(c) The commission has no jurisdiction over the question whether or not surplus campaign funds may be used for the operation and staffing of legislative district offices.]

[19:25-7.5 Transmittal of deposited funds by political party committee to candidate

The act does not prohibit contributions to a candidate of funds contributed to a poliical party committee which were solicited for the general purposes of the political party committee, provided there is no express or implied limitation by the original contributors against the contribution of such funds to the candidate. Such contributions must be reported by the candidate as contributions and must be reported by the political party committee as expenditures.

19:25-7.6 Earmarked funds

Whenever funds in excess of $100.00, which are earmarked or intended for the use of any candidate or committee are transferred or retransferred through an intermediate candidate or committee, the funds shall be accompanied by a statement of the name, address and amount of the original contributor of such fund, and the reports filed by each transferee shall identify the original source and amount of such contribution.

19:25-7.7 Limitation on or expenditure financial activity by political party committee

A State, county or municipal committee of a political party may not receive or expend funds in violation of N.J.S.A. 19:34-33 and N.J.S.A. 19:44A-11.

19:25-7.8 (Reserved)]

SUBCHAPTER [8.]**7.** RECORDKEEPING

[19:25-8.1] **19:25-7.1** Recordkeeping requirements

(a) An organizational or campaign treasurer, or deputy organizational or campaign treasurer of a candidate **committee, joint candidates committee,** [of a] political committee, [or of a] continuing political committee, **political party committee, or legislative leadership committee,** shall make **and maintain** a written record of all funds **and contributions, including non-monetary contributions, and shall record** [which he or she receives as contributions to the candidate, political committee or continuing political committee, including in that record] the name and address of the contributor, [and] the amount and date the contribution was received, **and if the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer.**

(b) An organizational or campaign treasurer, or deputy organizational or campaign treasurer, of a candidate **committee, joint candidates committee,** [of a] political committee, [or of a] continuing political committee, **political party committee, or legislative leadership committee,** shall make **and maintain** a written record of all funds [which he or she expends on behalf of the candidate, political committee or continuing political committee,] **expended by the committee,** including [in that record] the name and address of the recipient, the amount and date of the expenditure, and the purpose of the expenditure.

(c) The campaign or organizational treasurer of a candidate committee, joint candidates committee, or legislative leadership committee shall include as part of the record of any expenditure of such a committee, a notation or other reference disclosing which of the six enumerated permissible uses of funds set forth in N.J.A.C. 19:25-6.5(a) is applicable to the expenditure.

[(c)](**d**) A candidate, **the candidates of a joint candidates committee,** or the chairman of a political committee, [or] continuing political committee, **political party committee, or legislative leadership committee,** shall take such steps as are necessary and appropriate to insure that a campaign treasurer, or organizational treasurer, appointed by the candidate **committee, joint candidates committee,** political committee, [or] continuing political committee, **political party committee, or legislative leadership committee,** complies with the recordkeeping requirements of this section and this chapter.

19:25-7.2 Recordkeeping for credit card transactions

(a) Whenever a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee purchases, or authorizes purchase of, goods or services by use of a credit card, the campaign or organizational treasurer shall make and maintain a record of the following information:

1. The exact name or title of the owner of the card, and the name of the lending institution that issued the card;

2. The date of the purchase;

3. The name and address of the vendor from whom the purchase was made;

4. The purpose of the purchase; and

5. The cost and description of the goods or services purchased.

19:25-[8.2]**7.3** Period of retention

[(a)] All records required to be made by N.J.A.C. 19:25-[8.1]**7.1** shall be maintained for a period of not less than four years after the date of the election to which they are relevant, or a period of not less than four years after the transaction to which they relate occurred, whichever is longer.

[(b) A candidate, or the chairman of a political committee, or continuing political committee shall take such steps as are necessary and appropriate to insure that a campaign treasurer, or organizational treasurer, appointed by the candidate, political committee or continuing political committee, complies with the record retention requirements of this section and this chapter.]

19:25-[8.3]**7.4** Affidavit for missing records

(a) An organizational or campaign treasurer unable to produce any record required to be made pursuant to N.J.A.C. 19:25-[8.1]**7.1**, Recordkeeping requirements, shall submit to the Commission within 10 days after the Commission so requests an affidavit specifying which record cannot be produced and the reasons the record is unavailable. The affidavit shall specify:

1.-2. (No change.)

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

SUBCHAPTER 8. CANDIDATE, JOINT CANDIDATES, AND POLITICAL COMMITTEE REPORTING

19:25-8.1 Candidate or joint candidates committee election fund reports

(a) A candidate committee, or a joint candidates committee, shall file election fund reports of all contributions received, all expenditures made, and all other transactions of the election fund subject to reporting under the act and these regulations.

(b) The term "election fund reports" shall mean election-cycle reports as defined in N.J.A.C. 19:25-8.2(b), or quarterly reports as defined in N.J.A.C. 19:25-8.3(b), which reports shall be filed in accordance with N.J.A.C. 19:25-8.12, Time and place of filing reports.

(c) The initial election fund report of a candidate committee, or joint candidates committee, shall be either a 29-day preelection report or a quarterly report. In the event the committee is established within five months or less of the due date of the 29-day preelection report for the election in which the candidate or joint candidates is or are seeking office, the committee shall file the 29-day preelection report described in N.J.A.C. 19:25-8.2 report as its initial election fund report. However, if the committee is established more than five months prior to the due date of the 29-day preelection report for the election in which the candidate or joint candidates is or are seeking office, the committee shall file as its initial election fund report any quarterly report described in N.J.A.C. 19:25-8.3 that is due for filing within five months of the date the committee is established.

(d) The initial election fund report shall begin with the reporting of the first contribution received or expenditure made in the election (including any transaction that initially may have been pre-candidacy activity pursuant to N.J.A.C. 19:25-3.1), and shall report all subsequent contributions, expenditures, or other reportable transactions of the election fund occurring before the closing date applicable to the report.

(e) A candidate committee, or joint candidates committee, shall continue to file election fund reports until such time as it terminates its reporting requirements and files a final election fund report pursuant to N.J.A.C. 19:25-8.11.

19:25-8.2 Election-cycle reports

(a) A candidate committee, or joint candidates committee, shall file election-cycle reports during any election in which the candidate, or joint candidates, is or are seeking election, or nomination for election.

(b) The term "election-cycle reports" shall mean the reports described below, which reports shall be due for filing on the following dates and shall report all contributions, expenditures, or other transactions of the election fund occurring within the following periods of time:

1. The 29-day preelection report shall be due for filing on the 29th day before the election and shall begin with the reporting of the first contribution received or expenditure made in an election (including any transaction that initially may have been pre-candidacy activity pursuant to N.J.A.C. 19:25-3.1); except that if the candidate committee, or joint candidates committee, filed, or was required to file, a prior quarterly report pursuant to N.J.A.C. 19:25-8.3, its 29-day preelection report shall begin with the first contribution received or expenditure made on or after 12:00 A.M. of the date on which the reporting period of the prior quarterly report ended. The 29-day preelection report shall end with the reporting of the last transaction occurring before 12:00 A.M. on the 31st day preceding the date of the election.

2. The 11-day preelection report shall be due for filing on the 11th day before the election and shall begin with the reporting of the first transaction occurring on or after 12:00 A.M. on the 31st day preceding the date of the election and end with the reporting of the last transaction occurring before 12:00 A.M. on the 13th day preceding the date of the election; and

3. The 20-day postelection report shall be due for filing on the 20th day following the election and shall begin with the reporting of the first transaction occurring on or after 12:00 A.M. on the 13th day preceding the date of the election and end with the reporting of the last transaction occurring before 12:00 A.M. on the 18th day following the date of the election.

(c) Notwithstanding (b) above, a candidate committee or joint candidates committee that is filing election fund reports in a municipal run-off election shall not be required to file the 20-day postelection report following the municipal election or the 29-day preelection report for the municipal run-off election. The 11-day preelection municipal run-off election report shall begin with the reporting of the first transaction occurring after 12:00 A.M. on the 13th day preceding the municipal election, and shall end with the reporting of the last transaction occurring before 12:00 A.M. on the 13th day preceding the municipal run-off election.

(d) The campaign treasurer and the candidate shall file and certify the correctness of a candidate committee election-cycle report, and shall certify that no contributions have been received in violation of the contribution limits prescribed by the act.

(e) The campaign treasurer and the joint candidates shall file and each certify the correctness of a joint candidates committee election-cycle report, and certify that no contributions have been received in violation of the contribution limits prescribed by the act.

19:25-8.3 Quarterly reports

(a) A candidate committee, or joint candidates committee, shall file quarterly reports for any period of time it is not required to file election-cycle reports pursuant to N.J.A.C. 19:25-8.2.

(b) The term "quarterly reports" shall mean the reports described below, which reports shall be due for filing and shall cover the following periods of time:

1. The first quarterly report shall be due for filing on April 15 of a calendar year and shall begin with the reporting of transactions occurring on or after 12:00 A.M. of January 1st of the calendar year of the filing date and end with the reporting of transactions occurring before 12:00 AM. of April 1 of that calendar year;

2. The second quarterly report shall be due for filing on July 15 of a calendar year and shall begin with the reporting of transactions occurring on or after 12:00 A.M. on April 1 of the calendar year of the filing date and end with the reporting of transactions occurring before 12:00 A.M. of July 1 of that calendar year;

3. The third quarterly report shall be due for filing on October 15 of a calendar year and shall begin with the reporting of transactions occurring on or after 12:00 A.M. on July 1 of the calendar year of the filing date and end with the reporting of transactions occurring before 12:00 A.M. of October 1 of that calendar year; and,

4. The fourth quarterly report shall be due for filing on January 15 of a calendar year and shall begin with the reporting of transactions occurring on or after 12:00 A.M. on October 1 of the calendar year preceding the calendar year of the filing date and end with the reporting of transactions occurring before 12:00 A.M. of January 1 of the calendar year of the filing date.

(c) A candidate committee, or joint candidates committee, that does not terminate its election-cycle filing requirements with its 20-day postelection report and is therefore required to file quarterly reports, shall start filing quarterly reports on the following dates:

1. For a school board candidate, or joint candidates, the committee shall file a third quarter report on October 15 of the calendar year of the school board election;

2. For a municipal or municipal run-off election candidate, or joint candidates, the committee shall file a third quarter report on October 15 of the calendar year of the municipal or municipal run-off election;

3. For a primary election candidate, or joint candidates, who is or are defeated in a primary election or otherwise is or are not running in the following general election, the committee shall file a third quarter report on October 15 of the calendar year of the primary election;

4. For a general election candidate, or joint candidates, the committee shall file a first quarter report on April 15 of the calendar year following the general election; or

5. For a special election candidate, or joint candidates, the committee shall file a quarterly report on a quarterly report filing date set forth in (b) above that falls within five months of the date on which the 20-day postelection report closed, that is 12:00 A.M. of the 18th day after the date of the special election.

(d) The initial quarterly report filed by a candidate committee, or joint candidates committee, after the filing of a 20-day postelection report, shall begin with the reporting of the first contribution received, expenditure made, or other reportable transaction occurring after 12:00 A.M. on the 18th day following the date of election. Subsequent quarterly reports shall cover the time periods set forth in (b) above.

(e) The campaign treasurer and the candidate, or joint candidates, shall file and each certify the correctness of each quarterly report, and shall certify that no contributions have been received in violation of the contribution limits prescribed by the act.

19:25-8.4 Candidate certified statements (Form A-1 or A-2)

(a) There shall be no obligation to file the election fund reports referred to in N.J.A.C. 19:25-8.1 on behalf of any candidate committee of a candidate who files no later than five months after the date on which the committee is established, or no later than the 29th day before the election in which the candidate is seeking office, whichever is earlier, a certified statement (Form A-1) to the effect that the total amount expended or to be expended on behalf of his or her candidacy by the candidate committee, or by any candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, legislative leadership committee or person shall not in the aggregate exceed $2,000 in that election.

(b) There shall be no obligation to file the election fund reports referred to in N.J.A.C. 19:25-8.1 on behalf of a joint candidates committee if the joint committee files no later than five months after the date on which the committee is established, or no later than the 29th day before the election in which the joint candidates are seeking office, whichever is earlier, a certified statement (Form A-2) to the effect that the total amount to be expended on behalf of the joint candidacies by the joint candidates committee or by any candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, legislative leadership committee or person shall not in the aggregate exceed the following amounts:

1. In the case of a joint candidates committee consisting of two candidates, $4,000 in the election; or

2. In the case of a joint candidates committee consisting of three or more candidates, $6,000 in the election.

(c) If a candidate committee or joint candidates committee which has filed a certified statement receives any contribution from any one source aggregating more than $200.00 it shall file a report which shall provide the name and mailing address of the source and the aggregate total amount of contributions therefrom, and where the source is an individual, the occupation of the individual and the name and mailing address of the individual's employer. The report shall be signed by the campaign treasurer and filed no later than:

1. On the filing date for a quarterly report if the contribution is received within any quarterly report period prescribed by N.J.A.C. 19:25-8.3(b);

2. On the 29th day preceding the date of the election if the contribution was not required to be reported in a prior quarterly report period and is received prior to 12:00 A.M. on the 31st day preceding the date of the election;

3. On the 11th day preceding the date of the election if the contribution is received on or after 12:00 A.M. on the 31st day preceding the election but before 12:00 A.M. on the 13th day preceding the election; or

4. On the 20th day following the date of the election if the contribution is received on or after 12:00 A.M. on the 13th day preceding the election but before 12:00 A.M. on the 18th day following the election.

(d) A candidate, or joint candidates, for election to an office or offices of a school board, or a write-in candidate for any office, making expenditures within the limits provided in (a) or (b) above, shall not be required to file certified statements pursuant to (a) and (b) above, and any candidate committee, or joint candidates committee, established by such a candidate, or joint candidates, shall not be required to file election fund reports pursuant to N.J.A.C. 19:25-8.1. However, any candidate committee, or joint candidates committee, established by such a candidate or joint candidates, must file the reports required by (c) above. For the purposes of this section, the term "write-in candidate" shall mean an individual seeking or having sought election to a public office who has not filed an effective nominating petition for that office and whose name does not appear as a candidate for that office on the ballot used for that election.

19:25-8.5 Candidate not receiving contributions or making expenditures

A candidate who has not established a candidate committee or appointed a treasurer and opened a campaign depository because no contributions have been received and no expenditures have been made, and who reasonably expects not to receive any contributions or make any expenditures in the election in which the candidate is seeking office, shall file a certified statement (Form A-1) so indicating no later than the 29th day preceding the date of the election in which the candidate is seeking office. In the event the candidate subsequently receives a contribution in the election, the candidate must establish a candidate committee as provided by N.J.A.C. 19:25-4.1 and file reports pursuant to N.J.A.C. 19:25-8.

19:25-8.6 Contributions received immediately before an election

(a) A campaign treasurer of a candidate committee, or joint candidates committee, shall file a report or other written notice of any contribution in excess of $500.00 received on or after 12:00 A.M. on the 13th day preceding the date of an election in which the candidate, or joint candidates, is or are seeking election, but before 12:00 A.M. on the date of the election, which report shall contain:

1. The name of the recipient candidate committee, or joint candidates committee;

2. The date the contribution was received;

3. The amount of the contribution;

4. The name and mailing address of the contributor; and

5. If the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer.

(b) The report or written notice described in (a) above shall be filed with the Commission within 48 hours of receipt of the contribution, and shall be signed by the campaign treasurer or a candidate,

except that a report made by telegram need not be signed. Use of electronic facsimile transmission (that is, FAX) shall not be permitted.

19:25-8.7 Termination of election fund reporting

(a) A candidate committee, or a joint candidates committee, may certify a 20-day postelection report or a quarterly report as its final election fund report and thereby terminate further quarterly reporting provided:

1. There is no remaining balance in any depository opened or maintained by the candidate committee, or joint candidates committee;

2. There are no outstanding obligations of the candidate committee, or joint candidates committee; or, if outstanding obligations exist, the total amount does not exceed $1,000, or does not exceed 10 percent of the expenditures of the election fund with respect to the election, whichever amount is less; or written evidence is provided that any existing outstanding obligations are likely to be discharged or forgiven; and

3. The candidate committee, or joint candidates committee has been dissolved and wound up its business for the past election, or elections.

(b) The campaign treasurer, and the candidate, or each joint candidate, shall file and each certify the final election fund report.

(c) Notwithstanding (a) above, if after filing a final election fund report, a candidate, or joint candidates, receives or receive any subsequent contributions, makes or make any expenditures, or assumes or assume any obligation in connection with the election for which the candidate or joint candidates was or were seeking office, the candidate, or joint candidates, shall establish a candidate committee, or joint candidates committee, and that committee shall resume filing election fund reports pursuant to N.J.A.C. 19:25-8.1.

19:25-8.8 Political committee election fund reports

(a) A political committee receiving or expending more than $1,000 in an election shall file election fund reports of all contributions received, all expenditures made, and all other financial transactions of its election fund subject to reporting, and such reports shall be filed on the same dates and be pertinent to the same periods of time as set forth in N.J.A.C. 19:25-8.1 for candidate committee reports.

(b) The campaign treasurer of the political committee shall file and certify the correctness of the reports described in (a) above, and shall certify that no contributions have been received in violation of the contribution limits prescribed by the act.

19:25-8.9 Political committee contributions received immediately before an election

(a) A campaign treasurer of a political committee shall file a report or other written notice of any contribution in excess of $500.00 received on or after 12:00 A.M. on the 13th day preceding the date of the election but before 12:00 A.M. on the date of the election, which report shall contain:

1. The name of the recipient political committee;

2. The date the contribution was received;

3. The amount of the contribution;

4. The name and mailing address of the contributor; and

5. If the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer.

(b) The report or written notice described in (a) above shall be filed with the Commission within 48 hours of receipt of the contribution, and shall be signed by the campaign treasurer, except that a report made by telegram need not be signed. Use of electronic facsimile transmission (that is, FAX) shall not be permitted.

19:25-8.10 Political committee expenditures made immediately before an election

(a) A campaign treasurer of a political committee shall file a report (Form E-1) of any expenditure of money or other thing of value in excess of $500.00 made, incurred or authorized by the political committee to support or defeat a candidate in an election, or to aid the passage or defeat of a public question, which expenditure is made, incurred or authorized on or after 12:00 A.M. on the 13th day preceding the date of the election but before 12:00 A.M. on the date of the election. The report shall contain:

1. The name of the political committee;

2. The name and mailing address of the person, firm or recipient; or organization to whom or which the expenditure was paid or given; and

3. The amount and purpose of the expenditure.

(b) The report or written notice described in (a) above shall be filed with the Commission within 48 hours of the making of the expenditure, and shall be signed by the campaign treasurer, except that a report made by telegram need not be signed. Use of electronic facsimile transmission (that is, FAX) shall not be permitted.

19:25-8.11 Termination of political committee quarterly reporting

(a) A political committee may certify a 20-day postelection report or a quarterly report as its final election fund report and thereby terminate further reporting provided:

1. There is no remaining balance in any depository opened or maintained by the political committee;

2. There are no outstanding obligations of the political committee; or, if outstanding obligations exist, the total amount does not exceed $1,000, or does not exceed 10 percent of the expenditures of the election fund with respect to the election, whichever amount is less; or written evidence is provided that any existing outstanding obligations are likely to be discharged or forgiven; and

3. The political committee has been dissolved and wound up its business for the past election, or elections.

(b) The campaign treasurer of the political committee shall certify and file the final election fund report.

19:25-8.12 Time and place of filing reports

(a) An original and two copies of all reports required to be filed must be received at the Commission offices no later than 5:00 P.M. on the date the report is due for filing in order to be deemed timely filed. A report submitted by United States mail postmarked on or before a filing date but not received until after 5:00 P.M. of the date the report is due for filing will not be deemed timely filed.

(b) For election-cycle reports filed pursuant to N.J.A.C. 19:25-8.2 for primary and general elections only, filing may be accomplished by filing an original and three copies with the appropriate county clerk for transmittal to the Commission, provided that the reports are filed with the county clerk no later than 12:00 noon on the date due for filing. Any reports filed after 12:00 noon on the date due for filing will not be deemed timely filed until received by the Commission. The county clerk shall retain one of the copies of the report, and transmit the original and two copies to the Commission. The copy retained by the county clerk shall be duly certified by the campaign treasurer as a duplicate copy. This subsection is not applicable to election-cycle reports other than primary or general elections, and is not applicable to quarterly reports.

(c) With the exception of reports filed with a county clerk pursuant to (b) above, an additional copy of a candidate committee, or joint candidates committee, report filed pursuant to N.J.A.C. 19:25-8.1 shall be filed with the county clerk of the county in which the candidate, or joint candidates, seek office. A candidate, or joint candidates, for State legislative office shall file a copy with the county clerk of the county, or county clerks of the counties, in which the candidate, or joint candidates, resides or reside, if the legislative district includes more than one county. Such a report shall be duly certified as a duplicate copy by the campaign treasurer.

HEALTH

(a)

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICES

Worker and Community Right to Know Act Rules

Proposed Amendment: N.J.A.C. 8:59-5.6

Authorized By: Bruce Siegel, M.D., M.P.H., Commissioner, Department of Health.

Authority: N.J.S.A. 34:5A-1 et seq., specifically N.J.S.A. 34:5A-30.

Proposal Number: PRN 1993-424.

Submit written comments by September 1, 1993 to:

Richard Willinger, Program Manager
Right to Know Program
Occupational Health Services
New Jersey Department of Health
CN 368
Trenton, NJ 08625-0368
(609) 984-2202

The agency proposal follows:

Summary

N.J.A.C. 8:59 implements the requirements of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq. The chapter establishes a comprehensive system for the disclosure and dissemination of information about hazardous substances in the workplace and the environment to public employees, emergency responders, and community residents.

The Act was passed to address the significant incidence of illnesses and injuries to workers in the public and private sectors, as well as known and suspected injuries to community residents from hazardous substances in the environment. The law was intended to provide information about hazardous chemicals to workers and community residents so that they could make reasoned decisions and take informed action about their employment and living conditions.

Subsequent to passage of the Act, litigation resulted in pre-empting those portions of the law that protected private employees, so that in the private sector, the requirements to inventory hazardous chemicals and label containers are for the benefit of emergency responders and community residents. In addition, the Act continued to protect public employees, who were not pre-empted.

Significant amendments to the Right to Know Act rules, N.J.A.C. 8:59, were proposed on March 1, 1993, at 25 N.J.R. 864(a), and are adopted elsewhere in this issue of the New Jersey Register. These proposed amendments are a continuation of the process to amend the rules, begun on March 1, and constitute amendments to the rules that are so substantive as to require additional public notice and comment.

The proposed amendments are to the labeling requirements in N.J.A.C. 8:59-5.6(a)4 and 5.6(g).

In the March 1, 1993 proposal, the Department proposed to set a threshold of five pounds or 0.5 gallons (which was changed to two kilograms or two liters) below which a container would not have to be labeled, for both consumer and non-consumer products. However, for non-consumer products, any Special Health Hazard Substances in the products would have to be labeled at a lower threshold, such threshold to be set at a later date.

The within proposed amendments extend Special Health Hazard Substance labeling below the two kilogram or two liter threshold to consumer products, and sets the threshold for labeling of Special Health Hazard Substances.

The reasoning behind requiring labeling of Special Health Hazard Substances in both consumer and non-consumer products below the two kilogram/two liter threshold is that it is important for emergency responders, public employees, and community residents to know about the most hazardous chemicals and products that they have contact with or may have contact with in the course of their work and in their home, in order to protect their health and safety and property. As analogous situations the Occupational Safety and Health Administration does not set any threshold for hazardous products in the workplace, and the Environmental Protection Agency sets thresholds down to one pound for the most hazardous chemicals.

Special Health Hazard Substances are those chemicals that are listed on the Special Health Hazard Substance List developed by the Department pursuant to N.J.A.C. 8:59-10. (See N.J.A.C. 8:59, Appendix B). Special Health Hazard Substances are chemicals that are carcinogenic (cause cancer), mutagenic (cause genetic changes in the body), teratogenic (cause birth defects), highly flammable (in the 3rd or 4th degree as defined by the National Fire Protection Association, or meet the definition of flammable liquid, flammable compressed gas, or flammable solid as defined by the United States Department of Transportation), highly reactive (in the 2nd, 3rd or 4th degree as defined by the National Fire Protection Association), or corrosive (as defined by the United States Department of Transportation).

The Department proposes to set a container size threshold of zero for consumer and non-consumer products that contain ingredients that are carcinogens, mutagens or teratogens. This threshold is consistent with the original Right to Know law threshold and, therefore, does not create a greater burden on covered employers than previous requirements. Any carcinogens, mutagens or teratogens in the product must be labeled down to a level of 0.1 percent.

The Department proposes to set a container size threshold of zero for consumer and non-consumer products that contain ingredients that are flammable, reactive or corrosive, if the product that contains one of the flammable, reactive or corrosive Special Health Hazard Substances meets the Special Health Hazard criteria for flammable, reactive or corrosive. If the product meets the Special Health Hazard criteria, only the Special Health Hazard Substance ingredients need to be listed on the label. If the product does not meet the Special Health Hazard criteria, then the product does not have to be labeled if it is below the two kilogram/two liter threshold. The following are examples that explain this coverage:

Example 1—a product packaged in a one liter container (which is below the two kilogram/two liter threshold) is composed of 100 percent Acetaldehyde, which is on the Special Health Hazard Substance List as an F4 flammable. Therefore, the product meets the Special Health Hazard criteria for an F4 flammable and the chemical name "Acetaldehyde" would have to be listed on the product label along with its Chemical Abstracts Service (CAS) Number.

Example 2—a product packaged in a one liter container is composed of 10 percent Acetaldehyde and 90 percent water. This product would not meet the criteria of an F4 flammable or an F3 flammable and, therefore, would be exempt from all Right to Know labeling because it falls below the two kilogram/two liter container threshold.

Example 3—A product packaged in a one liter container is composed of 70 percent Acetaldehyde and 30 percent Diethyl Ether, another highly flammable substance. This product meets the criteria of an F4 flammable, therefore, Acetaldehyde would have to be listed on the label with its CAS number. The second chemical, Diethyl Ether, would have to be listed on the label because it also is on the Special Health Hazard Substance List. Even if the second chemical reduced the flammability of the product to an F3 flammable, since this category of flammability is still considered to be a Special Health Hazard, Acetaldehyde would have to be listed on the label. Any ingredients that are not Special Health Hazards would not have to be listed on the label.

The proposal to require the labeling of Special Health Hazard Substances in consumer products below the threshold was suggested by the New Jersey Industrial Union Council—AFL-CIO and the Right to Know and Act Coalition in their comments on the March 1, 1993, proposed amendments. In their comments, they claimed that many consumer products bought in hardware and paint stores are hazardous; that these hazardous products are brought into the workplace and home; and that Poison Information Centers need to know the chemical ingredients of these products in order to save the lives of children and workers from chemical poisoning incidents that occur. The Camden Fire Department also commented that there are a significant number of retail products that should contain ingredient labeling.

For non-consumer products, many commenters on the March 1, 1993, proposed amendments agreed that Special Health Hazard Substances should be labeled below the threshold (although they did not all agree on what the threshold should be), including the New Jersey Industrial Union Council—AFL-CIO, Right to Know and Act Coalition, Coalition Against Toxics, Union Carbide, Exxon Chemical Americas, and the Chemical Industry Council of New Jersey.

Social Impact

Identifying products that cause cancer, genetic mutations, and reproductive harm enables persons to eliminate or reduce their exposure

to such harmful products, thereby reducing the incidence of illnesses in New Jersey from these health hazards. Identifying products that are highly flammable, highly reactive, and corrosive enables persons, especially emergency responders, to protect themselves during an emergency response to an incident involving these products, thereby reducing the incidence of illnesses and injuries in New Jersey from these health and safety hazards.

Economic Impact

The economic impact on the regulated community should not be increased because the regulated community has been labeling Special Health Hazard Substances along with other ingredients on labels pursuant to the Right to Know law since 1985 for the public sector and 1990 for the private sector. However, the recent amendments that were adopted indicated that there would be a complete labeling exemption for consumer products below the two kilogram/two liter threshold and this proposal changes that. In that regard there may be additional economic costs for producers of consumer products. For non-consumer products, employers knew a lower threshold was going to be set for Special Health Hazard Substances, even though they did not know what it would be. This threshold is being proposed concurrently with the adoption of the two kilogram/two liter threshold, therefore, employers will be able to integrate this Special Health Hazard threshold in their labeling efforts and it should not cause extra costs.

The economic impact on reducing health care costs should be positive in both the short and long term because public workers, emergency responders, and community residents will be able to reduce their short-term illnesses and injuries from these extremely hazardous substances, as well as their long-term illnesses from cancer, genetic mutations and reproductive harm.

Regulatory Flexibility Analysis

The proposed amendments and their cost-related impacts delineated in the Summary and the Economic Impact above, respectively, affect those public and private employers whose activities fall within the Standard Industry Classification Codes specified at N.J.A.C. 8:59. Some of the private employers affected may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments should not increase the cost for small businesses for the reasons listed under the Economic Impact above. Therefore, no differentiation in requirements or exemptions is provided based on business size.

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

8:59-5.6 Exclusions from the requirement to label

(a) Containers containing the following categories of hazardous or other substances shall be exempt from the requirements of labeling:

1.-3. (No change.)

4. Any product which contains a hazardous or other substance in the same form and concentration as a product packaged for distribution and use by the general public, if the primary use container of the product is two kilograms (4.4 pounds) or two liters (0.53 gallons) or smaller.

i. [(Reserved.)] **The container thresholds in (a)4 above shall not apply to products that contain carcinogenic, mutagenic or teratogenic substances which are listed on the Special Health Hazard Substance List. (See N.J.A.C. 8:59-10.2.) For products that are below the two kilogram/two liter threshold and contain carcinogens, mutagens or teratogens, the chemical names and Chemical Abstracts Service numbers of all carcinogens, mutagens and teratogens shall be listed on the product's label. Other ingredients do not need to be listed on the label.**

ii. The container thresholds in (a)4 above shall not apply to products that contain flammable, reactive or corrosive substances which are listed on the Special Health Hazard Substance List, and that meet the Special Health Hazard Substance List's criteria for flammability, reactivity or corrosivity. (See N.J.A.C. 8:59-10.2.) For products that are below the two kilogram/two liter threshold and meet the Special Health Hazard Substance List's criteria for flammability, reactivity or corrosivity, the chemical names and Chemical Abstracts Service numbers of the flammable, reactive or corrosive substances which contribute to the Special Health Hazard of the product, shall be listed on the product's label. Other ingredients do not need to be listed on the label.

[ii.]**iii.** Consumer products **both** above **and below** this threshold shall be exempt from labeling, **regardless of the presence of Special Health Hazard Substances,** if the product is in the same form and concentration as a product packaged for distribution and use by the general public to which a public or private employee's exposure during handling is not significantly greater than a consumer's exposure during the principal use of the product.

5.-12. (No change.)

(b)-(f) (No change.)

(g) All containers that are two kilograms (4.4 pounds) or two liters (0.53 gallons) or smaller shall be exempt from labeling. [The threshold specified by this subsection shall not apply to Special Health Hazard Substances. The Department shall set lower thresholds for substances which appear on the Special Health Hazard Substance List, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30.]

1. The container thresholds in (g) above shall not apply to products that contain carcinogenic, mutagenic or teratogenic substances which are listed on the Special Health Hazard Substance List. (See N.J.A.C. 8:59-10.2.) For products that are below the two kilogram/two liter threshold and contain carcinogens, mutagens or teratogens, the chemical names and Chemical Abstracts Service numbers of all carcinogens, mutagens and teratogens shall be listed on the product's label. Other ingredients do not need to be listed on the label.

2. The container thresholds in (g) above shall not apply to products that contain flammable, reactive or corrosive substances which are listed on the Special Health Hazard Substance List, and that meet the Special Health Hazard Substance List's criteria for flammability, reactivity or corrosivity. (See N.J.A.C. 8:59-10.2). For products that are below the two kilogram/two liter threshold and meet the Special Health Hazard Substance List's criteria for flammability, reactivity or corrosivity, the chemical names and Chemical Abstracts Service numbers of the flammable, reactive or corrosive substances which contribute to the Special Health Hazard of the product, shall be listed on the product's label. Other ingredients do not need to be listed on the label.

(h) (No change.)

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route N.J. 67 in Bergen County

Proposed Amendment: N.J.A.C. 16:28-1.125

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

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

Proposal Number: PRN 1993-401.

Submit comments by September 1, 1993 to:

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

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28-1.125 to revise speed limits along Route N.J. 67 in the Borough of Fort Lee, Bergen County. The proposed amendment generally lowers the speed limit from a prior range of 30 to 40 miles per hour to a new range of 25 to 35 miles per hour. Speed zones are also more clearly defined, including mileposts.

This amendment is being proposed at the request of Fort Lee Borough and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Bureau of Traffic Engineering and Safety Programs proved that revised speed zones were warranted. Appropriate signs will be erected to advise motorists.

Social Impact

The proposed amendment will establish generally lower speed limits along Route N.J. 67 in the Borough of Fort Lee, Bergen County to enhance safety and improve traffic flow. Appropriate signs will be erected to advise motorists.

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]):

16:28-1.125 Route 67

(a) The rate of speed designated for the certain parts of State highway Route 67 described in this [section] **subsection** shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

[i. 40 mph from the junction of Routes 5 and 67 to Whiteman Street; thence

ii. 30 mph to a point 1,000 feet south of the intersection of Lincoln Avenue; thence

iii. 40 mph to the junction of Routes U.S. 9W and 67;

iv. The legal speed limits through school zones shall be subject to the provisions of N.J.S.A. 39:4-98(a).]

i. In Bergen County:

(1) Fort Lee Borough:

(A) Zone 1: 35 miles per hour between the junction of Route N.J. 5-Route N.J. 67 and Riverdale Drive (approximate mileposts 0.00 to 0.67); thence

(B) Zone 2: 30 miles per hour between Riverdale Drive and Hoym Street (approximate mileposts 0.67 to 1.03); thence

(C) Zone 3: 25 miles per hour between Hoym Street and 300 feet north of Main Street (approximate mileposts 1.03 to 1.13); thence

(D) Zone 4: 30 miles per hour between 300 feet north of Main Street and North Marginal Road (approximate mileposts 1.13 to 1.43); thence

(E) Zone 5: 35 miles per hour between North Marginal Road and Route U.S. 9W except while "25 MPH When Flashing" signs are operating when passing through the Fort Lee High School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 1.43 to 1.98).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping Routes U.S. 1 and 9 in Union County; N.J. 45 in Gloucester County; N.J. 57 in Warren County; and N.J. 88 in Ocean County

Proposed Amendments: N.J.A.C. 16:28A-1.2, 1.31, 1.36 and 1.44

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-139, 39:4-198 and 39:4-199.

Proposal Number: PRN 1993-402.

Submit comments by September 1, 1993 to:

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

The agency proposal follows:

Summary

The Department of Transportation proposes to amend and establish parking restrictions along various highways as described in the following counties and municipalities:

N.J.A.C. 16:28A-1.2, Route U.S. 1 and 9, is being amended to add handicapped parking along Spring Street in the City of Elizabeth, Union County.

N.J.A.C. 16:28A-1.31, N.J. Route 45, is being amended to add "time limit parking" along North and South Broad Streets, in the City of Woodbury, Gloucester County.

N.J.A.C. 16:28A-1.36, N.J. Route 57, is being amended to add handicap parking along West Washington Avenue in the Borough of Washington, Warren County.

N.J.A.C. 16:28A-1.44, N.J. Route 88, is being amended to add "no stopping or standing" zones in the Townships of Lakewood and Brick, Ocean County. In addition, this section is being amended at subsections (b) and (c) to conform with the Department's current format of rulemaking.

These amendments are being proposed at the request of local governments and as part of the Department's on-going review of current conditions. The traffic investigation conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that these amendments will improve the flow of traffic and enhance safety along the highway system.

Social Impact

The proposed amendments will establish parking restrictions along Routes U.S. 1 and 9 in the City of Elizabeth, Union County; N.J. 45 in the City of Woodbury, Gloucester County; N.J. 57 in the Borough of Washington, Warren County; and N.J. 88 in the Townships of Lakewood and Brick, Ocean County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. Local governments will pay for installation of appropriate parking restriction signs. The costs involved in the installation and procurement of signs vary, depending upon the materials 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-1.2 Route U.S. 1 and 9

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

(d) The certain parts of State highway Route U.S. 1 and 9 described in this subsection shall be designated and established as restricted parking space for the use of persons who have been issued special Vehicle Identification Cards by the Division of Motor Vehicles in accordance with N.J.S.A. 39:4-197.5. Under the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking space:

1. Restricted parking in the City of Elizabeth, Union County:

i. Along the Service Road southbound (Spring Street) west side:

(1) Beginning at a point 40 feet north of the northerly curb line of Fanny Street and extending to a point 22 feet north therefrom.

16:28A-1.31 Route 45

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

(c) The certain parts of State highway Route 45 described in this subsection shall be designated and established as "time limit parking" zones where parking is prohibited at all times except as specified below. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established time limit parking zones:

1. (No change.)

2. In the City of Woodbury, Gloucester County:

i. Along the east side:

(1) South Broad Street:

(A) Two hours time limit parking between Carpenter Street—Penn Street and Cooper Street—Delaware Street daily 9:00 A.M. to 9:00 P.M.

(2) North Broad Street:

(A) Fifteen minutes time limit parking between Cooper Street and Federal Street (Post Office Driveway) daily 8:00 A.M. to 6:00 P.M.

(B) One hour time limit parking between Federal Street (Post Office Driveway) and Hunter Street daily 8:00 A.M. to 6:00 P.M.

(C) Two hours time limit parking between Hunter Street and the Deptford Township Line daily 8:00 A.M. to 6:00 P.M.

ii. Along the west side:

(1) South Broad Street:

(A) Two hours time limit parking between Carpenter Street—Penn Street and Wester Center Street daily 9:00 A.M. to 9:00 P.M.

(2) North Broad Street:

(A) Fifteen minutes time limit parking between Delaware Street and Federal Street (Post Office Driveway) daily 8:00 A.M. to 4:00 P.M.

(B) One hour time limit parking between Federal Street (Post Office Driveway) and Hunter Street daily 8:00 A.M. to 4:00 P.M.

(C) Two hours time limit parking between Hunter Street and Red Bank Avenue daily 8:00 A.M. to 4:00 P.M.

(D) Two hours time limit parking between Red Bank Avenue and the West Deptford Township Line daily 8:00 A.M. to 6:00 P.M.

16:28A-1.36 Route 57

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

(c) The certain parts of State highway Route 57 described in this subsection shall be designated and established as a restricted parking space, for the use of persons who have been issued Special Vehicle Identification Cards by the Division of Motor Vehicles. No other person shall be permitted to park in these areas. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking space:

[1. Along the south side of West Washington Avenue, in the Borough of Washington, Warren County:

i. Beginning at a point 93 feet east of the easterly curb line of Broad Street and extending 23 feet easterly therefrom.]

1. In the Borough of Washington, Warren County:

i. Along the south side:

(1) West Washington Avenue:

(A) Beginning at a point 93 feet east of the easterly curb line of Broad Street and extending 23 feet easterly therefrom.

ii. Along the north side:

(1) West Washington Avenue:

(A) Beginning at a point 25 feet west of the westerly curb line of School Street and extending 20 feet westerly therefrom.

(B) Beginning at a point 45 feet west of the westerly curb line of School Street and extending 23 feet westerly therefrom.

16:28A-1.44 Route 88

(a) The certain parts of State [Highway] **highway** Route 88 described in this subsection shall be designated and established as "no [parking] **stopping or standing**" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. **In accordance with the provisions of N.J.S.A. 39:4-198, proper signs must be erected.**

1.-2. (No change.)

3. No stopping or standing in Lakewood Township, Ocean County:

i. Along the [south] **southerly** side (Ocean Avenue):

(1) [From Railroad Avenue to a point 150 feet east of the easterly curb line of New Hampshire Avenue] **From a point 300 feet west of the prolongation of the westerly curb line of Lexington Avenue to a point 150 feet east of the easterly curb line of New Hampshire Avenue;**

ii. Along the southerly side (Main Street):

(1) (No change.)

(2) From a point 90 feet east of the easterly curb line of Route U.S. 9 to a point 300 feet west of the prolongation of the westerly curb line of Lexington Avenue between the hours of 3:00 A.M. and 8:00 A.M. (except Sundays and legal holidays).

iii. Along the northerly side (Main Street):

(1)-(2) (No change.)

(3) From a point 212 feet east of the easterly curb line of Route U.S. 9 to Railroad Avenue between the hours of 3:00 A.M. and 8:00 A.M. (except Sundays and legal holidays).

iv. Along the northerly side (Ocean Avenue):

[(10) Beginning] **(1) From a point** 150 feet west of the westerly curb line of New Hampshire Avenue to a point 150 feet east of the easterly curb line of New Hampshire Avenue.

[4. No parking between the hours of 3:00 A.M. and 8:00 A.M. in Lakewood Township, Ocean County: (except Sundays and legal holidays):

i. Along the southerly side (Main Street):

(1) Beginning 90 feet from the easterly curbline of Route U.S. 9 to Railroad Avenue;

ii. Along the northerly side (Main Street):

(1) Beginning 212 feet from the easterly curb line of Route U.S. 9 to Railroad Avenue.]

4. No stopping or standing in Brick Township, Ocean County:

i. Along both sides:

(1) For the entire length within the corporate limits, including all ramps, service roads and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other parking restrictions adopted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 1:30.

[5. No parking—loading zones are established in Lakewood Township, Ocean County as follows:

i. Along the northerly side:

(1) Between points 258 feet and 318 feet west of the westerly curbline of Lexington Avenue.

6. No stopping or standing in Brick Township, Ocean County:

i. Along both sides for the entire length within the corporate limits of Brick Township including all ramps, service roads, and connections under the jurisdiction of the Commissioner of Transportation.]

(b) The certain parts of State [Highway] **highway** Route 88 described in this [section] **subsection** shall be designated and established as "no parking **bus stop**" zones where parking is

prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

[1. No parking bus stop—7:00 A.M.-2:00 P.M.—Sunday only:

i. Along the eastbound side in Lakewood Township:

(1) Mid-block bus stop from a point 90 feet east of the easterly curb line of Route U.S. 9 to a point 190 feet east of the easterly curb line of Route U.S. 9.

2. Along the westbound (northerly) side thereof in Lakewood Township, Ocean County:

i. Far side bus stop:

(1) New Hampshire Avenue: beginning at the westerly curbline of New Hampshire Avenue and extending 200 feet westerly therefrom.]

1. In the Township of Lakewood, Ocean County:

i. No parking bus stops—7:00 A.M. to 2:00 P.M.—Sunday only:

(1) Along the eastbound side:

(A) Mid-block bus stop: From a point 90 feet east of the easterly curb line of Route U.S. 9 to a point 190 feet east of the easterly curb line of Route U.S. 9.

(2) Along the westbound (northerly) side:

(A) Far side bus stop: New Hampshire Avenue—Beginning at the westerly curb line of New Hampshire Avenue and extending 200 feet westerly therefrom.

(c) The certain parts of State highway Route 88 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times and all hours. In accordance with N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established loading zones:

1. In the Township of Lakewood, Ocean County:

i. Along the northerly side:

(1) Between points 258 feet and 318 feet west of the westerly curb line of Lexington Avenue.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Turn Prohibitions
Routes U.S. 30 in Camden County
Proposed Amendments: N.J.A.C. 16:31-1.10

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.

Proposal Number: PRN 1993-404.

Submit comments by September 1, 1993 to:

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

The agency proposal follows:

Summary

N.J.A.C. 16:31-1.10, Route U.S. 30, is being amended to effect a "no left turn" eastbound into the Lions Head Plaza entrance (northbound) in the Borough of Magnolia, Camden County. The amendment is being proposed at the request of the municipal government, and as part of the Department's on-going review of current conditions. The traffic investigation conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that the establishment of this traffic amendment was warranted. The provision of this amendment will improve the flow of traffic and enhance safety along the highway system. Signs are required to notify motorists of the restriction proposed herein.

Social Impact

The proposed amendment will establish a turn restriction along Route U.S. 30 in the Borough of Magnolia, Camden 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 the 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 rule 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 rule.

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

16:31-1.10 Route U.S. 30

(a) Turning movements of traffic on the certain parts of State highway Route U.S. 30 described in this subsection are regulated as follows:

1. No left turns:

i. (No change.)

ii. Westerly on Route U.S. 30 to southerly on Illinois Avenue[.];

iii. In the Borough of Magnolia, Camden County:

(1) Eastbound into the Lions Head Plaza entrance (northbound) (approximate milepost 9.81), 90 feet east of Monroe Avenue.

(b)

NEW JERSEY TRANSIT CORPORATION
Disability Discrimination Complaint Procedure
Proposed New Rules: N.J.A.C. 16:84

Authorized By: New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director.

Authority: N.J.S.A. 27:25-5(e), 42 U.S.C. §12101 et seq. and 28 C.F.R. §35.107.

Proposal Number: PRN 1993-407.

Submit written comments by September 1, 1993 to:

Albert R. Hasbrouck, III
Senior Director
Corporate Affairs
NJ TRANSIT Headquarters
One Penn Plaza East
Newark, New Jersey 07105-2246

The agency proposal follows:

Summary

The proposed new rules establish a procedure for NJ TRANSIT to follow when someone such as patrons, employees, and applicants wishes to complain that the agency has done something that violates the Americans with Disabilities Act, also known as the ADA (42 U.S.C.A. §12101 et seq.). The ADA prohibits a public entity, including NJ TRANSIT, from discriminating against a qualified individual with a disability, or from excluding that person from participation in, or denying the person the benefits of, the services, programs or activities of the Agency. Regulations of the United States Justice Department (found at 28 C.F.R. Part 35) require that such governmental agencies maintain and publish a procedure to be followed when someone wishes to complain of a violation of the law. Under this procedure anyone, including an employee or applicant for employment, who believes he or she has been discriminated against in any program, service or activity of NJ TRANSIT, may require the Agency to review and, if appropriate, to investigate the complaint. These rules set a 60 day objective for the completion of the inquiry by the agency and the issuance of a written determination by

the head of the agency or a designee; they also set a 30 day limit following the incident complained of in which the individual may file a complaint. The rules also identify by title, with address and telephone number, the ADA coordinator of the agency who will be the person to receive the complaint in the first instance. These rules also contain a form for filing a complaint and a Notice of ADA Procedure, a copy of which will be made available to interested persons.

Social Impact

Because the injustice of discrimination continues to be visited upon the disabled members of society solely on account of their disabilities, Congress passed the ADA, which attacks the injustice on many fronts and with many methods. One of these fronts is public entities and one of the methods is the requirement that such public entities undertake an examination of complaints that they have violated the substantive provisions of the ADA. The disabled are sometimes excluded from the programs, services or activities of government agencies out of ignorance on the part of the non-disabled and sometimes out of the lack of an available established mechanism whereby those barriers to participation or enjoyment of benefits can be removed. This proposed complaint procedure will provide the disabled one means to correct such lingering discrimination and to eliminate persisting barriers. The procedure will also assist NJ TRANSIT in eliminating such discrimination by bringing to the agency's attention instances where such discrimination continues to exist and providing the agency the necessary insight and opportunity to correct them. Both the society at large, and the government in particular, and the disabled individuals will benefit from the enactment of these rules, as barriers to access are removed and the programs, services and activities of NJ TRANSIT are made available in a non-discriminatory manner, thereby enabling the disabled fuller and more equal participation in all aspects of life. It is in the nature of the proposed procedure that it be informal and expeditious, but still effective; thus, the remediation of discriminatory conditions will be facilitated quickly and without the cumbersome and sometimes counterproductive formalities of other methods of complaint resolution. Additionally, this procedure does not preclude individuals from reporting incidents orally or in writing to a responsible company official in an effort to resolve the matter to the mutual satisfaction of all parties without resorting to the filing of a complaint.

Economic Impact

Although the proposed complaint procedure will result in some minor additional expense to the agency, the result of the inquiries and investigations precipitated by the use of the procedure may have significant economic impacts, both as additional expenses are incurred by the agency in remediating instances of discrimination or eliminating barriers, and as the resulting nondiscriminatory access to the agency's programs, services and activities results in additional gains for the disabled that have economic value to them.

Regulatory Flexibility Statement

The proposed new rules do not require private entities to maintain any records or, in fact, to do anything at all, but merely requires NJ TRANSIT to follow certain procedures. Therefore, no regulatory analysis is required for these rules.

Full text of the proposed new rules follows:

CHAPTER 84
DISABILITY DISCRIMINATION COMPLAINT PROCEDURE

SUBCHAPTER 1. DEFINITIONS

16:84-1.1 Definitions

As used in this chapter, the following terms have the indicated meanings:

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Transit Corporation and its operating divisions, NJ TRANSIT Bus Operations, Inc.; NJ TRANSIT Rail Operations, Inc.; and NJ TRANSIT Mercer, Inc.

"Executive Director" means the Executive Director or his or her designee.

SUBCHAPTER 2. GENERAL PROVISIONS

16:84-2.1 Purpose

(a) These rules are adopted by the Agency in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, 28 C.F.R. 35.107.

(b) The purpose of these rules is to establish a designated coordinator whose duties shall include assuring that the Agency complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint filed with the Agency pursuant to N.J.A.C. 16:84-4.

16:84-2.2 Required ADA Notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the Agency's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the Agency.

AGENCY NOTICE OF ADA PROCEDURE

The Agency has adopted an internal procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the Americans with Disabilities Act. Title II states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination" in programs or activities sponsored by a public entity.

Rules describing and governing the internal procedure can be found in the New Jersey Administrative Code, N.J.A.C. 16:84-1.1 et seq. As those rules indicate, complaints should be addressed to the Agency's designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

Bobby Coney
Manager, EEO/AA and Diversity Programs
NJ TRANSIT Headquarters
One Penn Plaza East
Newark, NJ 07105-2246
Phone: 201-491-8052

1. The Agency's company procedure does not preclude individuals from reporting incidents orally or in writing to a responsible company official in an effort to resolve a matter to the mutual satisfaction of all parties without resorting to the filing of a complaint.

2. A complaint should be filed in writing and contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator.

3. A complaint should be filed promptly within 30 days by the complainant after the incident or action being reported. (Processing of allegations of discrimination which occurred before this complaint procedure was in place will be considered on a case-by-case basis).

4. An investigation, as may be appropriate, will follow the filing of a complaint. The investigation will be conducted by the Agency's designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint.

5. In most cases, a written determination as to the validity of the complaint and a description of the resolution, if any, will be issued by the "Executive Director" and/or his or her designee and a copy forwarded to the complainant no later than 60 days after its filing with the ADA Coordinator.

6. The ADA Coordinator will maintain the files and records of the Agency relating to the complaints filed.

7. The right of a person to a prompt and equitable resolution of the complaint filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA complaint with the responsible Federal department or agency of the New Jersey Division of Civil Rights. Use of this complaint procedure is not a prerequisite to the pursuit of other remedies.

8. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards

and to assure that the Agency complies with the ADA and implementing Federal rules.

SUBCHAPTER 3. DESIGNATED ADA COORDINATOR

16:84-3.1 Designated ADA coordinator

(a) The designated coordinator of ADA compliance and complaint investigation for the Agency is:

Bobby Coney
Manager, EEO/AA and Diversity Programs
NJ TRANSIT Headquarters
One Penn Plaza East
Newark, NJ 07105-2246
Phone: 201-491-8052

(b) All inquiries regarding the Agency's compliance with the ADA and the availability of accomodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the Agency should be directed to the designated coordinator identified in (a) above.

(c) All complaints alleging that the Agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this Section, in accordance with the procedures set forth in N.J.A.C. 16:84-4.

SUBCHAPTER 4. ADA COMPLAINT PROCEDURES

16:84-4.1 Procedure

A complaint alleging that the Agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted in writing to the designated ADA coordinator identified in N.J.A.C. 16:84-3.1(a).

16:84-4.2 Complaint contents

(a) A complaint submitted pursuant to this subchapter may be submitted in or on the form set forth at N.J.A.C. 16:84-4.3.

(b) A complaint submitted pursuant to this subchapter shall include the following information:

1. The name of the complainant, and/or any alternate contact person designated by the complainant to receive communication or provide information for the complainant;

2. The address and telephone number of the complainant or alternate contact person; and

3. A description of manner in which ADA has not been complied with or has been violated, including times and locations of events and names of witnesses, if appropriate.

16:84-4.3 Complaint form

Appendix A to this chapter contains the form that may be utilized for the submission of a complaint pursuant to this subchapter. A copy of the form may be obtained by contacting the designated ADA coordinator identified at N.J.A.C. 16:84-3.1.

16:84-4.4 Investigation

(a) Upon receipt of a complaint submitted pursuant to this subchapter, the designated ADA coordinator will notify the complainant of the receipt of the complaint and the initiation of an investigation into the matter. The designated ADA coordinator will also indicate a date by which it is expected that the investigation will be completed, which date shall not be later than 60 days from the date of receipt of the complaint by the ADA Coordinator, unless a later date is agreed to by the complainant.

(b) Upon completion of the investigation, the designated ADA coordinator shall prepare a report for review by the Executive Director or his or her designee for the Agency. The Executive Director or his or her designee shall render a written decision within 60 days of receipt of the complaint, unless a later date is agreed to by the complainant, which decision shall be transmitted to the complainant and/or the alternate contact person if so designated by the complainant.

APPENDIX A

NJ TRANSIT

DISABILITY DISCRIMINATION COMPLAINT FORM

INFORMATION PROVIDED TO THE ADA COORDINATOR IS MAINTAINED IN CONFIDENCE AND DIVULGED ONLY TO THE EXTENT NECESSARY TO CONDUCT A COMPREHENSIVE AND THOROUGH INVESTIGATION.

NAME:		
ADDRESS:		
PHONE NUMBERS: Work ( )		**Home ( )**
NAME, ADDRESS & TELEPHONE # OF ALTERNATE CONTACT PERSON:		
NJ TRANSIT EMPLOYEES ONLY		
POSITION:	**DEPARTMENT:**	**LOCATION:**
SUPERVISOR:		
DATE OF HIRE:	**EMPLOYEE #:**	**SOCIAL SECURITY #:**
DISABILITY OF COMPLAINANT		
Agency alleged to have denied access:		
Department:	**Division:**	
Bureau/Office:	**Location:**	
Incident or Barrier:		
Please describe the particular way in which you believe you have been denied the benefit of any service, program of activity or have otherwise been subject to discrimination. Please specify dates, times and places of incidents, and names and/or positions of agency employees involved, if any, as well as names, addresses and telephone numbers of any witnesses to any such incident. (Attach additional pages if necessary.)		
Proposed access or accommodation:		
If you wish, describe the way in which you feel access may be had to the benefits described above, or that accommodation could be provided to allow access:		
DATE OF ALLEGED DISCRIMINATION:		
Earliest / /	**Latest / /**	☐ **Continuing Action**

Name of Witness:	Address/Work Location:
Name of Witness:	Address/Work Location:
Name of Witness:	Address/Work Location:

Has the problem been reported to any other person? ☐ YES ☐ NO

If yes, with whom did you speak?

Name: Date: Position:

What was the result of your conversation with that person?

(NJ TRANSIT Employees Only)

Have you sought assistance about the action you think was discriminatory from your supervisor, union rep., or from any other person? ☐ YES ☐ NO

(If the answer is yes, complete below):

Name of Person:	Position:	Date Assistance Sought: / /

RESULTS (IF ANY):

Have you filed a complaint in the past? ☐ YES ☐ NO (If the answer if yes, complete below):

Approximate Date(s) Filed: / /	Person(s):

SIGNATURE OF COMPLAINANT: DATE:

For EEO/AA Department Use Only

ACTION: (Termination, Discipline, Promotion, Accommodation, Access, etc.)	Complaint #:	Date Filed: / /	Date Closed: / /
DIVISION: ☐ Bus ☐ Rail ☐ Administrative Support	DEPARTMENT:		
Investigator Assigned Date	BASIS (Physical, Mental, Perception, Drug, Alcohol, etc.):		
Manager EEO/AA & Diversity Programs Date (Signature)			

(a)

NEW JERSEY TRANSIT CORPORATION
Contracting Policies and Procedures
Proposed New Rules: N.J.A.C. 16:85

Authorized By: The New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director, New Jersey Transit Corporation.
Authority: N.J.S.A. 27:25-5 and 27:26-6(b).
Proposal Number: PRN 1993-408.

Submit comments by September 1, 1993 to:
Albert R. Hasbrouck, III
NJ TRANSIT
One Penn Plaza East
Newark, New Jersey 07105-2246

The agency proposal follows:

Summary

In April 1986, the NJ TRANSIT Board of Directors adopted a contracting out policy to govern the contractual arrangements between NJ TRANSIT and private bus carriers. Recently, the Superior Court of New Jersey, Appellate Division issued an opinion *Academy Bus Tours, Inc. v. New Jersey Transit Corporation,* Docket No. A-2195-90T3 (March 31, 1993) which required NJ TRANSIT to adopt the policy as rules in accordance with the State's Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. In order to continue the provision of essential public transportation services and to comply with the court's order, NJ TRANSIT is seeking comments on these proposed rules.

N.J.A.C. 16:85 contains the requirements governing the procurement by NJ TRANSIT of bus services pursuant to N.J.S.A. 27:25-6(b). Subchapter 1 describes the purpose of these rules and the applicable definitions, and subchapter 2 sets forth the guidelines and criteria to be followed in seeking proposals and in the awarding of contracts. Subchapter 3 sets forth the detailed procedures to be used during the Request for proposals (RFP) process.

Social Impact

The proposed new rules set forth the guidelines, criteria and procedures to be followed when NJ TRANSIT awards contracts for the provision of regular route public transportation by bus. NJ TRANSIT presently contracts for such services throughout the State. The procedures delineated in the rules will provide protection for the interests of the riding public, the taxpayers who subsidize such services and the individual motor bus carriers who submit proposals.

Economic Impact

NJ TRANSIT presently contracts with motor bus carriers to provide regular route bus services on various routes throughout the State. Such services cost the State of New Jersey approximately $18.3 million annually and approximately 6,010,190 riders use the services. The continuation of this program is expected to provide economies to the State which might not be available without the program. For those carriers choosing to respond to RFPs there are related administrative costs such as study and document preparations.

Regulatory Flexibility Analysis

The proposed rules apply to persons and entities who wish to submit proposals to operate regular route bus service pursuant to contract with NJ TRANSIT. Some of these entities may be small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules require that such proposals be submitted in a specified manner. No different treatment has been provided for small businesses. The rules provide for equal treatment of businesses in the process whether large or small in the interests of public safety and fairness to all proposers. The amount and types of information required are necessary for NJ TRANSIT to make decisions of not only the financial benefits but of safety issues as well.

Full text of the proposed new rules follows:

CHAPTER 85
CONTRACTING POLICIES AND PROCEDURES

SUBCHAPTER 1. GENERAL PROVISIONS

16:85-1.1 Purpose

NJ TRANSIT was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.) as an instrumentality of the State to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner. One of the ways by which NJ TRANSIT fulfills this responsibility is by reviewing opportunities to contract out its regular route bus services. In April 1986, the NJ TRANSIT Board of Directors adopted a contracting out policy to govern how the existing bus services provided by NJ TRANSIT might be contracted in an effort to reduce the cost of providing such services. Since 1986, NJ TRANSIT has awarded numerous contracts for the provision of regular route service to private bus carriers or its wholly owned subsidiary, NJ TRANSIT Bus Operations, in accordance with the procedures set forth in these rules. On March 31, 1993, the Superior Court of New Jersey, Appellate Division ruled in *Academy Bus Tours, Inc. v. New Jersey Transit Corporation*, Docket No. A-2195-90T3, that NJ TRANSIT should have adopted its contracting out policy in accordance with the Administrative Procedure Act. These rules are intended to comply with this ruling and to govern whenever NJ TRANSIT seeks proposals for the provisions of regular route bus services, and these rules shall constitute NJ Transit's Board's policy statement and rule concerning the Contracting Out Program.

16:85-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings.

"Board" means the Board of Directors of NJ TRANSIT.

"Carrier" means any person, firm, corporation or any type of entity which proposes to provide regular route bus service for NJ TRANSIT.

"Executive Director" means the Executive Director of NJ TRANSIT or his or her designee.

"NJ TRANSIT" means the New Jersey Transit Corporation.

"NJT Bus" means NJ Transit Bus Operations, Inc., the wholly owned bus operating division of NJ TRANSIT.

"Regular route bus services" means the operation of any motor bus or motor buses on streets, public highways or other facilities, over a fixed route and between fixed termini on a regular schedule for the purpose of carrying passengers for hire or otherwise, in this State or between points in this State and points in other states. For purposes of this chapter, "regular route bus service" also refers to bus routes to which NJ TRANSIT is authorized by law to possess or which NJ TRANSIT actually operates or could operate via NJT Bus Operations pursuant to law.

"Destructive competition" means the violation of territorial integrity that results in the worsening of the financial condition of the current operator.

"Direct costs" means costs that vary with the amount of service provided and therefore are directly attributable to the provision of the service (for example, drivers' and mechanics' wages, tolls, fees, fuel, parts and insurance).

"Fixed costs" means expenses that tend to remain constant in amount regardless of variations in volume of activity within a relevant range.

"Marginal cost" means the incremental cost, also known as avoidable cost, and not the fully allocated cost, as dictated by concepts of financial cost accounting and as deemed appropriate to mass transit activities by NJ TRANSIT.

"Marginal or avoidable cost analysis" means that in evaluating the exact cost of operating a service (or exact savings to be obtained from not operating a service), the "direct costs" must be utilized. In addition, "semi-variable costs" may be utilized in the exact cost calculation but only if the semi-variable costs result in additional costs or in cost savings. If no costs or savings are to be incurred

in the "semi-variable cost" area, such costs should not be included in the analysis as they do not directly relate to the cost of the service.

"Semi-variable" means that portion of fixed costs that can be avoided by not running the service (for example garage costs, management and supervisory costs, finance and data services costs, labor relations/personnel costs, procurement and engineering costs).

SUBCHAPTER 2. CRITERIA FOR CONTRACTING OF BUS SERVICE

16:85-2.1 Introduction

(a) Carriers have no right or entitlement of any kind to the receipt of any contract for any service pursuant to this chapter and the award of such regular route bus service contracts shall always be at the discretion of NJ TRANSIT acting in the exercise of its business judgment and pursuant to N.J.S.A. 27:25-6(b).

(b) NJ TRANSIT is not required to contract for any portion of its regular route bus service. However, from time to time as it may deem proper, NJ TRANSIT may offer for contracting one or more of its regular route bus services. NJ TRANSIT's determination as to which specific routes may be offered for contracting shall be based on NJ TRANSIT's review regarding which services will serve NJ TRANSIT's best interests by being operated through a contract for service.

16:85-2.2 Financial criteria

(a) In determining whether or not to award a contract for regular route bus service, NJ TRANSIT first shall determine whether such an award substantially improves the financial position of NJ TRANSIT. NJ TRANSIT shall do this by establishing a benchmark cost figure against which proposed costs shall be compared. Since the true measurement of cost must be predicated on the basis of net actual cost increase or cost savings to NJ TRANSIT the marginal cost of operating the service, under consideration for contracting, by NJ TRANSIT shall be used to determine the benchmark.

(b) The benchmark cost figure shall include, but not be limited to, the following types of costs: operators labor, mechanics labor, cleaners labor, fringe benefits, fuel and lubricants, rentals, insurance, toll and departure fees, commissions, and other direct costs.

(c) Proposals from private bus carriers that meet the Technical Qualifications at N.J.A.C. 16:85-3.8 and offer to provide the regular route bus service at a cost less than the established benchmark, subject to (a) above and (d) below, shall be deemed to improve NJ TRANSIT's financial position. NJ TRANSIT shall determine whether such improvements in its financial position are substantial.

(d) Additional factors which shall be included in NJ TRANSIT's assessment of proposed costs shall include, but are not limited to:

1. Lost opportunities to use part-time labor on other NJ TRANSIT routes;
2. All costs related to labor protection (unless the carrier agrees to assume such cost); and
3. Any additional cost which may be incurred, including monitoring and administrative costs such as revenue collection equipment and services associated with the contract.

16:85-2.3 Non-financial considerations

(a) In determining whether to contract out regular route bus services, NJ TRANSIT shall also consider the following non-financial factors:

1. The impact on the provision of regular route bus services in the most effective, efficient, coordinated, safe and responsive manner;
2. The need to encourage to the maximum extent feasible the participation of private enterprise;
3. Whether a carrier or its affiliates are current in its accounts with NJ TRANSIT or any other agency of the State of New Jersey;
4. The adequacy of performance by a carrier or its affiliates under prior leasing or other contractual arrangements with NJ TRANSIT;
5. Whether a carrier has the ability to maintain and operate the equipment associated with the service; and
6. Any other factor which NJ TRANSIT deems relevant to a particular proposal and in the public interest.

SUBCHAPTER 3. REQUESTS FOR PROPOSALS (RFP)

16:85-3.1 Solicitation for proposals

Proposals for the provision of regular route bus services shall be solicited by NJ TRANSIT in a manner which encourages, to the extent feasible, private carrier participation, unless it is otherwise deemed appropriate by NJ TRANSIT to utilize, on a case by case basis, a different method of solicitation due to the special needs and requirements of NJ TRANSIT.

16:85-3.2 Proposers' qualifications

Proposals from private carriers that, at the time of the proposal, are in violation of any agreement with NJ TRANSIT, disbarred and/or in destructive competition with NJ TRANSIT, shall not be considered.

16:85-3.2 Form and procedure for proposal

(a) Where NJ TRANSIT uses requests for proposals (RFPs) to seek proposals, the RFP shall identify and contain, but not be limited to, the following:

1. Standards of service;
2. Standards of equipment and facility maintenance;
3. Audit and inspections;
4. Revenue system and collection process;
5. Reporting requirements; and
6. Proposal format and evaluation process.

(b) The proposal format shall consist of two sections:

1. Technical qualification; and
2. Cost qualification.

(c) Both proposed sections must be separately sealed and delivered to NJ TRANSIT no later than the deadline specified in the RFP. Proposals must comply with all the terms and conditions of the solicitation or may be rejected as non-responsive. Persons or entities who wish to receive an RFP from NJ TRANSIT must file a written request to be provided with a specific RFP. A request for one RFP shall not be regarded as a continung request for future RFPs.

16:85-3.4 Amendment of request for proposals

(a) If after the issuance of an RFP, but before the time of opening of the proposals, NJ TRANSIT deems it necessary to make changes in scope, closing dates, or any other part of the RFP or to correct a defective or ambiguous RFP, such changes shall be accomplished by the issuance of an amendment to the RFP or the RFP may be cancelled if deemed appropriate by NJ TRANSIT. The amendment or notice of cancellation shall be sent to those parties who have indicated in writing an interest to be supplied with the specific RFP in accordance with N.J.A.C. 16:85-3.10.

(b) Any information given to a prospective proposer concerning an RFP shall be furnished promptly to all other prospective proposers as an addendum to the RFP if such information is deemed by NJ TRANSIT to be necessary to the proposers in submitting proposals or if the lack of such information would be prejudicial to uninformed proposers.

16:85-3.5 Cancellation of requests before opening

Where an RFP is cancelled, proposals which have been received shall be returned unopened to the proposers and a notice of cancellation shall be sent to all prospective proposers to whom RFPs were issued. The notice of cancellation shall identify the RFP and briefly explain the reason the RFP is being cancelled.

16:85-3.6 Receipt and safeguarding of proposals

(a) All proposals received prior to the time of opening shall be kept secure, and except as provided in (b) below, unopened. If an RFP is cancelled, or if a proposer withdraws its proposals, all proposals, or the withdrawn proposal, as the case may be, shall be returned.

(b) Unidentified proposals may be opened solely for the purpose of identification and then immediately resealed. A record of this event shall be kept in the RFP file.

(c) All proposals received prior to or at the time designated in the RFP, for formal receipt, shall be distributed for review by designated NJ TRANSIT employees.

16:85-3.7 Late submittals

Proposals not received prior to or at the time designated in the RFP for formal receipt shall not be considered. Late proposals shall be returned to the proposer unopened.

16:85-3.8 Evaluation of proposals

Based on a technical qualification evaluation, proposers' experience and ability to provide the service shall be scored. Proposers must obtain a minimum score as determined by NJ TRANSIT on the technical qualification evaluation before their cost proposal section may be considered. The cost proposals of proposers not achieving the minimum technical qualification score will not be opened or considered. The above indicated criteria shall be outlined on a case-by-case basis in each specific RFP.

16:85-3.9 Negotiations

Negotiations may be conducted by NJ TRANSIT with any proposers whose proposals are considered by NJ TRANSIT to be in the best interests of NJ TRANSIT.

16:85-3.10 Cancellation, withdrawal and rejection of proposals

(a) Requests for proposals may be cancelled and withdrawn at any time before and after opening but prior to award and all proposals rejected, where NJ TRANSIT determines in writing that:

1. Inadequate or ambiguous specifications were given in the RFP;
2. The services being contracted are no longer required;
3. The RFP did not provide for consideration of all factors of cost to NJ TRANSIT;
4. All otherwise acceptable proposals received were at unreasonable prices as determined by the criteria established for a specific RFP;
5. Proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
6. For other reasons, cancellation is in the best interest of NJ TRANSIT.

16:85-3.11 Rejection of individual proposals

(a) Any proposal which materially fails to conform to the requirements of the criteria of a specific RFP shall be rejected.

(b) Proposals received from carriers determined by NJ TRANSIT to be not responsible shall be rejected.

(c) Those carriers whose proposals are rejected will be notified pursuant to N.J.A.C. 16:85-3.10.

16:85-3.12 Debriefing

Upon written request, unsuccessful proposers shall be informed in general terms, through a face to face debriefing, only of reasons for non-acceptance of their proposals without disclosing other offerors' proprietary data or NJ TRANSIT confidential information. NJ TRANSIT shall establish within an RFP, specific time limits to request a debriefing in anticipation of a dispute.

16:85-3.13 Dispute resolution

NJ TRANSIT is an entity of the State of New Jersey. As such, disputes between other parties and NJ TRANSIT are guided by R.2:2-3(a)(2) of the Rules governing the Courts of the State of New Jersey and applicable law thereunder. However, NJ TRANSIT may utilize as part of its RFP process a dispute resolution procedure. Such procedure may be used to resolve disputes arising out of NJ TRANSIT's decisions involving the contracting for bus service prior to NJ TRANSIT's Board of Directors award of a bus service contract. Any such procedure is not designed to confer any right on a carrier to obtain a hearing under New Jersey's Administrative Procedure Act. Upon the Board of Directors' award of a bus service contract, any unsuccessful proposer may seek judicial review of the final agency action of NJ TRANSIT by filing the appropriate appeal with the Superior Court of New Jersey, Appellate Division as provided by R.2:2-3(a)(2).

16:85-3.14 Award

Unless all proposals are rejected, award shall be made to that proposer whose proposal, conforming to the Request for Proposals, will be most advantageous to NJ TRANSIT as so determined by NJ TRANSIT.

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF REGULATORY SERVICES
Grades and Standards
Readoption: N.J.A.C. 2:71

Proposed: May 3, 1993 at 25 N.J.R. 1801(a).
Adopted: July 2, 1993 by the State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: July 2, 1993 as R.1993 d.379, **without change.**

Authority: N.J.S.A. 4:13-11.12.

Effective Date: July 2, 1993.
Expiration Date: July 2, 1998.

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

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

(b)

DIVISION OF REGULATORY SERVICES
Notice of Administrative Correction
Grades and Standards
Requests; Charges
N.J.A.C. 2:71-2.26

Take notice that the Department of Agriculture has discovered an error in the text of N.J.A.C. 2:71-2.26. The second sentence of the rule states, "A charge shall be made from such services." The word "from" was adopted as "for" (see R.1978 d.114). Through this notice, published in accordance with N.J.A.C. 1:30-2.7, the correct word is inserted.

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

2:71-2.26 Requests; charges

Requests may be made of the Department by producers, dealers, shippers, processors, brokers, retailers or other commercial parties to a transaction involving fruits and vegetables to have the fruits or vegetables inspected or graded and certified on official certificates by qualified employees of the Department. A charge shall be made [from] **for** such services. Such charge shall be paid by the requestor of such services.

(c)

DIVISION OF REGULATORY SERVICES
Bonding Requirement of Commission Merchants, Dealers, Brokers, Agents
Readoption with Amendment: N.J.A.C. 2:72

Proposed: May 3, 1993 at 25 N.J.R. 1802(a).
Adopted: July 2, 1993 by the State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: July 2, 1993 as R.1993 d.378, **without change.**

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

Effective Date: July 2, 1993, Readoption;
August 2, 1993, Amendments.
Expiration Date: July 2, 1998.

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

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 2:72.

(d)

DIVISION OF REGULATORY SERVICES
Controlled Atmosphere Storage Apples
Readoption: N.J.A.C. 2:74

Proposed: May 3, 1993 at 25 N.J.R. 1803(a).
Adopted: July 2, 1993 by the State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: July 2, 1993 as R.1993 d.377, **without change.**

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

Effective Date: July 2, 1993.
Expiration Date: July 2, 1998.

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

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 2:74.

(e)

STATE AGRICULTURE DEVELOPMENT COMMITTEE
Acquisition of Development Easements
Adopted Amendments: N.J.A.C. 2:76-6.2 through 6.5, 6.8, 6.11, 6.13 and 6.16
Adopted Repeals: N.J.A.C. 2:76-6.7, 6.9 and 6.10
Adopted New Rules: N.J.A.C. 2:76-6.8, 6.9 and 6.10
Adopted Repeal and New Rules: N.J.A.C. 2:76-6.6 and 6.17

Proposed: May 3, 1993 at 25 N.J.R. 1804(d).
Adopted: June 24, 1993 by the State Agriculture Development Committee, Arthur R. Brown, Jr., Chairperson.
Filed: July 12, 1993 as R.1993 d.392, **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. 2:76-6.11(d)1 not adopted.**

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

Effective Date: August 2, 1993.
Expiration Date: July 31, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: The Atlantic County Agriculture Development Board expressed support for the use of the sliding scale in proposed N.J.A.C. 2:76-6.11(d)1 and the principle of relying on the CADB for review of applications.

RESPONSE: At its June 24, 1993 meeting the SADC considered the numerous comments received regarding the proposed sliding scale and decided not to adopt the proposed N.J.A.C. 2:76-6.11(d)1, the formula for determining the SADC cost share for providing a grant to a county, at this time due to the magnitude of concerns expressed. Instead the SADC will be proposing a new amendment to address its cost share percentages.

COMMENT: The Atlantic County Agriculture Development Board withheld commenting on the remainder of the rule stating that the changes would not make the easement purchase program attractive to farmers in the Pinelands.

RESPONSE: The SADC believes that the amendments make the program more attractive to all New Jersey farmers by reemphasizing the quality of farms, changes in the SADC's certification of development easement values and accelerating the application process to a one-year cycle.

COMMENT: The Burlington County Agriculture Development Board supported the proposed amendment to N.J.A.C. 2:76-6.11 which provided for the SADC's cost share grant to be based on an incremental sliding scale. The Burlington CADB stated that the incremental sliding scale would greatly increase the effectiveness of the easement purchase program by encouraging the greatest extent of farmland protection for the limited dollars available. The Burlington CADB felt that the proposal was appropriate due to the increased ability to raise cost share money in those counties with higher easement values.

RESPONSE: At its June 24, 1993 meeting the SADC considered the numerous comments received regarding the proposed sliding scale and decided not to adopt the proposed N.J.A.C. 2:76-6.11(d)1, the formula for determining the SADC cost share for providing a grant to a county, at this time due to the magnitude of concerns expressed. Instead the SADC will be proposing a new amendment to address its cost share percentages.

COMMENT: The Burlington CADB supported streamlining the program, granting the counties more authority to select and evaluate their applications and determine the number of RDSOs and exceptions.

RESPONSE: The SADC agrees that these changes will be beneficial to the farmland preservation program.

COMMENT: The Burlington CADB supported the amendment to N.J.A.C. 2:76-6.7 which allows the SADC to remove appraisers from its approved list if appraisals are not conducted in conformance with the SADC's appraisal standards or generally recognized appraisal practices and the amendment to N.J.A.C. 2:76-6.8 which limits the SADC's ability to certify a development easement value lower than the lowest development easement value determined by the two independent appraisers.

RESPONSE: The SADC agrees that the proposed amendments will improve the program's appraisal process.

COMMENT: The Burlington CADB suggested that the definition of "use for agricultural purposes" as contained in proposed N.J.A.C. 2:76-6.2 be amended to include the term "management."

RESPONSE: The proposed definition of "use for agricultural purposes" is consistent with the statutory definition of "agricultural use" set forth in N.J.S.A. 4:1C-13 and as contained in the Deed of Easement. The SADC does not wish to deviate from the legislative directive.

COMMENT: The Burlington CADB expressed its concern that the county's final ranking should be based solely on criteria developed by the county and not on the "relative best buy" formula which it feels is already addressed by the SADC when ranking applications based on landowner's offers.

RESPONSE: Pursuant to proposed N.J.A.C. 2:76-6.10 which reiterates statutory requirements, the CADB is required to establish a priority ranking of the approved applications based on suitability criteria which evaluates the following:

a. Priority consideration shall be given to offers with higher numerical values obtained by applying the formula contained at N.J.S.A. 4:1C-31(b)1;

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

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

Furthermore, N.J.S.A. 4:1C-31b mandates that the landowner's offer shall be reviewed and evaluated by the CADB and SADC.

COMMENT: The Burlington CADB, while acknowledging that the proposal de-emphasized the use of the relative best buy formula contained in N.J.A.C. 2:76-6.11, opposed any use of the formula.

RESPONSE: The Legislature mandates the use of the relative best buy formula in N.J.S.A. 4:1C-31. Upon final ranking of the applications the proposal integrates the formula with other factors such as the degree the purchase would encourage the survivability of agriculture and degree of imminence of change of the land from productive agriculture to nonagriculture use. The proposal, therefore, de-emphasizes the use of the formula, while retaining the statutory mandate that its use be given "priority consideration" by both the CADB and the SADC.

COMMENT: The Burlington CADB feels that proposed N.J.A.C. 2:76-6.17 will cause CADBs to grant exceptions rather than be able to allocate residual dwelling site opportunities ("RDSOs"). The CADB is of the opinion that the use of exceptions rather than RDSOs has a negative impact on the program since exceptions are not tied to the deed restricted farm parcel and therefore will not provide residential units for future owners. In addition, this provision undermines proposed N.J.A.C. 2:76-6.5 which delegates more authority to the CADB and gives them greater responsibility in allocating and administering RDSOs.

RESPONSE: It is the intent of the SADC to limit the eligibility of RDSOs which CADBs may allocate. Although an exception may not be covered by the terms of the Deed of Easement, the CADB as a condition of granting the exception can require that the parcel not be subdivided from the deed restricted farm in the future. With existing residences, RDSOs and excepted parcels, the SADC feels that the program provides for adequate housing opportunities for landowners. Decisions covering excepted parcels and RDSOs are the responsibility of the county.

COMMENT: The Burlington CADB stated that the SADC should not be able to re-rank the relative order of applications submitted by each county.

RESPONSE: Pursuant to proposed N.J.A.C. 2:76-6.16(g), the SADC gives considerable weight to county rankings by giving the highest county ranked application 10 additional points. However, the SADC has a separate statutory obligation to review and evaluate development easement purchase applications on a county-by-county basis pursuant to N.J.S.A. 4:1C-31(b).

COMMENT: The Cape May Agriculture Development Board expressed its support for the proposed amendments and feels that the proposed change is long overdue and slightly more equitable. In particular, the Board supported the limit of seven applications not requiring SADC approval, the incremental sliding scale and 10 points for the highest ranked application in a county. Overall, the Board supports the positive progress the SADC has made in implementing the program. The Cape May County Board of Agriculture expressed a similar comment in support of the overall changes and in particular the limit on applications from any one county and the sliding scale.

RESPONSE: The SADC acknowledges the Cape May Agriculture Development Board's and Cape May County Board of Agriculture's support of the proposed amendments which set a limit of seven applications not requiring SADC approval and 10 points for the highest ranked application in a county. With regard to the proposed sliding scale, the SADC considered the comment at its June 24, 1993 meeting and decided not to adopt proposed N.J.A.C. 2:76-6.11(d)1, the formula for determining the SADC's cost share for providing a grant to a county. Instead the SADC will propose a new amendment to address its cost share percentages.

COMMENT: The Cape May Agriculture Development Board noted its reservations on the ranking policy and the amendments to the residual dwelling site opportunity rule by reducing the eligibility from one unit per 50 acres to one unit per 100 acres. The Board indicated that most of its farms are less than 100 acres and that it is difficult to assemble farms in large contiguous blocks. The Cape May County Board of Agriculture expressed similar concerns.

RESPONSE: The proposed amendments and new rule incorporate minor amendments to the current rule provisions which impact the criteria for evaluating development easement applications. The primary amendment to the evaluation criteria was the addition of 10 points to recognize the CADB's highest ranked application. The SADC feels that this factor specifically addresses the CADB's and County Board of Agriculture's concerns. In response to the concern that most of the farms in Cape May are not eligible for an RDSO because their farms are less than 100 acres in size, the SADC in the proposed amendments has provided the CADB with the authority to consider exceptions from the premises. Certainly, the CADB must use its discretion when granting an exception to minimize the impact on the agricultural operation. An arbitrary decision to grant exceptions which adversely affect the applicant's agricultural operation may result in the lowering of the applicant's quality score and overall rank.

COMMENT: The Cumberland County Agriculture Development Board strongly supports the transfer of more direct control and responsibility to the CADBs.

RESPONSE: The SADC recognizes that the CADB needs to have a more responsible role in the decision of applications to be considered by the SADC for the purchase of development easements. The proposed amendments and new rule convey this authority and decision-making to CADBs.

COMMENT: The Cumberland CADB strongly supports the proposed incremental sliding scale for SADC grants to CADBs which has been uncoupled from the landowner's offer to sell a development easement.

RESPONSE: At its June 24, 1993 meeting the SADC considered the numerous comments received regarding the proposed sliding scale and decided not to adopt the proposed N.J.A.C. 2:76-6.11(d)1, the formula for determining the SADC cost share for providing a grant to a county, at this time due to the magnitude of concerns expressed. Instead the

SADC will be proposing a new amendment to address its cost share percentages.

COMMENT: The Cumberland CADB recommends that the proposed amendment at N.J.A.C. 2:76-6.11(c) which integrates the applicant's quality score of the farm and the relative best buy formula index as contained in N.J.S.A. 4:1C-31(b) be reduced from (formula index × 200) to (formula index × 100) to lower the significance of the formula index.

RESPONSE: The SADC evaluated several variations of the formula including (formula index × 100). The use of (formula index × 100) did not give enough weight to the statutory formula contained at N.J.S.A. 4:1C-31(b). Furthermore, it was determined that the use of (formula index × 100) yielded negative values in cases where the applicant's offer to sell a development easement was greater than the SADC's certified value of the development easement. From a practical point, applications could not be ranked in this manner.

Pursuant to the existing rule, the SADC's final ranking of applications was only based on the statutory formula. Under the proposal, the SADC has incorporated the applicant's quality score of the farm along with the use of the formula index. Therefore, the formula (quality score) + (formula index × 200) was selected to recognize the quality of the farm while still ensuring compliance with the statute.

COMMENT: The Hunterdon County Agriculture Development Board stated that the proposed rule changes will significantly alter the schedule and procedures of the easement purchase program. While many, if not most, of the changes are positive changes that will simplify the program, the changes are being proposed in the middle of an application process. As a result, county agriculture development boards (CADBs) must solicit easement purchase applications and possibly even review and rank them without knowing the rules of the program. This is unfair to the boards as well as the applicants. Changing rules in the middle of an application process has been a familiar complaint of the State Agriculture Retention and Development Program.

RESPONSE: The SADC feels that the proposed amendments and new rule are not changing the rules in the middle of an application process. The SADC had not formally established a funding round prior to the proposal amendments. Although the SADC recognizes that the proposed January 15, 1994 deadline for submission of appraisals to the SADC may be difficult to meet, it felt it was critical that the momentum of the program be continued in view of the current market conditions.

COMMENT: The Hunterdon CADB requested that the definition of "use for agricultural purposes" as applies to RDSOs, contained in proposed N.J.A.C. 2:76-6.2 be expanded to include the "regular engagement in farm management" as a permitted use.

RESPONSE: The proposed definition of "use for agricultural purposes" is consistent with the statutory definition of agricultural use set forth in N.J.S.A. 4:1C-13 and as contained in the Deed of Easement. The SADC does not wish to deviate from the legislative directive.

COMMENT: In commenting on proposed N.J.A.C. 2:76-6.17 which decreases the residual dwelling site opportunity ("RDSO") maximum allocation from one per 50 acres to one per 100 acres, the Hunterdon CADB stated that it preferred exceptions to RDSOs. However, if RDSOs are continued to be offered the Hunterdon CADB supports the proposed rule change decreasing RDSO allocation.

RESPONSE: The proposed rule does not mandate that CADBs grant RDSOs. The Hunterdon CADB has complete discretion to grant or not grant RDSOs. The Hunterdon CADB may not grant any RDSOs if it wishes. It may permit exceptions under the proposal without penalty as long as the exceptions do not adversely affect the applicant's agricultural operation.

COMMENT: The Hunterdon CADB supports proposed N.J.A.C. 2:76-6.7 which permits the SADC to remove an appraiser from its official list. The Hunterdon CADB has had great difficulty with some of its appraisers who failed to provide the CADB with minimally adequate appraisal reports.

RESPONSE: Under the current and proposed rule, the CADB is not required to utilize an appraiser that has not performed according to CADB standards in the past. Since the CADB is responsible for contracting directly with the appraisers, it would be greatly appreciated if the CADB could contact the SADC when an appraiser has not fulfilled contractual terms or has produced a report which includes a valuation which has not been properly substantiated. The basis for removing an appraiser from the SADC approved list must be carefully documented with factual information.

COMMENT: The Mercer County Agricultural Development Board stated its concern that proposed N.J.A.C. 2:76-6.17 limits the ability to allow for an onsite residence to provide for management on the premises. The Mercer CADB further commented that if the SADC adopts a more stringent RDSO eligibility, the SADC should be more liberal in its granting of exceptions.

RESPONSE: The SADC acknowledges the Mercer CADB's concern and feels that the proposed new rule and amendments provide CADBs with sufficient options to provide for adequate housing opportunities on the premises for agricultural purposes.

COMMENT: The Middlesex County Agriculture Development Board strongly opposes the use of the Incremental Sliding Scale to allocate the State share of funds for the purchase of development easements pursuant to proposed N.J.A.C. 2:76-6.11(d).

The Board further expressed its concern that the proposed sliding scale discriminates against higher valued land and gives a significantly greater percentage of State funds to lower valued land.

The CADB feels the voters of Middlesex County in supporting State funding for the Farmland Preservation Program by inference expect equitable application of those funds in Middlesex County.

The Middlesex CADB requests the SADC to review the funding methods for the easement purchase program and to establish a policy that the farmland preservation program seeks to preserve farms based on their quality and viability and not on the value of the land.

Middlesex CADB stated that there is no farmland in the State at greater risk than land in Middlesex County. Its successful program is in jeopardy in future rounds of funding because Middlesex County farms will not be competing on an equal level for funding with farms statewide.

RESPONSE: At its June 24, 1993 meeting the SADC considered the numerous comments received regarding the proposed sliding scale and decided not to adopt the proposed N.J.A.C. 2:76-6.11(d)1, the formula for determining the SADC cost share for providing a grant to a county, at this time due to the magnitude of concerns expressed. Instead the SADC will be proposing a new amendment to address its cost share percentages.

COMMENT: The Middlesex County Board of Chosen Freeholders and the Township Committees of South Brunswick, Plainsboro and Cranbury strongly opposed the use of the incremental sliding scale to allocate the State share of funds for the purchase of agricultural development easements and requested the SADC to reject or review the sliding scale. The Middlesex County Board of Chosen Freeholders and the Township Committees urged the SADC to adopt a policy to preserve farms based on the farms' quality and viability and not on the value of the land. The Board and Township Committees felt that the incremental sliding scale discriminates against higher valued land and gives a significantly greater percentage of State funds to lower valued land.

RESPONSE: At its June 24, 1993 meeting the SADC considered the numerous comments received regarding the proposed sliding scale and decided not to adopt the proposed N.J.A.C. 2:76-6.11(d)1, the formula for determining the SADC cost share for providing a grant to a county, at this time due to the magnitude of concerns expressed. Instead the SADC will be proposing a new amendment to address its cost share percentages.

COMMENT: State Senator Peter Inverso, Assemblypersons Paul R. Kramer and Barbara W. Wright supported the proposal's efforts to simplify the process, to give the CADBs more direct control and responsibility and to establish a regular 12 month cycle for easement purchase rounds. However, the legislators question the effects of implementation of the new sliding scale on the preservation of the viable quality farmland in the Central Jersey area. They argued that the proposed sliding scale creates a situation which gives a significantly greater percentage of State funds to lower valued land. While this may allow the State to purchase more acres, it will also create a situation where farms in Central Jersey will be permanently lost to non-agricultural development.

The Legislators supported a funding formula which places two areas of the State with high-priced land on an equal footing with those areas of the State with relatively low-priced land in terms of competing for State funds. This is the only way to insure that farming remains a viable option in counties under intense development pressure.

RESPONSE: At its June 24, 1993 meeting the SADC considered the numerous comments received regarding the proposed sliding scale and decided not to adopt the proposed N.J.A.C. 2:76-6.11(d)1, the formula for determining the SADC cost share for providing a grant to a county, at this time due to the magnitude of concerns expressed. Instead the SADC will be proposing a new amendment to address its cost share percentages.

COMMENT: The Middlesex County Board of Agriculture expressed its discontent with the SADC's proposed amendments regarding the use of the "sliding scale" as a means of determir ng the state's portion of contribution for easement purchase. The "sl ling scale" will virtually eliminate Middlesex County from receiving its air share of state monies and will also discriminate against other count s with high land values. It would be unconscionable to require the resic nts of Middlesex County and its local municipalities to contribute a g eater percentage to the program than other counties. The Board stated hat the SADC is working out of the will of the voters but also out of the r quests of the agricultural community. The delegates to the State Agric ltural convention unanimously passed a resolution that charges the SA C to "continue to assure equitable and fair distribution of state monies." The SADC has changed its objective from one of preserving farms in danger of development to simply being a state land acquisition board, ne that obtains property at "best buy" and disregards the paramount i sue. The Board strongly urges the SADC to reconsider its position o the "sliding scale" and to return to the former guidelines for state ontributions.

RESPONSE: At its June 24, 1993 meeting t e SADC considered the numerous comments received regarding the p posed sliding scale and decided not to adopt the proposed N.J.A.C. 2 76-6.11(d)1, the formula for determining the SADC cost share for prov ling a grant to a county, at this time due to the magnitude of concer expressed. Instead the SADC will be proposing a new amendment) address its cost share percentages.

COMMENT: The Cranbury Historical anc Preservation Society is deeply concerned by the incremental sliding s ale funding determinant as set forth in the proposed amendments. The ociety feels strongly that the scale will severely and adversely impart bo Middlesex County and Cranbury Township in their efforts to preser farmland. The Society suggested that the SADC establish a policy po tion that will ensure the preservation of farmland based on quality and iability, and not on the value of the land.

RESPONSE: At its June 24, 1993 meeting t e SADC considered the numerous comments received regarding the p posed sliding scale and decided not to adopt the proposed N.J.A.C. 2 6-6.11(d)1, the formula for determining the SADC cost share for provi ing a grant to a county, at this time due to the magnitude of concern expressed. Instead the SADC will be proposing a new amendment t address its cost share percentages.

COMMENT: Ms. Janice S. Mironov, Coun lwoman, East Windsor Township, expressed concern about the pol y implications of the proposed amendments altering the funding fc mula for acquisition of development easements. The incremental sli ing scale discriminates against higher valued land and gives a signific ntly greater percentage of State funds to lower valued land in Southern Jew Jersey. Particularly, as real estate values recover the new formula ould have a potentially devastating effect on the farmland preservatio program in Middlesex County and potentially in Mercer County. Cen al New Jersey counties like Middlesex and Mercer logically would be a primary focus of saving farms threatened by immediate development ressures. Ms. Mironov suggested that at the very least, the SADC shou l sunset the rule change so that the formula will be re-examined at the end of the year and in light of the existing land values at that time.

RESPONSE: At its June 24, 1993 meeting th SADC considered the numerous comments received regarding the pr posed sliding scale and decided not to adopt the proposed N.J.A.C. 2: 5-6.11(d)1, the formula for determining the SADC cost share for provi ng a grant to a county, at this time due to the magnitude of concern expressed. Instead the SADC will be proposing a new amendment t address its cost share percentages.

COMMENT: The Monmouth County Agricult re Development Board is completely supportive of the proposed change and is looking forward to working within the new structure. The Monmc th CADB is particularly supportive of the larger role the counties wil play in deciding which applications to pursue each funding cycle.

The Monmouth CADB also supports the ne ranking methodology, noting that the revised formula at proposed N .A.C. 2:76-6.11(c) will more accurately reflect the real ranking of th farm.

The Board expressed concern about the pro sed sliding scale cost-share provision, but noted that the program was t designed to preserve individual farms. While the sliding scale could be erceived as a deterrent in bringing new areas into the program, it was re ognized that new areas must provide financial assistance to be compet ive within the county. The counties must decide where to target their b dget expenditures and municipalities must decide what it's worth to the to preserve farmland.

Overall, the Board decided that the sliding scale approach is fair to the taxpayers of the State and therefore is supported with a provision that the SADC conduct a periodic review of the scale to adjust to market fluctuations.

RESPONSE: The SADC acknowledges the Monmouth County Agriculture Development board's support of the proposed amendments which provide the boards with a more direct role in determining the applications to be considered by the SADC and new formula for ranking applications. With regard to the proposed sliding scale, the SADC considered the numerous comments received at its June 24, 1993 meeting and decided not to adopt proposed N.J.A.C. 2:76-6.11(d)1, the formula for determining the SADC's cost share for providing a grant to a county, at this time. Instead the SADC will propose a new amendment to address its cost share percentages.

COMMENT: The Morris County Agriculture Development Board is very supportive of the SADC's efforts to minimize the time for processing easement purchase applications. However, the Board is adamantly opposed to the incremental sliding scale funding mechanism proposed at N.J.A.C. 2:76-6.11(d). The Board feels that the current method places all landowners on a fair and equal base for funding. The sliding scale however unjustly disperses the funds based on land values. The proposed method not only places an unfair financial burden on the governmental units where land values are high but also has the potential of eliminating the selection of farms based on land quality. In summary, the Board requests the SADC to seriously consider the effects such a change would have on the quality of the program.

RESPONSE: The SADC acknowledges the Morris County Agriculture Development Board's support of the proposed amendments which reduce the time for processing easement purchase applications. With regard to the proposed sliding scale, the SADC considered, the numerous comments received at its June 24, 1993 meeting and decided not to adopt proposed N.J.A.C. 2:76-6.11(d)1, the formula for determining the SADC's cost share for providing a grant to a county, at this time. Instead the SADC will propose a new amendment to address its cost share percentages.

COMMENT: The Ocean County Agriculture Development Board opposes any reduction in the minimum acres necessary to allocate a residual dwelling site opportunity. The Ocean CADB was concerned that with an average farm size of 49 acres, the doubling of the amount of land necessary to obtain an RDSO from 50 to 100 acres would in most cases not provide farmers with an opportunity to have a home site in the future. As a result, farmers may be discouraged from participating in the program.

RESPONSE: As stated above, it is the intent of the SADC to limit the eligibility of RDSOs which CADBs may allocate. With existing residences, RDSOs and excepted parcels, the SADC feels that the program provides for adequate housing opportunities for landowners in the future. Pursuant to the proposed amendments and new rule, decisions covering excepted parcels and RDSOs are the responsibility of the county.

COMMENT: The Salem County Agriculture Development Board strongly supports the proposed changes in the administration of the farmland preservation easement purchase program. The Board is especially pleased with the shifting of responsibility and decision making to the county level and the proposal to compress the application timetable into annual rounds. These two actions will make the program more responsive to local needs and create renewed interest on the part of the landowners.

The Board further supports the proposal whereby the SADC's certified fair market value of the development easement shall not be less than the lowest independent appraised value of the development easement.

Most importantly, the Board feels that the proposed sliding scale for state cost-sharing will result in a prudent use of taxpayer dollars. While the Board recognizes that higher valued farmland will receive less cost share dollars, every county is treated equally on each level of the scale.

RESPONSE: The SADC acknowledges the Salem CADB's support of the proposed amendments and new rule which shift the decision making to the county level and compressing the application processing time. With regard to the proposed sliding scale, at its June 24, 1993 meeting the SADC considered the numerous comments received regarding the proposed sliding scale and decided not to adopt the proposed N.J.A.C. 2:76-6.11(d)1, the formula for determining the SADC cost share for providing a grant to a county, at this time due to the magnitude of concerns expressed. Instead the SADC will be proposing a new amendment to address its cost share percentages.

COMMENT: The Somerset County Agriculture Development Board opposes the proposed SADC cost share funding method and requests the current funding method be retained. The Board expressed its concern that the proposed sliding scale would conversely limit the State's share of dollars available to counties where land values are greater. The proposal would affect State dollars available to purchase easements in the northern and central part of the State where land values tend to be higher by virtue of the farmlands' imminence of change in use from agricultural production which is another legislative mandate.

The Board further argued that the Agriculture Retention and Development Act was voted for by the people of New Jersey to preserve and prevent conversion of critical farmland that was being lost due to growth pressures and those areas of the State which generate the highest supporting revenues for the program through taxation would be receiving the least benefit as an effect of the proposed amendment and new rule. The proposal represents a significant reduction of the "up to 80%" State cost share assumption advertised to voters on the 1987 ballot question and is therefore contrary to the context and intent of the enabling legislation.

RESPONSE: At its June 24, 1993 meeting the SADC considered the numerous comments received regarding the proposed sliding scale and decided not to adopt the proposed N.J.A.C. 2:76-6.11(d)1, the formula for determining the SADC cost share for providing a grant to a county, at this time due to the magnitude of concerns expressed. Instead the SADC will be proposing a new amendment to address its cost share percentages.

COMMENT: The Sussex County Agriculture Development Board prefers that the SADC retain the existing rule, N.J.A.C. 2:76-6.17. The Board feels that the proposed new rule puts the average county farmer with less than 100 acres at a disadvantage should they want to construct a residential unit on the premises in the future. Furthermore, the CADB feels that the farmer should not be penalized in any way when applying for the permissible amount of residual dwelling site opportunities or exceptions. The CADB feels that the judgment value should be placed back into their hands the way it was originally intended.

RESPONSE: Pursuant to the proposed amendments and new rule, decisions covering excepted parcels and RDSOs are the responsibility of the county. Decisions regarding RDSO allocations and exceptions of land from the premises should be based on the evaluation of the impact on the agricultural operation.

COMMENT: The New Jersey Farm Bureau commented that overall, the proposed amendments and new rules represent an improvement over current procedures. Problems with the existing regulations have developed in recent years, which have detracted from the reputation of the program among farmers. Chief among these concerns have been the absence of county control, inordinate delays in reviewing applications, frustrations with the appraisal system and value certifications, funding cycles and constant changes in the ground rules in the program.

RESPONSE: The SADC has recognized these criticisms and feels that the proposed amendments and new rules address these concerns.

COMMENT: New Jersey Farm Bureau commented that in proposed N.J.A.C. 2:76-6.5 the allowance for an expanded role by CADBs in reviewing easement purchase applications is good and recaptures the original intent of the program. However, they caution that there should be some accompanying move to provide some resources to help affect this change. Otherwise, granting counties more authority may be frustrating if they cannot afford to take advantage of it. This is highlighted by rule changes shifting a greater share of costs for appraisals and closing onto the counties.

RESPONSE: Although the proposal places more responsibility on the CADB's decision making, the level of CADB work should remain consistent or in some cases it may be less. Under the current rule, CADBs are responsible for evaluating, ranking, and submitting easement purchase applications to the SADC for preliminary review. The proposed amendments and new rules allow the CADB to primarily focus on its seven highest ranked applications. In particular, costs for conducting appraisals and county closing costs have been the responsibility of the county.

COMMENT: New Jersey Farm Bureau supports proposed N.J.A.C. 2:76-6.6 which removes the requirement of SADC preliminary approval for seven or fewer applications from a CADB. This will tend to encourage participation and sharing of state funds by a larger number of counties.

RESPONSE: The SADC agrees that this amendment will result in a more efficient program.

COMMENT: New Jersey Farm Bureau endorses deadlines for appraisals. New Jersey Farm Bureau further supports the placement of some parameters on the decisions of the review appraiser. This is especially true for the new prohibition on setting a value lower than the lowest appraisal.

RESPONSE: The SADC agrees that these amendments will result in a more efficient program.

COMMENT: The New Jersey Farm Bureau remains opposed to the bid-down procedure and acknowledges the change which lessens the absolute use of the statutory formula in the reranking procedure. However, the "incremental scale related to the landowner's final asking price," the so-called sliding scale formula, is the subject of much controversy in certain areas of the state. The merits of it can be debated on both sides for a long time. They as a state organization do not want to step in front of the views of local county opinion. It is understandable that more rural counties with lower land values and a smaller tax base would hope for a greater share of state funds. On the other hand, counties closer to metropolitan pressures have something to lose by the formula as written. These areas have a greater imminence of conversion and are close to areas whose residents may come into greater contact with the deed-restricted open space created by the program. These counties also approved the bond referendum with a larger plurality. It might be wise to consider some leveling in the proposed sliding-scale formula. They stated they would not object to an extended comment period on this question.

RESPONSE: At its June 24, 1993 meeting the SADC considered the numerous comments received regarding the proposed sliding scale and decided not to adopt the proposed N.J.A.C. 2:76-6.11(d)1, the formula for determining the SADC cost share for providing a grant to a county, at this time due to the magnitude of concerns expressed. Instead the SADC will be proposing a new amendment to address its cost share percentages.

COMMENT: The New Jersey Farm Bureau noted its skepticism about the SADC's ability to judge whether an exception or RDSO "adversely impacts the applicant's agricultural operation." Putting that judgment to a point system is highly questionable. Both of these allowances were designed to put some flexibility into the program. The Bureau stated it does not want to jeopardize that with something that purports to be an objective ranking or point scoring system.

RESPONSE: The rule only deducts a maximum of 10 points for an exception which adversely affects the agricultural operation. Applicants do not receive any deductions for eligible RDSOs. Although it is true that the SADC's judgment is required to evaluate whether an exception adversely impacts the applicant's agricultural operation, the SADC by virtue of its composition is uniquely qualified to make that judgment. The impact of the number, location, nature and extent of exceptions must be determined in order for the SADC to comply with the statutory mandate to evaluate "the degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture."

COMMENT: The Grain and Forage Producers' Association of New Jersey has expressed its concern that the proposed sliding scale will probably stop the Farmland Preservation Program in the higher priced counties. In particular, Middlesex County will not be able to compete for more farmland. It is their understanding that the program should preserve the farmland that is under the most development pressure where possible.

RESPONSE: The SADC considered the comment at its June 24, 1993 meeting and decided not to adopt proposed N.J.A.C. 2:76-6.11(d)1, the formula for determining the SADC's cost share for providing a grant to a county. Instead the SADC will propose a new amendment to address its cost share percentages.

COMMENT: Mr. Earl Ervey, Medford Nursery, Inc., noted his concern that the proposed "sliding scale" will not be very supportive of preserving quality farmland in those areas of the State with significant development pressure because of the $7,650 per acre maximum cost sharing of up to $10,000 per acre as a maximum at the $20,000 and higher easement cost would be more reasonable/fair and allow the counties and local municipalities to participate at what would amount to a 50 percent level when easement costs are at $20,000. Perhaps a maximum level of participation should be set at 50 percent even for easement costs above $20,000 when applying State funds to preserve farmland, since the SADC has the control with regard to the quality of farmland and the location of such land which they opt to deed restrict and preserve. Mr. Ervey noted his belief that there is an issue of

"fairness" in the distribution of funds that are a proved by the electorate on a Statewide basis. Voters in counties that upport bond issues and pay taxes, certainly deserve their "piece of t e pie."

Mr. Ervey encouraged the SADC to stror ly review the proposed "sliding scale" and consider an adjustment a noted above. This may allow for a more equitable distribution of imited funds to valued farmland of high quality both within and outsi of areas under greatest development pressure.

RESPONSE: The SADC considered the con nent at its June 24, 1993 meeting and decided not to adopt proposed N I.A.C. 2:76-6.11(d)1, the formula for determining the SADC's cost sh e for providing a grant to a county. Instead the SADC will propose a n v amendment to address its cost share percentages.

COMMENT: The Gloucester County Times, n an editorial, supported the proposed incremental sliding scale. The pa er noted that under the existing rule the State pays 60 to 80 percent o the cost of the development easement regardless of location. The pa er states that the price of development rights in Middlesex County wa $10,645 an acre whereas the price in Gloucester County was $2,000 to $,000 an acre. The paper stated that for the price of preserving one acr in Middlesex, you could preserve about four acres in Gloucester County The proposed incremental sliding scale makes sense because counties th t want to preserve costly land ought to pay for that privilege.

RESPONSE: The SADC considered the com nent at its June 24, 1993 meeting and decided not to adopt proposed N .A.C. 2:76-6.11(d)1, the formula for determining the SADC's cost sha e for providing a grant to a county. Instead the SADC will propose a n v amendment to address its cost share percentages.

COMMENT: The Gloucester County Times n an editorial, supported the proposal's granting more of the selection rocess to the counties. The State often second-guesses the counties wit regard to which parcels are best suited to preservation. The paper fe that the proposal is a sensible home rule move since county officials l ve a better understanding of what areas should be preserved and wh re the best parcels can be obtained for preservation at the best pric

RESPONSE: The SADC while generally agr eing with the comments of the Gloucester County Times, the SADC is nandated to conduct an independent evaluation of applications consider d for development easement purchase. The program amendments wh e still providing for an independent SADC evaluation, counties are g en greater authority in determining which applications are considere

COMMENT: The Gloucester County Times editorial supported the proposal's establishment of specific timetables be followed each year for acquisition of development rights. Combi d, the proposed policy changes should enable New Jersey to preserve more farmland with its limited funds. The proposal should be adopte l.

RESPONSE: The SADC agrees that the pr posed amendments will reduce the time required for the evaluation and urchase of development easements. The amount of acreage preserved ill be dependent upon the cost of the development easements and ot r quality of the farms.

Summary of Agency-Initiated Changes:

The SADC, in response to public comments pertaining to proposed N.J.A.C. 2:76-6.11(d)1, the sliding scale formula ound at 25 N.J.R. 1808, decided not to adopt the proposed formula fo determing the SADC's cost share for providing a grant to a county. I stead, the SADC at its June 24, 1993 meeting approved a first readi of a newly proposed amendment to N.J.A.C. 2:76-6.11(d)1 which will e published in the New Jersey Register for public review and comme

In the interim, the former formula for deter ining the SADC's percent cost share grant to counties for the pu chase of development easements contained at N.J.A.C. 2:76-6.11(b) will remain in effect. Subsection N.J.A.C. 2:76-6.11(b)1 has been ecodified as N.J.A.C. 2:76-6.11(d)1, in the following adoption. Forme subsections at N.J.A.C. 2:76-6.11(a) and (b) will be deleted and replaced y N.J.A.C. 2:76-6.11(a) and (b) as proposed at 25 N.J.R. 1808.

In proposed N.J.A.C. 2:76-6.7(a)2, the board required to select two appraisers from the list adopted by the SADC conduct independent appraisals on lands that have received board, municipal and, where appropriate SADC approvals. Although the Ag culture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P 1983, c.32, requires municipal approval to purchase a development asement, the sequence of obtaining municipal approval is not mandat d. The SADC realizes that the boards are under tight time constrain regarding the review, approval and appraisal of farms. To provide t e boards with greater flexibility, the SADC has initiated a change at proposed N.J.A.C. 2:76-6.7(a)2 to remove the requirement of municipal approval "prior to" the appraisals being conducted and moved to N.J.A.C. 2:76-6.10(a)5, the requirement to submit a copy of the municipal resolution approving the easement. The statute requires approval and it therefore must still be obtained.

In proposed N.J.A.C. 2:76-6.7(a)2, the word "committee" has been changed to "Committee."

In proposed N.J.A.C. 2:76-6.10(a), the word "developmental" was changed to "development" to correct a typographical error.

In proposed N.J.A.C. 2:76-6.10(a)2i, the word "committee" was changed to "Committee" to correct a typographical error.

In proposed N.J.A.C. 2:76-6.11(c), paragraph i and ii were improperly codified. N.J.A.C. 2:76-6.11(c)i and ii have been recodified as (a)1 and 2, respectively.

In proposed N.J.A.C. 2:76-6.17(c), the words "13 above" have been changed to "15 below" to identify the proper deed restriction being referenced.

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

2:76-6.2 Definitions

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

...

"Application," as relates to the purchase of development easements, means a standard form adopted by the county agriculture development board.

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

...

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

...

"Landowner asking price" means the applicant's per acre confidential offer for the sale of a development easement.

...

"Municipal planning review body" means the appropriate governmental body having authority for reviewing and approving development proposals.

...

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

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

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

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

...

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

2:76-6.3 Eligible applicants

Any landowner that applies to the board in compliance with N.J.A.C. 2:76-6.4 and whose land is in a farmland preservation program, a municipally approved program or qualifies for differential property tax assessment pursuant to the Farmland Assessment Act

of 1964 and which is included in an agricultural development area shall be eligible to sell a development easement on that land.

2:76-6.4 Application

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

2:76-6.5 Preliminary board review

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

1. Criteria duly adopted by the board which evaluates the degree to which the purchase would encourage the survivability of the land in productive agriculture and the degree of imminence of change of the land from productive agriculture to nonagricultural use pursuant to N.J.S.A. 4:1C-31b.

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

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

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

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

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

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

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

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

2:76-6.6 Preliminary Committee review

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

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

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

2:76-6.7 Appraisals

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

1. The Committee shall adopt a list of appraisers;

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

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

3. Appraisers shall perform appraisals in accordance with procedures detailed in the appraisal handbook.

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

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

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

2:76-6.8 Committee certification of development easement value

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

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

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

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

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

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

2:76-6.9 Landowner offer

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

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

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

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

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

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

2:76-6.10 Final board review

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

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

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

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

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

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

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

i. The purchase price of the developm nt easement shall be adjusted according to the acceptance or rejection of any residual dwelling site opportunities permitt d pursuant to N.J.A.C. 2:76-6.17 and other adjustments required by the *[committee]* ***Committee***;

3. The percent of county and local cost hare funding for each application; *[and]*

4. The justification for the board's deci on*[.]* ***; and***

***5. A copy of the municipal governing bod 's resolution approving the purchase of the development easemen ***

(b) Regardless of the board's ranking de ermined by (a) above, the board may disapprove an application i it determines that an applicant has initiated proceedings in anticip tion of applying to sell a development easement or during the ap lication process which have the effect of increasing the applicant's ppraised development easement value.

2:76-6.11 Final committee review

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

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

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

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

(quality score) + (formula index × 200) = final score

*[i.]***1.*** Regardless of the final score, the Committee may disapprove an application if it determines that the applicant has initiated proceedings in anticipation of applying to se l a development easement or during the application process wh ch have the effect of increasing the applicant's appraised develo nent easement value.

*[ii.]***2.*** The Committee may give fundin priority to offers with higher numerical values in any one county b sed on the applicant's final score.

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

*[1. The Committee's cost share grant sh ll be based upon the landowner's asking price as follows:

Landowner asking price			Percent Committee cost share
For the first $1,000		$ 0 to $ 1 00	80
For the next $2,000	from	> $ 1,000 to $ 3 00	70
For the next $2,000	from	> $ 3,000 to $ 5 00	60
For the next $5,000	from	> $ 5,000 to $10 00	50
For the next $5,000	from	> $10,000 to $15 00	25
For the next $5,000	from	> $15,000 to $20 00	10
For the next amount		> $20,000	0]*

1. The percent Committee cost share shall be t sed upon the applicant's formula index as follows:

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

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

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

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

(e) Subject to the available funds, the Committee shall approve a grant, on a per acre basis, for the purchase of a development easement as determined in (d)1 and 2 above, based on the final surveyed acreage.

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

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

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

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

2:76-6.14 Payment procedures; schedule of payment

(a) (No change.)

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

2:76-6.16 Criteria for evaluating development easement applications

(a) The evaluation shall be based on the merits of the individual application and the application's contribution to its respective project area. The weight factor assigned to each criterion identifies the relative importance of the specific criterion in relation to the other criteria.

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

(c) (No change.)

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

1. (No change.)

2. Factors to be considered are as follows:

i. The type and quality of buffers, including:

(1) Compatible uses as follows:

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

(I) Highways (limited access);

(J) Golf course (public); and

(K) Other compatible buffers.

(2) (No change.)

(3) Negative consideration:

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

ii.-iii. (No change.)

(e) (No change.)

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

1. (No change.)

2. Factors to be considered are as follows:

i. The size of the individual application;

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

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

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

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

1.-2. (No change.)

2:76-6.17 Residual dwelling site opportunity

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

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

i. Existing residential buildings on the premises;

ii. Proposed residential buildings which have received preliminary or final approval from the municipal planning review body; and

iii. In no case shall the overall density of residual dwelling site opportunities, existing residential buildings and proposed residential buildings exceed one unit per 100 acres.

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

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

ii. Other factors which the board deems appropriate.

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

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

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

In the event a subdivision of the premises occurs in compliance with deed restriction No. *[13 above]* ***15 below***, the Grantor shall prepare or cause to be prepared a Corrective Deed of Easement reflecting the reallocation of the residual dwelling site opportunities to the respective subdivided lots. The Corrective Deed shall be recorded with the County Clerk. A copy of the recorded Corrective Deed shall be provided to the Grantee and Committee.

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

For purposes of this Deed of Easement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Appraisal Handbook Standards

Adopted New Rules: N.J.A.C. 2:76-10

Proposed: May 3, 1993 at 25 N.J.R. 1811(a).

Adopted: June 24, 1993 by the State Agriculture Development Committee, Arthur R. Brown, Jr., Chairperson.

Filed: July 12, 1993 as R.1993 d.391, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: August 2, 1993.
Expiration Date: July 31, 1994.

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

Summary of Agency Initiated Change: doption:

The following changes were made upon

In proposed N.J.A.C. 2:76-10.4, the wor : "development easement value" were added because the developmen easement value is in fact the value derived from subtracting the prec ding two indicated values in that sentence.

In proposed Appendix C, Land Sale Cor parable Rating Grid, unit symbols ($) were added where they were om ted in the initial proposal.

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

SUBCHAPTER 10. APPRAISAL HANI BOOK STANDARDS

2:76-10.1 Applicability

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

2:76-10.2 Definitions

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

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

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

"Appraiser handbook" means a docume t prepared and adopted by the Committee which identifies the s andards for conducting appraisals which shall be available to the boards.

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

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

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

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

"Hydrologically limited area" means ose areas which are designated as freshwater wetlands, transiti n zones, 100 year flood hazard areas, hydric soils, State open wate s, State-owned riparian lands, or otherwise lack or have limited de elopment potential due to excessive water.

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

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

"Subject property" means the property l :ing considered for the purchase of a development easement.

2:76-10.3 Appraisal report format

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

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

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

2:76-10.4 Summary

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

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

2:76-10.5 General information

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

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

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

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

1. A description of the subject property including all physical attributes and improvements which shall include, but not be limited to:
   i. A discussion of the topography, soil characteristics, hydrologically limited areas, state owned or privately held riparian lands, frontage, configuration, dwellings, outbuildings and other appropriate characteristics;
   ii. Any rejected, approved, or pending subdivision plans;
   iii. Any residual dwelling site opportunities allocated to the subject property pursuant to N.J.A.C. 2:76-6.17. (The appraiser shall not incorporate the effect of the value of residual dwelling site opportunities into the valuation);
   iv. Any exceptions to the subject property. (The appraiser shall incorporate the effect of the value of exceptions into the valuation); and
   v. The estimated acreage of hydrologically limited areas.

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

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

1. The appraiser shall consider the direct sales comparison method of valuation which shall be based on a comparison of the relevant vacant acreage sales to the subject property. At a minimum, the report shall address the following:
i. Grantor/grantee;
ii. Deed date/recording date;
iii. Deed book and page;
iv. Sale price;
v. Property size;
vi. Location, block and lot;
vii. Soil types/percent tillable soils;
viii. Frontage/access;
ix. Conditions of sale;
x. Color photograph(s);
xi. Improvements;
xii. Utilities;
xiii. Easements;
xiv. Verification; and
xv. Legible copy of subject tax map.
2. The appraiser shall adjust the comparable sales to include salient characteristics in the market which may include, but not be limited to the following: soil characteristics, zoning, topography, hydrologically limited areas, riparian lands (state owned or privately held), date of sale and financing.
i. The appraiser shall provide a land sale comparative rating grid in conformance with the sample, Appendix C of this subchapter, incorporated herein by reference.
ii. The final estimate of value shall be expressed as a per acre figure and a total value for the property.
3. In addition, the appraiser may consider the following methods of valuation:
i. Subdivision method;
ii. Income capitalization method; and
iii. Cost method.
4. The appraiser shall provide a value conclusion which identifies the final market value unrestricted for the subject property and discuss how the conclusion was determined.

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

(a) The property valuation after development easement acquisition (market value restricted) section of the appraisal report shall contain the following:
1. A description of the subject property in conformance with N.J.A.C. 2:76-10.6(a)1. In addition, an evaluation of the deed restrictions contained in N.J.A.C. 2:76-6.15 and their effect on the subject property, the subject property's adaptability for agricultural use or other uses which are not in conflict with the deed restrictions, soils and their productivity and other items which are significant to the valuation of the subject property;
2. A detailed description of the subject property's highest and best use as encumbered by the deed restrictions. The highest and best use analysis shall consider the following:
i. The legality of possible use;
ii. The physical possibility of use;
iii. The probability or likelihood of use; and
iv. The economic feasibility of use.
3. A determination of the subject property's market value restricted. The appraiser shall consider the effect of buildings and improvements when conducting the valuation, but only the market value of the land is required to be identified.
i. The appraiser shall consider the direct sales comparison method of valuation which shall be based on a comparison of the relevant vacant acreage sales to the subject property as encumbered by the deed restrictions. The appraiser shall consider the following types of land sales;
(1) Deed restricted properties;
(2) Physically limited properties;
(3) Flood plain;
(4) Low development pressure; and
(5) Development easements.
ii. The appraiser shall adjust the comparable sales to include, but not be limited to, the following: soil characteristics, zoning, hydrologically limited areas, date of sale and financing.
(1) The appraiser shall provide a land sale comparative rating grid in conformance with the sample in Appendix C.
(2) The final estimate of value shall be expressed as a per acre value and a total value for the property.
iii. In addition, the appraiser may consider the following methods of valuation:
(1) Income capitalization; and
(2) Cost approach.

2:76-10.8 Final estimate of development easement value

(a) The final estimate of development easement value section of the appraisal report shall contain the following:
1. The estimated development easement value which is arrived at by the difference between the market value unrestricted and the market value restricted and reported as a per acre value and total value of the property;
2. A discussion of the rights represented by the value conclusion and resultant changes in the highest and best use of the unrestricted versus the restricted property; and
3. A summary of the major points of the report which support the final estimate of value.

2:76-10.9 Addendum

(a) The addendum section of the appraisal report shall contain the following:
1. A subject property location map;
2. A subject property tax map or survey;
3. Soils/flood/topographic maps;
4. A study of hydrologically limited areas (if appropriate);
5. Subject property photos (color);
6. Reference materials, studies, articles, or other data considered important;
7. Development easement deed restrictions; and
8. The appraiser's qualifications.

APPENDIX A
SUMMARY OF SALIENT FACTS
AND IMPORTANT CONCLUSIONS

PROPERTY LOCATION

PROPERTY TYPE

LAND SIZE

ZONING

HIGHEST AND BEST USE

DATE OF VALUATION

	PER ACRE	TOTAL
ESTIMATE OF PROPERTY VALUE "BEFORE":	_____	_____
ESTIMATE OF PROPERTY VALUE "AFTER":	_____	_____
ESTIMATE OF DEVELOPMENT EASEMENT VALUE:	_____	_____

APPENDIX B
TABLE OF CONTENTS

PAGE #'S

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GENERAL INFORMATION
Appraisal Purpose 00
Estate Appraised 00

Definitions 00
Assumptions and Limiting Conditions 00
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Zoning and Assessment Information 00
Community and Neighborhood Data 00

PROPERTY VALUATION, BEFORE DEVE OPMENT

EASEMENT ACQUISITION (MARKET VA JE UNRESTRICTED)

Subject Property Description and Adaptabilit
for Development Use 00
Highest and Best Use 00
Valuation Method(s) 00
Sales Grid 00
Value Conclusion 00

PROPERTY VALUATION AFTER DEVEL(PMENT

EASEMENT ACQUISITION (MARKET VA JE RESTRICTED)

Subject Property Description 00
Highest and Best Use 00
Valuation Methods 00
Sales Grid 00
Value Conclusion 00

FINAL ESTIMATE OF DEVELOPMENT EA EMENT VALUE

ADDENDUM

Subject property location map 00
Subject property tax map or survey 00
Soils/flood/topographic maps 00
Study of hydrologically limited areas 00
Subject property photos 00
Reference materials, etc. 00
Development easement restrictions 00
Appraiser's qualifications 00

APPENDIX C

LAND SALE COMPARATIVE R ATING GRID

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

HIGHER EDUCATION

(a)

STUDENT ASSISTANCE BOARD

General Provisions for Tuition Aid Grant and Garden State Scholarship Programs
Dependent/Independent Student Defined
Adopted Amendment: N.J.A.C. 9:7-2.6

Proposed: May 17, 1993 at 25 N.J.R. 1945(a).
Adopted: July 7, 1993 by the Student Assistance Board, M. Wilma Harris, Chairperson.
Filed: July 12, 1993 as R.1993 d.388, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:71-26.8 and 18A:71-48.

Effective Date: August 2, 1993.
Expiration Date: November 6, 1997.

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

The Department, however, has made a minor punctuation correction due to a printing error in N.J.A.C. 9:7-2.6(b)6ii. The period at the end of this subparagraph was mistakenly included within the brackets for deletion. The period has again been added to signify the end of that subparagraph.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***):

9:7-2.6 Dependent/independent student defined

(a) (No change.)

(b) An individual meets the requirements of this section if such individual:

1.-2. (No change.)

3. Is a graduate or professional student; or

4. Is a married individual; or

5. Has legal dependents other than a spouse; or

6. Is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances. For purposes of receiving State financial assistance as an independent student due to unusual circumstances, at least one of the following criteria must be met:

i. The student has been separated from his or her parents due to an unsafe home environment. Documentation of such status must be received from a court, social service agency, or other similar source acceptable to the director of the applicable student assistance program within the Department of Higher Education.

ii. The student has been separated from his or her parents and comes from a documented background of historical poverty as set forth in N.J.A.C. 9:11-1.5 (or as attested to by a social service agency or respected member of the student's community and acceptable to the director of the applicable student assistance program within the Department of Higher Education), and is living with a relative who is providing support to the student***.***

iii. The student's economic and personal circumstances are of such a unique or unusual nature that denial of independent student status would create an unjust hardship upon the student. Documentation of eligibility under this subparagraph must be acceptable to the director of the applicable student assistance program within the Department of Higher Education.

(c) (No change in text.)

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Access to Client Records and Record Confidentiality

Adopted Amendments: N.J.A.C. 10:41-2.3, 2.4, 2.8, 2.9 and 2.10

Proposed: February 1, 1993 at 25 N.J.R. 432(a).
Adopted: July 1, 1993 by William Waldman, Commissioner, Department of Human Services.
Filed: July 7, 1993 as R.1993 d.381, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 9:6-8 10a; 30:1-12; 30:4-24.3; and 30:6D-4(f).

Effective Date: August 2, 1993.
Operative Date: August 16, 1993.
Expiration Date: March 20, 1994.

Summary of Public Comments and Agency Responses:

The proposed amendments were published on February 1, 1993. During the comment period, which closed March 3, 1993, comments were submitted by Spectrum for Living Development, Inc., The Arc of New Jersey, and the Department of the Public Advocate, Division of Advocacy for the Developmentally Disabled.

Spectrum for Living Development, Inc.

COMMENT: The agency expressed a concern that the proposed amendments do not address specifically the responsibilities and requirements for private agencies under contract with the Division when requests for records are received. A statement addressing this concern should be added to the amendment.

RESPONSE: The Division agrees that a statement is needed to clarify the responsibilities and requirements for private agencies. The following statement has been added to N.J.A.C. 10:41-2.4: "Requests for client records received by an agency under contract with or regulated by the Division shall be referred to the appropriate regional office of Community Services."

The Arc of New Jersey

COMMENT: The provisions of the proposed amendments are supported by The Arc of New Jersey. Access to internal communications involving service decisions will provide benefit to all of the Division's clients.

RESPONSE: The Division agrees and thanks the agency for supporting the proposed amendments.

Division of Advocacy for the Developmentally Disabled

COMMENT: The Public Advocate strongly supports the proposed amendments that allows access to internal communications which pertain directly to the client. This information is essential to permit timely correction of inaccurate information and to make informed evaluations of the agency's actions.

RESPONSE: The Division agrees and thanks the Office of the Public Advocate for supporting this amendment.

COMMENT: The Public Advocate urges an amendment of N.J.A.C. 10:41-2.8(b) to provide access by the client and/or representative to the complete reports of investigations of unusual incidents.

RESPONSE: The Division does not agree that complete investigations reports should be released to the client and/or representatives. The current practice of the Division is to give the family, in writing, information surrounding the unusual incident, a summary of the investigation, and a conclusion of the findings. The Division feels this explanation is sufficient and this practice also protects confidentiality rights of staff and other clients who may have been involved.

Moreover, the Division does not only generate all investigation reports. In some instances, investigations are undertaken and reports completed by the Division of Youth and Family Services or, in some criminal matters, by an independent law enforcement agency.

COMMENT: The regulation should be amended at N.J.A.C. 10:41-2.8(b)4. This amendment would allow clients and/or their representatives access to the information contained in referrals to other agencies.

RESPONSE: The Division agrees with the Public Advocate's comment and N.J.A.C. 10:41-2.8(b)4 "Referrals to other agencies" has been deleted from the regulation.

COMMENT: The Public Advocate is requesting that an additional section be added to the regulation which would recognize the independent right of the Department of the Public Advocate, as the designated protection and advocacy system, to have access to certain client information.

RESPONSE: The Division agrees and recognizes that access to specific client information by the Public Advocate needs to be clarified. The Division feels that an additional section is not necessary in the regulation, since it would involve internal directives. The Division will work with the Public Advocate on the additional wording through the Division circular process. The circular will provide internal directives to staff for access to records by the Public Advocate.

Summary of Agency-Initiated Change:

Following Departmental review and discussion, the Division concluded that additional wording is needed to protect the confidentiality of shared communications between Divisions, especially reports involving allegations of abuse and neglect. Additional wording has been added to N.J.A.C. 10:41-2.10(h), to the effect that requests for copies of DYFS reports involving the investigation of abuse and neglect of individuals served by the Division of Developmental Disabilities will be referred to DYFS.

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

10:41-2.3 Definitions

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

. . .

"Service component" means any developmental center, regional office, day training, adult activity center or special residential services.

10:41-2.4 Division policy

The Division recognizes its responsibility to protect the confidentiality of the records of clients in its care. Records may be released in accord with N.J.S.A. 30:4-24.3 which mandates that all certificates, applications, records and reports that directly or indirectly identify an individual currently or formerly receiving services from the Division be kept confidential and not subject to public disclosure. Any records which may be released shall not contain the name of any client other than the client whose records have been requested. Other clients shall be identified by initials. ***Requests for client records received by an agency under contract with or regulated by the Division shall be referred to the appropriate regional office of Community Services.*** Employees of the Division or agencies under contract with or regulated by the Division who violate confidentiality may be subject to disciplinary action.

10:41-2.8 Public and non-public agency records

(a) (No change.)

(b) Agency records which are not public include:

1. Investigation of unusual incidents;
2. Internal communication, not dealing with client's health, safety, welfare or habilitative goals, between agency personnel; ***and***
3. Internal procedures*[; and]***.***
[4. Referrals to other agencies.]

10:41-2.9 Client record

(a) The client record contains official information which is required by law. Only court commitments and payments of maintenance shall be considered to be public information. The client record includes, but is not limited to:

1. Eligibility determinations;
2. Applications for services;
3. Medical examinations and reports;
4. Evaluations reports;
5. Individual Habilitation Plan (IHP);
6. Progress notes and internal communications relating directly to the client's physical condition, IHP goals or service decisions, for example, placement in a day program;

7. Communication to legal guardian;
8. Initial reports of unusual incidents; a d
9. Social history.

10:41-2.10 Release of records
(a)-(g) (No change.)
(h) If it has been specifically indicated tl it a report is not to be shared except by the person or agency issuin the report, the Division shall not release that report, and
1. The individual requesting the release of the report shall be directed to the issuing entity; *[or]*
2. In the instance where the Division is referring the client for services, the Division shall be responsible t request the release of the report from the issuing entity*[.]**; o
3. In the instance of the Division of You h and Family Services' (DYFS) reports involving the investigation f abuse and neglect of individuals served by the Division of Develo nental Disabilities, the requests for copies of these reports shall e referred to DYFS.
(i)-(j) (No change.)

(a)

DIVISION OF FAMILY DEVELOPME NT

General Assistance Manual

Elimination of Time-Limited Eligibil ty Periods for Employable GA Recipients

Adopted Amendments: N.J.A.C. 10 85-1.1, 3.1, 3.2, 4.2 and 7.2

Proposed: April 19, 1993 at 25 N.J.R. 1714 a).
Adopted: July 6, 1993 by William Waldma , Commissioner, Department of Human Services.
Filed: July 8, 1993 as R.1993 d.382, **withou change.**
Authority: N.J.S.A. 44:8-111(d), and Asser bly Bill 60 as introduced December 14, 1992, enacted anuary 13, 1993 and effective January 13, 1993.
Effective Date: August 2, 1993.
Expiration Date: December 20, 1994.

Summary of Public Comments and Age icy Responses:
No comments received.

Full text of the adoption follows:

10:85-1.1 Purpose of the General Assist ice program
(a)-(f) (No change.)
(g) Financial assistance for maintenanc requirements or other needs, including medical assistance, shall n be authorized through General Assistance when, during the same period, such needs are actually being provided by any other sou e.
1.-2. (No change.)
3. The following situation shall be incl ded as duplicative assistance within the meaning of the penalty provisions stipulated in this subsection:
i. General Assistance benefits received om any MWD during any imposed sanction period, such as set forth at N.J.A.C. 10:85-3.2(g)7.

10:85-3.1 Persons eligible for General A istance
(a) General Assistance shall be provid l to all eligible needy persons who, while in the State, are e titled to receive such assistance. Entitlement does not extend to persons who have been found eligible for or are recipients of pu ic assistance programs administered by the county welfare agency, r who have been found ineligible for such programs due to voluntar refusal to comply with program requirements. (See also (c) and d) below.)
1.-3. (No change.)
4. An "employable" person is any person pplying for or receiving assistance who is able-bodied and does n meet any one of the criteria of "unemployable" delineated in)5 below.
5. (No change.)
(b)-(f) (No change.)

10:85-3.2 Application process
(a)-(b) (No change.)
(c) Rules concerning taking applications are:
1. Application/affidavit: Any person who indicates a wish to apply for General Assistance shall be recognized as an applicant. Such individual will be assisted by an MWD worker in completing the application (Form GA-1). He or she shall then be required to sign under oath the attached affidavit attesting to the correctness of his or her statements.
i.-iii. (No change.)
iv. The following procedures apply at the time of application:
(1) (No change.)
(2) (No change in text.)
v. (No change.)
2.-7. (No change.)
(d)-(i) (No change.)

10:85-4.2 Periods for which assistance is granted
(a) General assistance is granted to meet needs of individuals in a variety of situations. The director of welfare shall determine which of the following is appropriate:
1.-5. (No change.)
6. (No change in text.)

10:85-7.2 Notices to applicants or recipients
(a) (No change.)
(b) Exceptions to timely notice are:
1. (No change.)
2. Time-limited assistance: When it is mutually understood between the applicant and the MWD that assistance is requested for and will be granted to cover only a limited period of time, or is limited to a specific purpose or an emergency grant (see N.J.A.C. 10:85-4.2(a)4 and 5) or when other circumstances warrant the MWD to grant assistance to cover a limited period of time, the MWD will send a time-limited notice promptly when such assistance is granted. No further notice will be required.
i. (No change in text.)
(c) (No change.)

INSURANCE

(b)

DIVISION OF ADMINISTRATION

Medical Fee Schedules: Automobile Insurance Personal Injury Protection and Motor Bus Medical Expense Insurance Coverage

Adopted Amendments: N.J.A.C. 11:3-29.2, 29.4 and 29.6

Proposed: January 19, 1993 at 25 N.J.R. 229(b).
Adopted: July 12, 1993 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: July 14, 1993 as R.1993 d.395, **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. 39:6A-4.6.
Effective Date: August 2, 1993.
Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:
The Department received a total of 34 written responses from chiropractors, physicians and surgeons, lawyers, diagnostic facilities, rehabilitation facilities, medical equipment suppliers, insurers, insurance claim review services and agencies, associations and societies that represent these interests.
Many of the comments received expressed concerns shared by more than one commenter. A list of commenters follows:
Bergen Chiropractic Associates
Camden County Chiropractic Center
Campbell Chiropractic Center

Old Bridge Chiropractic Center
Plaza Chiropractic Center
Bio-Sales, Inc.
Brach, Eichler, Rosenberg, Silver, Bernstein, Hammer & Gladstone
George E. Chapman, D.C.
Clinical Diagnostics, Inc.
Consolidated Rehabilitation Company
Data Management Ventures, Inc.
Dr. Joseph C. DeFazio
Essex County Medical Society
Green, Lundgren & Ryan
Jersey Association of Medical Equipment Suppliers
Liberty Mutual
Market Transition Facility of New Jersey (MTF)
M.D. Business Management and Consulting Corporation
Medical Society of New Jersey
National Association of Independent Insurers
Neurosurgical Group of Chatham, P.A.
New Jersey Manufacturers Insurance Company
New Jersey Neurosurgical Society
The Prudential Property and Casualty Insurance Company of New Jersey
PSI Auditing Services
PTS Imaging, P.A.
RTW/Medical Services Review
Selective Insurance Company of America
State Farm Insurance Companies
Thermographic Consultants
Sunil M. Thomas
Union County Medical Society of New Jersey
Unger & Unger
Universal Diagnostics, Inc.

COMMENT: The New Jersey Medical Fee Schedule for physicians' services establishes upper limits for reimbursement of physician charges but not assisting surgeon charges. The proposed amendment at N.J.A.C. 11:3-29.4(h) addresses this failure by limiting assisting surgeon charges. Similarly, proposed N.J.A.C. 11:3-29.4(i) recognizes that radiologists have been customarily compensated for the professional component of radiology services at up to 40 percent of the global charge. This cap on radiology fees is reasonable and will help keep the rising cost of automobile insurance down.

RESPONSE: The Department generally agrees but views the 40 percent factor not as a "cap on radiology fees" but rather as an upper limit on personal injury protection (PIP) benefits paid by auto insurers.

COMMENT: If the global charge exceeds the fee schedule maximum, how should the PIP insurer distribute payment? For example, will the provider of the professional service receive 40 percent of the maximum and the technician the remaining 60 percent, or should the schedule maximum be prorated to reflect the components of the billing? Some clarification would be helpful.

RESPONSE: The insurer is responsible in each case for reimbursement of the technical and professional components of global charges within the meaning and intent of the rules. In no case may reimbursement for the professional component of allowable global charges for radiology services exceed 40 percent of the global charge, and in no case may the sum of the components exceed the global charge which appears on the fee schedule as the upper limit of the insurer's liability.

COMMENT: The incorporation of the 1992 evaluation and management codes is helpful, but physician fees are about 10 to 18 percent below reasonable standards. Overall fee levels have not changed since adoption of the initial fee schedule while practice costs have increased over the same time frame. There have been no cost of living increases to the medical fee schedules (except for the medical equipment schedule) since shortly after the original rules and fee schedules were promulgated. We understand the Department's desire to be conservative. If, however, the statute is to be respected, a modest upward adjustment reflective of the overall Consumer Price Index since 1990 would be prudent.

RESPONSE: The Department is seeking to obtain a large database not previously available for use in reviewing the physicians' and dentists' fee schedules. Review of these schedules and others, as indicated in the proposal, are ongoing. Changes in the upper level dollar amounts have been and will continue to be made when indicated by the databases from which the fee schedules are derived.

COMMENT: Fee schedules and rules are supplied free of charge to providers by most insurers. We have received complaints from physicians who consider fees charged by the Department of Insurance to be excessive.

RESPONSE: Charges for copies of the fee schedules and rules provided by the Department are in compliance with the "Right to Know Law," N.J.S.A. 47:1A-2. This law sets forth the required fees to be charged the public for the provision of copies of public documents. The required charges are as follows: 75¢ each for the first 10 pages; 50¢ cents each for the next 10 pages; and 25¢ per page thereafter. The total copy charge for medical fee schedules and rules varies depending on how much material is sent out. Although not required to do so, the Department sends copies of everything published in the New Jersey Register relating to the medical fee schedules to all of New Jersey's county medical societies and speciality societies with a cover letter inviting the societies to make as many copies as they wish for circulation among their members.

COMMENT: Since the changes proposed, if approved, will necessitate software corrections, if, as you indicated, you are also planning fee upgrading on CPT codes, nursing and allied health services, ambulance and dental services, a major revamping of the entire schedule at one time would certainly prove to be not only cost-effective but also education effective.

RESPONSE: The Department agrees, but more often than not, proposed changes will be adopted while others are in the development stage or still pending as part of the regulatory process.

COMMENT: While the physicians' schedule has been updated by code listings, these are not current. CPT-1993 codes should be incorporated, particularly the orthopedic trauma section, which has been extensively revised for 1993.

RESPONSE: The Department is currently working toward proposal and adoption of 1993 CPT code changes.

COMMENT: The New Jersey no-fault law provides for certain deductibles and co-payments. Frequently, insurers do not provide Explanation of Benefits statements to physicians so they can properly bill patients. The Department should require carriers to provide Explanation of Benefits to physicians.

RESPONSE: The specific requirements for Explanation of Benefits are set forth at N.J.A.C. 11:3-37.10.

COMMENT: The proposed inscription appearing at the end of the physicians' fee schedule and the dental fee schedule should be changed to conform with the wording that was proposed for N.J.A.C. 11:3-29.6(f) under PRN 1992-394. The inscription under that proposal read, "Dollar amounts on the fee schedule define the automobile insurer's upper limit of liability for the service provided. Reimbursement will be based on what is usual, customary and reasonable within the upper limit." The advantage of this wording is that it clearly communicates the Department's position that the New Jersey Medical Fee Schedules are usual and customary fee schedules and not amount specified fee schedules.

RESPONSE: The Department agrees and the change has been made accordingly.

COMMENT: We feel that insurance companies are somewhat lax in response to medical billing and we would like to see some stipulation included in the regulation that would allow physicians to charge interest on those claims that are not paid within a reasonable time period, and that time period should be specified in the regulation.

RESPONSE: Time limits for payment of personal injury protection coverage benefits and provisions for interest on overdue payments are set forth at N.J.S.A. 39:6A-5b and c.

COMMENT: Many insurance companies insist on receiving a patient's entire file, including progress notes, operative notes and hospital reports as well as the attending physician's report. The New Jersey State Board of Medical Examiners has allowed physicians since 1976 to charge for copying records, and the current guidelines of the State Board of Medical Examiners is that they may charge up to $1.00 a page, not to exceed $100.00 per record. We feel that physicians should be allowed to charge insurers for copies and that this should be included in the regulations. In our opinion, this would limit the number of claims that insurance companies "lose" and that have to be resubmitted, currently at additional cost to the physician.

RESPONSE: With regard to PIP coverage, health care providers are required to furnish such information upon request by the insurer. The last sentence of N.J.S.A. 39:6A-13b provides that "(T)he person requesting such records shall pay all reasonable costs connected therewith."

COMMENT: The Department's proposal to clarify physicians' schedule code no. 93762—peripheral thermogram—by adding the phrase "including any series" produced many responses.

Those favoring the proposal questioned the validity of thermography in the first place and pointed out that even $432.00 "including any series," the New Jersey reimbursement limit i excessive in light of the New Jersey Supreme Court opinion in *The nographic Diagnostics v. Allstate,* 125 *N.J.* 491, 516 (1991) and when co pared to reimbursement levels prevailing in other states. Two comment s recommended that the code be eliminated from the fee schedule a ogether.

Commenters opposing the proposal labe d it as "arbitrary and capricious" and threatened litigation. They cla ned that the upper limit amount of $432.00 "is significantly below the c rrent 75th percentile fee level for a total body thermographic study." Al rnative coding proposals with varying amounts were offered for the De partment's consideration.

RESPONSE: The Department's position emains unchanged. As stated in the proposal, thermograms in N v Jersey are ordinarily provided in a three-part series to the cervical, horacic and lumbar areas of the body. Material received by the Departr ent as part of the public comment only tended to confirm this. The ith percentile charge of $432.00 established by the Department's dat base makes sense when viewed in the series context; but is unquestion bly excessive when compared to any other acceptable standards if view d merely as representing the cost of taking a single thermogram.

COMMENT: The Department received sev al comments concerning codes and procedures omitted from the fee chedules. Providers said to be most affected by omissions includ l anesthesiologists and neurosurgeons. Other comments addressed m dical fee schedule limits which were said to be too low or, in one ir tance, too high.

RESPONSE: The Department appreciat having these matters brought to its attention, but must maintain th integrity of the available database information upon which the medical fee schedules are based. The Department will correct obvious errors, b it will refrain from arbitrary changes which are unsupported by factual ata. For medical services and equipment not on the fee schedules, N.J.A C. 11:3-29.4(e) provides, in part, that the insurer's limit of liability "sh ll not exceed the usual, customary and reasonable fee."

In some instances, discrepancies are cau d by anomalies in the database. For example, the lower rated pr cedure may have been performed more frequently in higher-cost r gions of the State. The Department is required by statute to set ma imum allowable charges at the actual 75th percentile of charged fees in ach of the three regions, and for procedures of low occurrence to set th same maximum charges for all regions. This may result in fees that ometimes appear to be illogical. Only in cases where providers charg the upper limit allowed for their services will these discrepancies cor e into play. In most instances, the usual, customary and reasonable ee charged by providers will be within the range of charges establishec by the upper limits. The Department is hopeful that expansion of its c tabase will resolve most of these problems.

The fee schedule for durable medical equi ment and prosthetic devices is derived from the Federal Medicare program. It follows that changes appear first in the "program" and ar thereafter incorporated into the fee schedule. The Department is av re of the lag time that results from this process and is hopeful th it can be significantly decreased or eliminated. Variations in rental fe between the "program" and the fee schedule are due to the limitation at N.J.A.C. 11:3-29.4(c)1 that the insurer's liability for monthly rental es be no more than 10 percent of the purchase price.

COMMENT: A pre-authorization mechanisr for the use of diagnostic testing should be considered by the Departm nt in order to eliminate some of the unnecessary testing being perfor ed at an alarming rate in no-fault cases.

RESPONSE: The Department is increasing aware of this problem, but reminds insurers and claim review organiz ions that reimbursement of personal injury protection coverage benefits conditioned on medical necessity. See N.J.A.C. 11:3-29.4(a). Instance believed to involve insurance fraud should be reported to the Dep tment's Fraud Division. The Fraud Hotline number is 1-800-662-009

COMMENT: One area that we feel ould be addressed is neurological testing. We have noticed an a ndance of noninvasive surface testing that is being billed at the same a nount as invasive testing. Since this testing is being conducted without needles, we have found that numerous chiropractors are performing th se neurological tests and charging the same amount as invasive testing ith needles. We feel an adjustment should be instituted for this type of testing.

RESPONSE: Insurers and audit companies re reminded once again that the success or failure of the medical fe schedules and rules in containing or reducing the cost of automobile insurance in New Jersey is dependent upon the manner in which they perform their responsibilities in reviewing claims for reimbursement. Under no circumstances should reimbursement exceed the upper limit on the fee schedule or the usual, customary and reasonable fee for the services rendered—whichever is lower—assuming such services are medically necessary in the first place.

COMMENT: Physical therapy performed on an outpatient basis at acute care hospitals should be subject to the medical fee schedules and rules. We have found that outpatient physical therapy provided by acute care hospitals is being billed at approximately 30 to 40 percent higher than the fee schedules allow. Since the fee schedules were put in place to reduce medical costs, we believe outpatient physical therapy services should fall under the same guidelines.

RESPONSE: The Department agrees. A proposal addressing this matter will appear in the New Jersey Register in the near future.

COMMENT: We request clarification with regard to microsurgery. Should a physician be allowed to charge higher than the fee schedule allows if microsurgery is involved?

RESPONSE: Health care providers are expected to charge their usual, customary and reasonable fees for the medical services or equipment they provide. Auto insurers are expected to review submissions for reimbursement based on the same standard. In some instances, the provider's usual, customary and reasonable charge may exceed the amount appearing on the fee schedule. In no event will the provider be reimbursed beyond the amount appearing on the schedule. In the context of the medical fee schedules and rules, no distinction is made between microsurgery and other form of surgery.

COMMENT: We understand the reason for deleting code number 7881 "T.M.J. therapy" from the dental fee schedule. However, we suggest that ADA code 7880 be added for T.M.J. appliances. This would obviate the need for unnecessary audits and ultimately result in savings.

RESPONSE: The Department is only able to add new codes to the medical fee schedules if the database shows that the incidence of use of such codes in the treatment of auto accident injuries is great enough to justify their inclusion. Otherwise, services and procedures that do not appear on the fee schedules will continue to be governed by N.J.A.C. 11:3-29.4(e).

COMMENT: We are pleased that the Department is reviewing fees for nurses and allied health services. We respectfully suggest that a fourth category, cognitive therapy, be added to the subheading "Home Health Visits" which now includes physical, speech and occupational therapies. The current schedule includes only a provision for such therapy given in the provider's office.

RESPONSE: The preceding response applies here as well.

COMMENT: We request clarification with regard to multiple procedures when performed on separate fingers or toes. At the present time, the rules refer to the hand as one body area.

RESPONSE: The Department believes that the present language at N.J.A.C. 11:3-29.4(f) is sufficient even though it agrees that, from time to time, varying situations will arise. For this reason the Department has emphasized that reference to specific body parts or regions is included "as a guideline" recognizing that there will be exceptions to which insurers and providers alike will be expected to reasonably adjust.

The Department has initiated changes at code EO943 "cervical pillow" on the fee schedule for durable medical equipment and prosthetic devices to correct errors resulting from a transposition made at the time of the proposal.

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

11:3-29.2 Definitions

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

. . .

"Global charge" means the sum of the technical and professional components.

. . .

"HCPCS" means the Federal Health Care Financing Administration's (HCFA's) Common Procedure Code System.

. . .

11:3-29.4 Application of the Medical Fee Schedules

(a)-(g) (No change.)

(h) The insurer's limit of liability for medically necessary assisting surgeon expenses shall be 20 percent of the primary physician's allowable fee determined pursuant to the fee schedule and rules.

(i) The insurer's limit of liability for the professional component of allowable global charges for radiology services shall be 40 percent of the global charge.

11:3-29.6 Medical Fee Schedules

(a) The following is the Medical Fee Schedule for physicians' services:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE—PHYSICIANS' SERVICES

CPT-4 Code	Description of Services	Region 1	Region 2	Region 3
10060	I&D ABSCESS, SIMPLE OR SINGLE	$91	$86	$81
10061	I&D ABSCESS, COMPLICATED OR MULTIPLE	275	269	269
10120	INCIS & REMOVAL OF FOREIGN BODY, SIMPLE	99	91	86
10121	INCIS & REMOVAL, MULTIPLE OR COMPLICATED	301	301	301
10140	I&D OF HEMATOMA, SIMPLE	80	75	84
10141	I&D OF HEMATOMA, COMPLICATED	583	583	583
10160	PUNCTURE ASPIRATION OF ABSCESS	92	102	112
11000	DEBRIDEMENT OF SKIN; UP TO 10%	37	37	37
11040	DEBRIDEMENT; SKIN, PARTIAL THICKNESS	52	43	48
11041	DEBRIDEMENT; SKIN, FULL THICKNESS	93	107	113
11042	DEBRIDEMENT; SKIN, SUBCUTANEOUS TISS	188	162	140
11043	DEBRIDEMENT; SKIN, SUB-Q TISS, MUSCLE	454	454	486
11044	DEBRIDEMENT; SKIN, SUB-Q, MUSCLE, BONE	648	648	648
11730	NAIL AVULSION, SIMP, PARTIAL OR COM	61	61	50
11750	EX NAIL/MATRIX, PART/COMP, PERMANENT	346	372	377
11765	WEDGE EXC OF SKIN NAIL FOLD	146	146	146
12001	SIMPLE REPAIR, SCALP ETC; TO 2.5 CM	107	124	120
12002	SIMPLE REPAIR, SCALP ETC; 2.6-7.5 C	162	162	162
12004	SIMPLE REPAIR, SCALP ETC; 7.6-12.5 C	233	233	233
12011	SIMP REPAIR, FACE ETC; TO 2.5 CM	131	152	147
12013	SIMP REPAIR, FACE ETC; 2.6-5.0 CM	190	190	189
12031	INTER REPAIR, SCALP ETC; TO 2.5 CM	207	207	207
12032	INTER REPAIR, SCALP ETC; 2.6-7.5 C	277	277	277
12041	INTER REPAIR, NECK, ETC; TO 2.5 CM	218	218	218
12042	INTER REPAIR, NECK ETC; 2.6-7.5 CM	286	286	286
12051	INTER REPAIR, FACE ETC; TO 2.5 CM	438	394	482
12052	INTER REPAIR, FACE ETC; 2.6-5.0 CM	540	540	594
13101	COMPLEX REPAIR, TRUNK; 2.6-7.5 CM	491	491	491
13120	COMPX REPAIR, SCALP ETC; 1.1-2.5 CM	405	405	405
13121	COMPX REPAIR, SCALP ETC; 2.6-7.5 CM	637	637	637
13131	COMPX REPAIR, CHECKS ETC; 1.1-2.5 CM	547	547	567
13132	COMPX REPAIR, CHECKS ETC; 2.6-7.5 CM	846	846	809
13150	COMPX REPAIR, NOSE ETC; TO 1.0 CM	438	438	438
13151	COMPX REPAIR, NOSE ETC; 1.1-2.5 CM	639	639	648
13152	COMPX REPAIR, NOSE ETC; 2.6-7.5 CM	1040	1040	1040
13300	COMPLICATED REP; OVR 7.5 CM ANY AREA	1431	1431	1431
14000	ADJ TISS TRANSFER, TRUNK; TO 10 SQ CM	513	513	542
14001	ADJACENT TIS TRANS OR REARR, TRUNK	920	920	951
14020	ADJ TISS TRANS, SCALP ETC; TO 10 SQ CM	1096	1096	1096
14040	ADJ TISS TRANS, CHIN ETC; TO 10 SQ CM	1225	1225	1269
14060	ADJ TISS TRANS, NOSE ETC; TO 10 SQ CM	1589	1589	1589
15100	SPLIT GRAFT, TRUNK ETC; TO 100 SQ CM	1261	1261	1261
16000	INITIAL TREATMENT, FIRST DEGREE BURN	75	75	75
16020	DRESS/DEBRIDE SM BURN; NO ANESTHESIA	87	87	93
16025	DRESS/DEBRIDE MED BURN; NO ANES	124	124	124
17250	CHEMICAL CAUT OF GRANULATION TISS	57	57	54
19000	PUNCTURE ASPIRATION CYST PAST	107	118	113
20220	BIOPSY, BONE, TROCAR OR NEEDLE; SUPER	317	317	313
20550	INJ, TEND SHEATH, LIGAMENT, TRIGGER P	96	96	91
20600	ARTHROCENTESIS, ASP &/OR INJ; SM JNT	81	86	86
20605	ARTHROCEN, ASP &/OR INJ; INTER JOINT	86	92	96
20610	ARTHROCEN, ASP &/OR INJ; MAJOR JOINT	102	113	113
20670	REMOVAL OF IMPLANT; SUPERFICIAL	187	187	187
20680	REMOVAL OF IMPLANT; DEEP	806	809	864
21320	MANIP TREATMNT, NOSE FX; STABILIZATION	719	719	719
21455	CLOSE MANIP TREAT, FIXATN, MANDIB FX	2398	2398	2398
21800	RIB, FRACTURE(S), CLOSED (SIMPLE)	86	86	86

23350	INJECTION PROC, SHOUL	)ER ARTHROGRAPH	132	132	132
23420	REPAIR SHOULDER CUF	AVULSION, CHRON	3294	3294	3294
23500	TREAT CLOSED CLAVICL	: FX; NO MANIPUL	237	237	237
23505	TREAT CLOSED CLAVICL	: FX; W/MANIPUL	468	468	468
23600	TREATMENT CLOSED HU	MERAL FX; NO MANIP	430	430	430
23605	TREATMENT CLOSED HU	MERAL FX; W/MANIP	617	617	617
23650	TREAT CLOSED SHOULD	R DISLOC, W/MANIP	354	354	339
23655	TREATMENT OF CLOSED	SHOULDER DISLOC	450	450	450
24640	RADIAL HEAD SUBLUXA	TION, CHILD, MANI	194	194	194
24650	CLOSED RADIAL HEAD/N	ECK FX; NO MANIP	505	505	505
25111	EXCISION GANGLION, W	IST; PRIMARY	1000	1000	1101
25500	CLOSED RADIAL SHAFT I	X; NO MANIP	452	452	452
25505	CLOSED RADIAL SHAFT I	X; W/ MANIP	559	559	559
25560	CLSD RADIAL & ULNAR S	HAFT FX; NO MANIP	728	728	728
25565	CLSD RADIAL & ULNAR S	HAFT FX; W/ MANIP	843	843	843
25600	C/S DIS RAD FX/ EPIPHYS	SEP; NO MANIP	498	486	513
25605	C/S DIS RAD FX/EPIPHYS	EP; W/ MANIP	657	594	702
25610	CLSD COMPLEX, DIST RA	) FX/EPIPHY SEP	719	719	719
25635	TREATMENT CLOSED CA	SPAL BONE FX W M	481	481	481
26600	TX CLOSED METACARP F	K, SNG; W/O MANIP	323	323	346
26605	TX CLOSED METACARP F	K, SNG; W/ MANIP	428	428	432
26720	TX CLOS PHALAN SHAFT	FX; W/O MANIP	224	224	210
26725	TX CLOS PHALANG SHAF	' FX, W/ MANIP	344	344	344
26750	TX CLOS DIST PHALANG	X; W/O MANIP	156	156	156
26755	TX CLOS DIST PHALANG	X; W/ MANIP	194	194	194
26770	TX CLOS INTERPHAL JNT	DIS; W/O ANESTH	154	154	154
27125	PARTIAL HIP REPLACEM	NT, PROSTHESIS	4429	4429	4429
27130	ARTHROPLAS; TOT HIP R	EPLAC W/WO GRF	4932	4618	5185
27236	OPEN TX CLOSE/OPEN FE	M FX, INT FIX	3422	3422	3422
27244	OPEN TX CHANTERIC FE	I FX; W INT FIX	2971	2971	2971
27370	INJECT PROCEDURE KNI	E ARTHROGRAPHY	139	139	165
27447	ARTHRO, KNEE, TOT, CN	YL&PLAT; MED & LAT	5022	5022	5402
27506	OPEN TX CLOS/OPEN FEM	SHAFT FX	3955	3955	3955
27520	PATELLA, FRACTURE, CI	OSED (SIMPLE), WITHOUT RED	444	444	444
27750	TX CLOSED TIBIAL SHAF	' FX; W/O MAN	648	648	648
27752	TIBIA, SHAFT FRACTURE	CLOSED (SIMPLE)	817	817	817
27760	TX CLOSED DISTAL TIBIA	L FX; W/O MAN	451	451	451
27762	TX CLOS DIST TIBIAL FX;	W/MANIP	544	544	544
27786	TX CLOSED DISTAL FIBU	AR FX; W/O MAN	521	521	518
27788	TX CLOSED DISTAL FIBU	AR FX; W/ MAN	602	602	602
27802	TX CLOS TIB & FIB FX, SE	AFT; W/ MANIP	1046	1046	1046
27808	TX CLOS BIMALLEOLAR	ANKL FX, W/O MAN	648	648	648
27810	TX CLOS BIMALLEOLAR	ANKLE FX, W/ MAN	803	803	803
27814	OPEN TX CLOS/OPEN BIM	ALL ANKLE FX	2522	2522	2522
27818	TX CLOS TRIMALL ANKL	FX; W/ MANIP	1107	1107	1107
27822	OPEN TX CL/OP TRIMALI	ANKLE FX; ONLY	3155	3155	3155
28090	EXC LES TEN, SHEATH, C	P W/SYNOV; FOOT	844	844	844
28124	PART EX, PHALANXO FA	CIAL REL	687	687	687
28126	CONDYLECTOMY, PHAL	NX BASE SNG EA	648	648	648
28153	RESECTION, HEAD OF PI	ALANX	648	648	648
28160	HEMIPHALANGECTOMY	OINT EX, SNG, EACH	917	917	917
28455	TRTM. OF CLOSED TARS	L BONE FRACTURE	347	347	366
28470	METATARSAL FX CLSD; W	/O MANIP, EA W M	384	384	384
28475	METATARSAL FX CLSD; W	/ MANIP, EA	390	390	390
28490	PHALANGES FX, CLSD; W	O MANIPULATION	148	148	148
28510	PHAL NT GT TOE FX CLSI	W/O MANIP, EA	132	132	132
28515	PHAL NT GT TOE FX CLSI	W/ MANIP EA	219	219	219
29065	CAST SHOULDER TO HAI	D (LONG ARM)	216	226	216
29075	CAST ELBOW TO FINGER	(SHORT ARM)	188	216	205
29085	CAST HAND & LOWER FO	REARM- GAUNTLET	185	185	185
29105	SPLINT LONG ARM (SHOI | LDER TO HAND)	137	137	137
29125	SPLINT SHORT ARM (FOI	EARM-HAND(STAT))	114	135	135
29130	SPLINT FINGER; STATIC		91	91	91
29240	STRAPPING; SHOULDER		89	89	89
29260	STRAPPING; ELBOW OR '	RIST	69	69	70
29280	STRAPPING; HAND OR FI	IGER	58	58	62
29345	CAST LONG LEG (THIGH | O TOES)	279	279	279
29365	CAST CYLINDER (THIGH | O ANKLE)	208	208	208
29405	CAST SHORT LEG (BELO' | ' KNEE TO TOES)	243	269	243
29425	CAST SHORT LEG; WALK	NG/AMBULATORY	280	291	296
29505	SPLINT LONG LEG (THIG | -ANKLE/TOES)	67	67	67

29515	SPLINT SHORT LEG (CALF TO FOOT)	128	124	135
29530	STRAPPING; KNEE	93	93	91
29540	STRAPPING; ANKLE	75	75	75
29550	STRAPPING; TOES	59	59	65
29580	STRAPPING; UNNA BOOT	90	107	102
29700	CAST REM/BIV;GAUNTLET/BOOT/BODY	90	90	90
29705	CAST REM/BIV;FULL ARM/FULL LEG	83	83	86
29870	ARTHROSCPY, KNEE, DIAG, W/WO SYNOV BX	1785	1785	1785
29874	ARTHROSCPY, KNEE, SURG; REMOVE F-BODY	2452	2452	2452
29875	ARTHROSCPY, KNEE, SURG; SYNOVECTMY, LTD	2594	2594	2594
29876	ANTHROSCPY, KNEE, SURG; SYNOVECT, COMP	2798	2798	2798
29877	ARTHROSCPY, KNEE, SURG; CHONDROPLASTY	2640	2640	2640
29880	ARTHRO, KNEE SRG, W/MENISECTOMY	2998	2998	2998
29881	ARTHROSCOPY, W/MENISCTMY MED OR LAT	2627	2700	3106
29882	ARTHROSCOP, W/MENSCUS REP MED OR LAT	3189	3189	3189
29888	ARTHRO, AID ANT CRUC LGMNT, RP/AG/RC	4567	4567	4567
30200	INJECTION TURBINATE(S), THERAPEUTIC	76	76	75
30300	REMOVAL FOR BODY, INTRANSAL; OFFICE	96	96	96
30420	RHINOPLASTY; INCL MAJOR SEPTAL REP	4041	4041	4213
30520	SEPTOPLASTY W/WO CARTILAGE IMPLANT	2479	2479	2700
30901	CONTROL NASAL HEMORRHAGE, ANT SMP; U	104	107	102
30903	CNTROL NASAL HEMORRHAGE, ANT, COMP; U	159	143	162
30905	CONTROL NASAL HEMORRHAGE POST; INIT	405	405	405
31000	LAVAGE CANNULATION; MAXIL SINUS, UNI	113	113	124
31201	ETHMOIDECTOMY; INTRANASAL, TOTAL	2714	2714	2714
31250	NASAL ENDOSCOPY, DIAGNOSTIC	226	226	226
31500	INTUBATION, ENDOTRACHEAL EMERGENCY	275	275	269
31505	LARYNGOSCOPY INDIRECT; DIAGNOSTIC	121	121	129
31515	LARYNGOSCOPY, DIRECT; FOR ASPIRATION	346	346	346
31525	LARYNGOSCOPY, DIR; DIAG, EXCEPT NEWBORN	421	421	421
31575	LARYNGOSCOPY, FLEX FIBERSCOPIC; DIAG	351	377	351
31600	TRACHEOSTOMY, PLANNED	1075	1075	1075
31622	BRONCHOSCOPY, DIAG; W W/O CELL WASHNG	737	702	778
31645	BRONCHOSCOPY; W/ASP TRACH TREE INIT	756	756	756
32000	THORACENTESIS, INITIAL/SUBSEQUENT	305	249	291
32020	TUBE THORACOSTOMY W/WO WATER SEAL	806	853	804
32405	BX LUNG/MEDASTINUM; PERCUTAN NDLE	408	408	408
32480	LOBECTOMY, TOTAL OR SEGMENTAL	5660	5660	5660
33210	INS TEMP CARD ELECT/PACEMAKER CATH	831	831	831
33212	INSERT/REPLC PULSE GENERATOR/AICD	1262	1262	1262
35301	THROMBOENDARDECTOMY; CAROTID, ETC; NCK	4215	4215	4215
35656	BYPASS GFT; FEMORAL-POPLITEAL	3937	3937	3937
36000	INTRO NEEDLE/INTRACATHETER, VEIN; UN	118	103	124
36010	INTRO CATH; SUP/INF VENA CAVA, RT HRT	470	470	446
36200	CATHETER; AORTANA CAVA, RT HRT	462	462	464
36400	VENIPUNCTURE, < 3 YR; FEM JUGULAR/SAGI	50	50	50
36410	VENIPUNCTURE, > 3 YR, DIAG/THER, COMPL	41	41	43
36415	ROUTINE VENIPUNCTURE 4 SPECMEN COLL	10	10	10
36425	VENIPUNCTURE, CUTDOWN; AGE 1 OR OVER	59	59	59
36430	TRANSFUSION, BLOOD/COMPONENTS; INDIR	153	153	162
36488	PLACE CENT VEN CATH; PERCUT; AGE 2& <	156	156	156
36489	PLACE CENT VENOUS CAT; PERCUT, > 2	324	273	316
36491	PLCMT CENT VEN CATH HYPERAL, > 2YR	444	442	437
36600	ART PUNCTURE, WITHDRAW BLD FOR DIAG	105	102	107
36620	ART CATH/CANNULAT FOR SAMP; PERCUTAN	216	216	216
36800	INS CANNULA HEMODIALYSIS; VEIN-VEIN	571	571	571
36830	ARTERIOVEN FIST, NONAUTOGENOUS GRAFT	2833	2833	2833
36860	CANNULA DECLOTTING; WO BALLOON CATH	73	73	73
37609	LIGATION/BIOPSY, TEMPORAL ARTERY	584	584	584
37620	INTERRUPT, INFERIOR VENA CAVA BY SUT	2539	2539	2539
43220	ESOPHAGOSC, RIG/FIBEROPT; W/DIR DILAT	918	918	918
43235	ESOPHAGOGASTRODUODENOSCOPY; DIAGNOST	594	541	648
43245	ESOPHAGOGASTRODUODENOSCOPY, DILATION	883	883	883
43246	ESOPHAGOGASTRODUODENOSCOPY, FOR TUBE	1093	1093	1093
43247	ESOPHAGOGASTRODUODENOSCOPY; W/REM FB	988	988	988
43255	ESOPHAGOGASTRODUOD; FOR HEMORRHAGE	1053	1053	1053
43260	ERCP W/WO BX +/SPEC COLLECTION	1000	939	1026
43450	ESOPHAG, INDIRECT DILATE SOUND, INIT	152	152	152
43451	ESOPHAG, INDIRECT DILATE SOUND, SUBS	162	162	162
43830	GASTROSTOMY, TEMPORARY (SEP. PROC.)	1594	1594	1594
44005	ENTEROLYSIS	2485	2485	2485
44120	ENTERECTOMY, RES SM INTES; W/ANASTOMO	2994	2994	2994

44140	COLECTOMY, PARTIAL;	W/ANASTOMOSIS	3102	3102	3284
44143	COLECTOMY, PART; EN	COLOST/CLS DIST	3461	3461	3461
44145	COLECTOMY, PARTIAL;	W/COLOPROCTOSTOMY	3501	3501	3501
44160	COLECTMY W/REM TER	ILEUM & ILEOCOL	3354	3354	3354
45300	PROCTOSIGMOIDOSCO	Y; DIAGNOSTIC (SEP)	129	129	124
45330	SIGMOIDOSCOPY, FLEX	IBEROPTIC; DIAGN	269	254	259
45355	COLONOSCOPY W/SIGM	ID, TRANSAB/COLOT	354	377	335
45378	COLONOSCOPY, FIBER I	EYOND SPLEN FLEX	809	702	783
46040	I&D ISCHIORECTAL/PE	RECTAL ABSCESS	466	466	466
46050	I&D PERIANAL ABSCES	SUPERFICIAL	155	155	155
46600	ANOSCOPY, DIAGNOSTI	(SEPARATE PROC)	93	114	93
46604	ANOSCOPY, DX W/DILA	E, DIRECT, INSTRUM	124	124	124
46700	ANOPLASTY FOR STRIC	URE, ADULT	1296	1296	1296
47000	BIOPSY LIVER, NEEDLE	PERCUTANEOUS	396	396	396
47600	CHOLECYSTECTOMY		1991	1991	2433
47605	CHOLECYSTECTOMY W	CHOLANGIOGRAPHY	2183	2106	2296
47610	CHOLECYSTECTOMY W	EXPL COMMON DUCT	2686	2686	2686
49000	EXPLOR LAPAR/CELIOT	OMY W/WO BX(S)	2114	2114	2204
49080	PERITONEOCENTESIS, A	BD PARACEN; INIT	202	216	247
49421	INS INTRAPERI CANN/C	TH DRAIN, PERM	1012	1012	1012
50230	NEPHRECTOMY, RAD, W	RGNL LYMPHADEC	3916	3916	3916
50392	INTRO OF INTRACATHE	ER RENAL PELVIS	666	666	666
50394	INJECT PROC FOR PYEL	GRAPHY (SEPARA)	122	122	122
51600	INJ PROC CYSTOGRAPH	/VOID URCYSTOG	80	80	80
51700	BLAD IRRIG, SIMP, LAV	GE &/ INSTILLA	70	65	78
51725	SIMPLE CYSTOMETROG	AMIC AGNT	166	166	166
51736	SIMPLE UROFLOWMETI	Y	86	86	86
51741	ELECTRONIC UROFLOW	METRY	178	178	178
52000	CYSTOURETHROSCOPY	ETHROPX, SIMP	249	249	304
52005	CYSTOURETHROSC, W/I	RETERAL CATH	543	489	594
52204	CYSTOURETHROSC, W/I	OPSY	512	512	512
52276	CYSTOURETHROSC; DIF	VIS INT URTHROT	964	964	964
52281	CYSTOURETHROSC W/D	LAT URETH STR	464	432	486
52310	CYSTOURETHROSC; W/I	EM FB UR/BLAD, SIM	582	582	631
52332	CYSTOURETHROSC; W/	NS INDWELL STENT	866	866	945
52335	CYSTOURETHROSC; W/I	RETEROSC & PYELOSC	934	934	934
52500	TRNSURETH RESECT OI	BLADDER NECK	1620	1620	1620
53600	DILAT URET STRICT, W/	OUND, MALE, IN	77	78	81
53601	DILAT URET STRICT, W/	OUND, MALE SU	64	64	63
53620	DIL UR STRIC, FILLIFRM	FOLL, MALE, IN	132	132	132
53621	DIL UR STRIC, FILLIFRM	FOLL, MALE, SU	124	124	124
53660	DIL FEM UR W/ SUPPOS	/INSTILL, INIT	80	75	70
53661	DIL FEM UR W/ SUPPOS	/ INSTILL, SU	69	65	59
53670	CATHETERIZATION; SIM	PLE	81	81	91
53675	CATHETERIZATION; CO	MPLICATED	155	155	155
54235	INJ CORPORA CAVERNO	SA W/PHARM AGNTS	105	105	104
58980	LAPAROSCOPY; SURGIC	AL	1747	1620	1922
59160	CURETTAGE, POSTPART	UM	848	848	848
59515	CESAREAN DELIV INC P	OSTPARTUM CARE	2968	2968	3187
59812	SPONT ABORT, TRIMEST	COMPLETE SURG	773	773	809
59820	TREAT MISS ABORT, CO	MP SURG, 1ST TRIM	756	809	809
62270	SPINAL PUNCTURE LUM	BAR; DIAGNOSTIC	216	216	216
62278	INJ ANESTH SUB; EPIDU	RAL/CAUDAL, SIM	388	354	388
62279	INJ ANESTH SUB; EPIDU	RAL/CAUDAL, CON	378	378	378
62282	INJ NEUROLYTIC SUB; E	IDURAL/CAUDAL	486	486	486
62284	INJ PROC MYELOGRAPH	/, SPINAL/POST	535	535	589
62289	INJ SUB OT THAN ANES/	NEUROLYT; EP/C	420	420	432
63030	LAMINOTOMY; 1 INTRSP	LMBR, UNILAT	4650	4650	4861
64440	INJ, ANESTH AGNT; PAR	VERTEBR, NRV, SN	92	92	83
64445	INJ, ANESTHETIC AGEN	SCIATIC NERV	113	113	113
64450	INJ, ANESTH AGNT; OT P	TRIPH NRV/BRAN	84	84	86
64505	INJ, ANESTH AGNT; SPHI	NOPALATINE GAN	432	432	432
64640	DESTR BY NEUROLYTIC	AGNT; OT PER NRV	118	118	118
64721	NEUR &/ TP; MEDIAN NR	/ @ CARPAL TUN	1380	1620	1620
65205	REM FB, EXTERN EYE; C	ONJUNC SUPERFI	53	53	53
65210	REM FB, EXTERN EYE; C	ONJUNC EMBEDDE	80	80	80
65220	REM FB, EXTERN EYE; C	ORN, W/O SLIT L	103	103	103
65222	REM FB, EXTERN EYE; C	ORN W/ SLIT LM	112	112	113
65420	EX OR TRANSPOS PIERY	GIUM; W/O GRAFT	1296	1296	1296
65435	REM CORNEA EPITHELI	M WWO CHEMOCAU	156	156	156
67101	REP RET DETACH, CRYC	THERAPY/DIATHERM	1646	1646	1646

67105	REP RET DETACH; PHOTCOAG, W/WO DRAIN	1635	1635	1635
67107	REP RETINAL DETACH; SCLERAL BUCKLIN	3713	3713	3713
67145	PROPHY RET DETACH; PHOTOCOAGULATION	1508	1508	1508
67500	RETROBULBAR INJECTION; MEDICATION	126	126	126
69420	MYRING W ASPIRE &/EUST TUBE INFLA	167	167	183
69433	MYRNG/TYMPNOSTMY, LOC/TOP ANES, TUBE	306	306	324
69436	MYRING/TYMPANOSTMY, GEN ANES; W TUBE	704	704	704
70110	X-RAY MANDIBLE, COMP, MIN 4 VIEWS	65	65	65
70150	X-RAY FACIAL BONES, COMP, MIN 3 VIEWS	69	69	69
70160	X-RAY NASAL BONES, COMP, MIN 3 VIEWS	60	60	66
70200	X-RAY ORBITS, COMP, MIN 4 VIEWS	72	72	65
70210	X-RAY SINUSES, PARTIAL, < 3 VIEWS	82	82	86
70220	X-RAY SINUSES, COMP, MIN 3 VIEWS	95	89	102
70250	X-RAY SKULL, < 4 VIEWS, W/WO STEREO	67	67	67
70260	X-RAY SKULL, COMP, MIN 4 VIEWS, W/WO	81	74	70
70330	X-RAY TMJ, OPEN/CLOSED, BILATERAL	166	166	166
70336	MRI, TEMPOROMANDIBULAR JOINT	875	875	875
70355	ORTHOPANTOGRAMAR JOINT	70	70	70
70360	X-RAY NECK, SOFT TISSUE	45	45	43
70450	CAT SCAN, HEAD OR BRAIN, W/O CONTRAST	453	371	432
70460	CAT SCAN, HEAD OR BRAIN W/CONTRAST	517	428	458
70470	CAT SCAN, HEAD/BRN, WO CONT, FOL CONTR	612	535	535
70480	CAT SCAN, ORBIT/SELLA/FOSSA, WO CONTR	536	536	539
70481	CAT SCAN, ORBIT/SELLA/FOSSA, W/CONTR	505	505	505
70486	CAT SCAN, MAXILLOFACIAL, W/O CONTRAST	539	536	539
70487	CAT SCAN, MAXILLOFACILA, W/CONTRAST	357	357	357
70490	CAT SCAN, NECK, SOFT TISSUE, WO CONTR	539	539	539
70491	CAT SCAN, NECK, SOFT TISSUE, W CONTR	501	501	481
70540	MRI, ORBIT, FACE AND NECK	918	918	918
70551	MRI, BRAIN, W/O CONTRAST	891	891	918
70552	MRI, BRAIN, W/CONTRAST	1096	1096	1096
71010	X-RAY CHEST, SINGLE, FRONTAL	43	41	48
71020	X-RAY CHEST, 2 VIEWS, FRONTAL/LATERAL	66	57	65
71021	X-RAY CHEST, 2 VIEWS, APICAL LORDOTIC	70	70	70
71022	X-RAY CHEST, 2 VIEWS, OBLIQUE PROJECT	80	80	80
71030	X-RAY CHEST, COMPLETE, MIN 4 VIEWS	73	77	77
71035	X-RAY CHEST, SPECIAL VIEWS	15	15	15
71100	X-RAY RIBS, UNILAT, 2 VIEWS	80	68	75
71101	X-RAY RIBS, UNI, INCL CHEST, 3 VIEWS	81	89	91
71110	X-RAY RIBS, BILAT, 3 VIEWS	80	80	80
71111	X-RAY RIBS, BI, INCL CHEST, 4+ VIEWS	96	96	96
71120	X-RAY STERNUM, MIN 2 VIEWS	70	70	70
71250	CAT SCAN, CHEST, W/O CONTRAST	513	467	475
71260	CAT SCAN, CHEST, W/CONTRAST	580	527	507
71270	CAT SCAN, CHEST, WO CONT, FOL BY CONTR	476	476	476
72010	X-RAY SPINE, ENTIRE, SURVEY, A/P & LAT	135	129	145
72020	X-RAY SPINE, SINGLE VIEW	53	53	43
72040	X-RAY CERVICAL SPINE, A/P & LATERAL	65	65	65
72050	X-RAY CERV SPINE, A/P LAT, MN 4 VIEWS	107	96	107
72052	X-RAY CERV SPINE, COMP, OBLIQ/FLEX/EX	117	105	113
72070	X-RAY THORACIC SPINE, A/P & LATERAL	73	71	75
72072	X-RAY THOR SPINE, AP LAT, CERVICOTHOR	61	61	61
72074	X-RAY THOR SPINE, COMP, INCL OBLIQUES	83	83	83
72080	X-RAY THORACOLUMBAR SPINE, A/P & LAT	75	72	70
72090	X-RAY SPINE, SCOLIOSIS STUDY	79	79	75
72100	X-RAY LUMBOSACRAL SPINE, A/P & LAT	75	75	75
72110	X-RAY LUMBOSACRAL SPINE, COMPLETE	129	108	118
72114	X-RAY LUMB/SAC SPINE, INCL BENDING	140	133	131
72120	X-RAY LUMB/SAC SPINE, BENDING ONLY	81	81	89
72125	CAT SCAN CERVICAL SPINE WO CONTRAST	453	453	498
72128	CAT SCAN THORACIC SPINE WO CONTRAST	572	572	572
72131	CAT SCAN LUMBOSACRAL SPINE WO CONTR	550	513	577
72141	MRI, CERVICAL SPINE, W/O CONTRAST	918	864	891
72148	MRI, LUMBOSACRAL SPINE, W/O CONTRAST	914	914	918
72170	X-RAY PELVIS, ANTEROPOSTERIOR ONLY	66	59	63
72190	X-RAY PELVIS, COMP, 3 OR MORE VIEWS	67	67	67
72192	CAT SCAN PELVIS, W/O CONTRAST	413	413	372
72193	CAT SCAN PELVIS, W/CONTRAST	432	392	353
72194	CAT SCAN PELVIS, WO CONT FOL BY CONT	550	550	550
72196	MRI, PELVIS	938	938	938
72200	X-RAY SACROILIAC JOINTS, < 3 VIEWS	77	77	77

72202	X-RAY SACROILIAC JOI	TS, 3 OR MORE	93	93	93
72220	X-RAY SACRUM & COC	YX, MIN 2 VIEWS	73	73	75
73000	X-RAY CLAVICLE, COMI	LETE	61	60	65
73010	X-RAY SCAPULA, COMP	ETE	62	62	62
73020	X-RAY SHOULDER, 1 VI	W	62	62	65
73030	X-RAY SHOULDER, COM	PLETE, MIN 2 VIEWS	70	70	70
73050	RADIOL EXAM, ACROM	OCLAVICULAR, BILAT	81	81	81
73060	RADIOLOGIC EXAMS, H	UMERUS, 2+ VIEWS	73	66	66
73070	X-RAY ELBOW, A/P & LA	TERAL	65	59	65
73080	X-RAY ELBOW, COMPLE	TE, MIN 3 VIEWS	67	65	70
73090	X-RAY FOREARM, A/P &	LATERAL VIEWS	63	59	59
73100	X-RAY WRIST, A/P & LA	ERAL VIEWS	62	62	59
73110	X-RAY WRIST, COMPLE	TE, MIN 3 VIEWS	70	65	70
73120	X-RAY HAND, 2 VIEWS		59	54	59
73130	X-RAY HAND, MINIMUM	3 VIEWS	65	65	65
73140	X-RAY FINGER(S), MINI	UM 2 VIEWS	56	51	59
73220	MRI UPPER EXTREMITY	NOT JOINT	929	929	929
73221	MRI UPPER EXTREMITY	JOINT	902	902	902
73500	X-RAY HIP, UNIL, 1 VIEW		63	63	65
73510	X-RAY HIP, UNIL, COMP	MIN 2 VIEWS	81	70	75
73520	X-RAY HIPS, BIL, MIN 2 V	IEWS EA SIDE	96	100	102
73540	X-RAY PELVIS & HIPS, IN	FNT/CHILD, MIN 2	73	73	73
73550	X-RAY FEMUR, A/P & LA	TERAL VIEWS	75	70	70
73560	X-RAY KNEE, A/P & LATI	RAL VIEWS	70	70	70
73562	X-RAY KNEE, AP & LAT,	OBLIQ, MIN 3 VIEWS	75	80	80
73564	X-RAY KNEE, COMPLETI		91	91	91
73590	X-RAY TIBIA, & FIBULA,	A/P & LATERAL	65	65	75
73600	X-RAY ANKLE, A/P & LA	ERAL	57	57	70
73610	X-RAY ANKLE, COMPLE	E PROCEDURE	75	65	70
73620	X-RAY FOOT, A/P & LATI	RAL	54	57	55
73630	X-RAY FOOT, COMPLETI	, MIN 3 VIEWS	70	70	70
73650	X-RAY CALCANEUS, MI	IMUM 2 VIEWS	59	64	65
73660	X-RAY TOE(S), MINIMUI	2 VIEWS	59	56	57
73700	CAT SCAN LEG, W/O CO	TRAST	486	486	486
73720	MRI LOWER EXTREMIT	, NOT JOINT	891	908	918
73721	MRI LOWER EXTREMIT	JOINT	907	896	891
74000	X-RAY ABDOMEN, SING	E A/P VIEW	54	53	59
74010	X-RAY ABDOMEN, AP, O	LIQUE, CONE VIEWS	48	44	39
74020	X-RAY ABDOMEN, COM	DECUB/ERECT	46	54	54
74022	X-RAY ABDOMEN, ACU	E SERIES	61	60	60
74150	CAT SCAN ABDOMEN, W	O CONTRAST	465	423	443
74160	CAT SCAN ABDOMEN, W	CONTRAST	575	471	513
74170	CAT SCAN ABD WO CON	FOLL BY CONT	624	578	583
74181	MRI, ABDOMENNT FOLL	BY CONT	958	958	958
74210	X-RAY PHARYNX &/OR (	ERV ESOPHAGUS	108	108	108
74220	X-RAY ESOPHAGUSRV E	SOPHAGUS	114	112	113
74240	X-RAY UPPER GI, W/O KI	B/VIDEO	159	173	178
74241	X-RAY UPPER GI, W/KUB		182	187	221
74245	X-RAY UPPER GI, W/SM I	OWEL, MULT FILM	221	220	259
74246	UPPER GI SERIES/BARIU	M, W/O KUB	174	190	209
74247	UPPER GI SERIES, BARIU	M, W/KUB	216	223	226
74249	UPPER GI, BARIUM, W/SI	BOWEL FOLLOW	284	284	300
74250	X-RAY SMALL BOWEL, II	CL MULT FILMS	153	153	162
74270	CONTRAST X-RAY COLO	N, BARIUM ENEMA	167	166	199
74280	CONTRAST X-RAY COLO	N, BARIUM, AIR CONT	232	222	229
74290	CHOLECYSTOGRAPHY, (	RAL CONTRAST	104	116	127
74400	UROGRAPHY/PYELOGR	PHY, IV, W WO KUB	168	168	173
74405	UROGRAPHY, IV, W/HYP	ERTENSIVE CONTR	210	210	210
74410	UROGRAPHY, INFUSION	DRIP/BOLUS TECH	188	188	188
74415	UROGRAPHY, INF, W/NE	HROMATOGRAPHY	198	216	226
74420	UROGRAPHY, RETROGR	ADE, W WO KUB	55	55	55
75754	COR ANGIO, BI, LFT VEN	T/SUPVALV, S/I	178	178	178
76000	FLUOROSCOPY, UP TO C	NE HOUR	67	67	65
76140	CONSULT, XRAY MADE I	LSEWHERE, WRITTEN	54	53	54
76150	XERORADIOGRAPHY		24	23	26
76375	CAT SCANS, OTHER PLA	ES	243	232	216
76506	ECHOENCEPHALOGRAP	IY	101	101	101
76511	OPHTHALMIC ULTRASO	ND, A-MODE	216	216	216
76512	OPHTHALMIC ULTRA, C	NTACT B-SCAN	298	298	296
76516	OPHTHAL BIOMETRY, U	TRASOUND, A-MODE	188	196	216
76519	OPHTHAL BIOMETRY, W	OL POWER CALC	188	202	216

76536	ECHOGRAM, HEAD/NECK, B-SCAN/REAL TIME	182	182	191
76700	ECHOGRAM, ABDOMEN, W IMAGE DOCUMENT	226	213	221
76705	ECHOGRAM, ABDOMEN, LIMITED	203	168	173
76770	ECHOGRAM, RETROPERITONEAL, COMPLETE	232	221	226
76775	ECHOGRAM, RETROPERITONEAL, LIMITED	198	198	198
76805	ECHOGRAM, PREGNANT UTERUS, COMPLETE	243	216	216
76815	ECHOGRAM, PREGNANT UTERUS, LIMITED	177	146	162
76816	ECHOGRAM, PREG UTERUS, REPEAT/FOLOWUP	132	132	119
76818	FETAL BIOPHYSICAL PROFILE	223	223	216
76830	ECHOGRAM, TRANSVAGINAL	269	269	269
76856	ECHOGRAM, PELVIC, NON-OB, COMPLETE	226	185	194
76857	ECHOGRAM, PELVIC, NON-OB, LTD/FOLLOW	147	164	180
76870	ECHOGRAM, SCROTUM AND CONTENTS	291	291	269
76872	ECHOGRAM, PROSTATE, TRANSRECTAL	311	311	311
76880	ECHOGRAM, EXTREMITY, NON-VASCULAR	246	246	246
78006	THYROID IMAGING W/UPTAKE, SINGLE	233	233	243
78007	THYROID IMAGING W/UPTAKE, MULTIPLE	171	171	171
78215	LIVER & SPLEEN IMAGING, STATIC ONLY	164	164	164
78223	HEPATOBILIARY DUCT IMAGE, INCL GALL	145	145	145
78300	BONE IMAGING, LIMITED AREA	193	193	193
78305	BONE IMAGING, MULTIPLE AREAS	324	319	313
78306	BONE IMAGING, WHOLE SKELETON	296	269	269
78315	BONE SCAN, 3-PHASE TECHNIQUE	269	269	269
78351	BONE DENSITY, DUAL PHOTON ABSORPT	199	199	199
78460	MYOCARDIAL IMAGING, RESTING	258	258	254
78461	MYOCARDIAL IMAGING, EXERCISE	513	568	469
78464	MYOCARDIAL IMAGING, TOMOGRAM, REST	628	628	628
78465	MYOCARDIAL IMAGING, TOMOGR, EXERCISE	697	697	848
78472	CARD BLD POOL, WALL MOTION, REG EJ FR	339	339	339
78481	CARD BLD POOL, 1ST PASS, EJ FRACTION	205	205	205
78580	PULM PERFUSION IMAGING, PARTICULATE	115	115	113
78707	KIDNEY IMAGING, VASC & FUNCT STUDIES	310	310	310
78990	PROVISION OF DIAG RADIONUCLIDES	89	89	107
80002	1-2 CLINICAL CHEM TESTS	35	35	35
80003	3 CLINICAL CHEMISTRY TESTS	25	25	25
80004	4 CLINICAL CHEMISTRY TESTS	24	24	24
80006	6 CLINICAL CHEMISTRY TESTS	51	51	51
80007	7 CLINICAL CHEMISTRY TESTS	26	26	26
80010	10 CLINICAL CHEMISTRY TESTS	29	29	29
80012	12 CLINICAL CHEMISTRY TESTS	37	37	37
80016	13-16 BLOOD/URINE TESTS	46	51	43
80018	17-18 BLOOD/URINE TESTS	41	37	43
80019	19 OR MORE BLOOD/URINE TESTS	37	42	37
80031	DRUG MONITORING, ONE DRUG	80	80	80
80058	HEPATIC FUNCTION PANEL	45	45	45
80059	HEPATITIS PANEL	77	77	77
80062	CARDIAC EVALUATION PANEL	51	51	51
80073	RENAL PANEL	43	43	43
81000	URINALYSIS WITH MICROSCOPY	12	12	13
81002	URINALYSIS W/O MICROSCOPY	12	12	10
81005	URINALYSIS, ANY # OF CONSITIUENTS	11	11	11
81015	MICROSCOPIC EXAM OF URINE	8	8	8
82150	ASSAY OF SERUM AMYLASE	18	18	16
82172	APOLIPOPROTEIN IMMUNOASSAY	18	18	18
82250	ASSAY BLOOD BILIRUBIN	19	19	19
82270	TEST FECES FOR BLOOD DIRECT	12	12	15
82310	ASSAY CALCIUM IN BLOOD, CHEMICAL	16	16	16
82372	ASSAY SERUM CARBAMAZEPINE	57	57	57
82374	ASSAY BLOOD CARBON DIOXIDE	11	11	11
82643	RIA ASSAY FOR DIGOXIN	49	49	49
82660	TEST FOR DRUGS	67	67	67
82947	ASSAY BLOOD FLUID GLUCOSE	12	12	12
82948	STICK ASSAY OF BLOOD GLUCOSE	12	12	12
82950	GLUCOSE TEST	14	14	13
82951	GLUCOSE TOLERANCE TEST (GTT)	42	42	42
82952	GTT-ADDED SAMPLES	45	45	45
82977	ASSAY OF GGT ENZYME	15	15	15
83001	PITUITARY GONADOTROPIN RIA	66	66	66
83002	PITUITARY GONADOTROPINS RIA	59	59	59
83020	ASSAY HEMOGLOBINS RIA	13	13	12
83036	GLYCOSYLATED HEMOGLOBIN TEST	38	38	39

83540	ASSAY SERUM IRON	15	15	15
83545	AUTO-ASSAY SERUM I[ON	24	24	24
83550	SERUM IRON BONDIN(TEST	31	31	31
83555	SERUM IRON BINDING. AUTO-TEST	12	12	12
83705	ASSAY BLOOD LIPID G[OUPS	29	29	29
83718	ASSAY BLOOD LIPOPR(TEIN, PRECIP	17	18	15
83719	BLOOD LIPOPROTEIN / SSAY, ULTRACENT	33	33	33
83720	BLOOD LIPOPROTEIN / SSAY, FRACT CALC	16	16	16
83725	ASSAY BLOOD LITHIUI RACT CALC	27	27	26
83735	ASSAY BLOOD MAGNE: [UM, CHEMICAL	25	25	25
84045	ASSAY PHENYTOIN	57	57	57
84065	ASSAY PROSTATE PHO: PHATASE, FRACTION	41	41	41
84075	ASSAY ALKALINE PHO: PHOTASE, BLOOD	15	15	15
84132	ASSAY BLOOD POTASS[JM	13	13	12
84144	ASSAY PROGESTERON[	62	62	68
84146	RIA ASSAY FOR PROLA TIN	79	79	80
84165	ASSAY SERUM PROTEI[S, ELEC FRAC, QUAN	42	42	42
84180	ASSAY URINE PROTEIN FRAC, QUAN	30	30	30
84231	RADIOIMMUNOASSAY	94	94	94
84233	ASSAY ESTROGEN	43	43	43
84295	ASSAY BLOOD SODIUM	19	19	19
84403	RIA ASSAY BLOOD TES' OSTERONE	95	95	95
84420	ASSAY THEOPHYLLINE ONE	54	54	54
84435	ASSAY THYROXINE (T-	25	25	25
84436	RIA ASSAY, TRUE THYI OXINE	22	24	21
84439	RIA ASSAY, FREE THYR OXINE	53	53	50
84443	ASSAY THYROID STIM I ORMONE	60	59	66
84450	UV-ASSAY TRANDAMIN ASE (SGOT)	14	14	14
84460	UV-ASSAY TRANSAMIN ASE (SGPT)	14	14	14
84478	ASSAY BLOOD TRIGLY(ERIDES	18	18	16
84479	ASSAY TRIIODOTHYTO IINE (T-3)	16	16	15
84480	RIA ASSAY, TT-3E (T-3)	58	58	64
84520	ASSAY BLOOD, UREA, N TROGEN	12	12	13
84550	ASSAY BLOOD URIC AC D	19	19	19
84702	CHORIONIC GONADOT OPIN TEST	58	58	60
84703	CHORIONIC GONADOT OPIN ASSAY	29	29	30
84999	CLINICAL CHEMISTRY ' EST	90	90	90
85005	BASOPHIL BLOOD CELI COUNT	15	15	15
85007	DIFFERENTIAL WBC CC JNT, W/MORPH + PLT	12	12	11
85009	DIFFERENTIAL WBC CC JNT, BUFFY COAT	9	9	9
85014	HEMATOCRIT COUNT, I UFFY COAT	12	10	12
85018	HEMOGLOBIN, COLORI IETRIC	12	10	10
85021	AUTOMATED HEMOGR M, R/WBC, HGB, HCT, IN	17	15	16
85022	AUTOMATED HEMOGR M, MAN DIFF, WBC	19	21	21
85023	AUTOMATED HEMOGR M, PLAT, AUT + MAN, CBC	31	31	25
85024	AUTOMATED HEMOGR M, PLT, AUT + AUT PART	27	30	26
85025	AUTO HEMOGRAM, PL/ TLETE, AUT + AUT COMP	18	18	18
85027	AUTOMATED HEMOGR M, HEM + PLAT COUNT	23	22	23
85029	AUTOMATED HEMOGR M, RDW + MPV 1-3 IND	4	4	4
85031	MANUAL HEMOGRAM, OMPLETE CBC	21	20	21
85044	RETICULOCYTE COUN1	15	15	15
85060	BLOOD SMEAR INTERPI ETATION	37	37	37
85100	BONE MARROW EXAMI ATION	269	269	269
85580	BLOOD PLATELET COU T	15	15	15
85595	ELECTRONIC PLATELE1 COUNT	14	15	14
85610	PROTHROMBIN TIME	16	15	14
85650	RBC SEDIMENTATION R ATE, WINTROBE	16	15	16
85651	RBC SEDIMENTATION R ATE, WESTERGREN	15	15	14
85730	THROMBOPLASTIN TIM , PART, PLAS/WHOLE	23	23	22
86006	ANTIBODY, QUALITATI E, FIRST	26	26	26
86008	ANTIBODY, QUANT., FI ST	54	54	54
86016	RBC SALINE ANTIBODI ; HP + ANTIHUMAN	18	18	18
86038	ANTINUCLEAR ANTIBO IES, RIA	42	42	42
86060	ANTISTREPTOLYSIN O T TER	32	32	32
86082	BLOOD TYPING, ABO & HO(D)	23	23	20
86100	BLOOD TYPING, RHO(D ONLY	6	6	6
86128	COLLECTION, PROCESS STORAGE BLOOD	432	432	432
86140	C-REACTIVE PROTEIN	25	25	25
86244	ASSAY ALPHA-1 FETRO ROTEIN	65	65	65
86255	FLUORESCENT ANTIBO Y; SCREEN	78	78	83
86256	FLUORESCENT ANTIBO Y; TITER	68	68	68
86280	HEMAGGLUTINATION I HIBITION	30	30	30

86287	HEPATITIS HAA, RIA, OR EIA	32	32	31
86289	HEPATITIS BC ANTIBODY TEST, HBCAB	49	49	49
86291	HEPATITIS BS ANTIBODY TEST, HBSAB	37	37	37
86296	HEPATITIS A ANTIBODY TEST, HAAB	51	51	51
86300	HETEROPHILE ANTIBODY SCREEN	20	20	20
86310	HETEROPHILE ANTIBODIES	35	35	35
86312	HIV ANTIBODY DETECTION	51	51	51
86316	IMMUNOASSAY, TUMOR ANTIGEN	61	61	63
86317	IMMUNOASSAY, INFECTIOUS AGENT	67	74	60
86319	IMMUNOASSAY TECHNIQUE FOR DRUGS	54	54	54
86329	IMMUNODIFFUSION, EACH	67	67	67
86357	LYMPHOCYTES, T&B DISTINCTION	178	178	178
86403	RAPID TEST, INFECTIOUS AGENT	20	20	19
86421	RADIOALLERGOSORBENT TESTS, 5/ <	34	34	34
86422	RADIOALLERGOSORBENT TESTS, 6/ >	346	346	346
86423	RADIOIMMUNOSORBENT TEST IGE, QUANT	58	58	58
86430	RHEUMATOID FACTOR TEST	18	18	16
86580	TB INTRADERMAL TEST	15	15	15
86585	TB TINE TEST	14	13	15
86592	BLOOD SEROLOGY, QUALITATIVE	15	15	14
86999	IMMUNOLOGY PROCEDURE	82	82	82
87015	SPECIMEN CONCENTRATION	32	32	32
87040	BLOOD CULTURE FOR BACTERIA	51	51	54
87045	STOOL CULTURE FOR BACTERIA	45	45	45
87060	NOSE/THROAT CULTURE, BACTERIA	15	15	16
87070	CULTURE SPECIMEN, BACTERIA	35	32	36
87072	CULTURE OF SPECIMEN BY KIT	20	18	21
87081	BACTERIA CULTURE SCREEN	18	16	19
87082	CULTURE OF SPECIMEN BY KIT, SINGLE	19	19	19
87084	CULTURE OF SPECIMEN BY KIT, COL EST	19	19	19
87085	CULTURE OF SPECIMEN BY KIT, COL CNT	15	15	15
87086	URINE CULTURE, COLONY COUNT	30	26	31
87087	URINE BACTERIA CULTURE, COMMERC KIT	22	22	24
87088	URINE BACTERIA CULTURE, ID + COM KIT	26	26	26
87101	SKIN FUNGUS CULTURE	25	25	25
87102	FUNGUS ISOLATION CULTURE	38	38	38
87106	FUNGUS IDENTIFICATION	26	26	26
87109	MYCOPLASMA CULTURE	74	74	74
87110	CULTURE, CHLAMYDIA	80	80	80
87177	OVA AND PARASITES SMEARS	63	63	63
87184	ANTIBIOTIC SENSITIVITY, EACH, DISC	25	25	22
87186	ANTIBIOTIC SENSITIVITY, MIC	16	16	16
87205	SMEAR, STAIN & INTERPRET, ROUTINE	17	17	17
87210	SMEAR, STAIN & INTERPRET, WET + SIMPLE	16	16	15
87253	VIRUS INOCULATION FOR TEST, ADDL STD	70	70	70
87999	MICROBIOLOGY PROCEDURE	26	26	26
88104	CYTOPATHOLOGY, W/CENTRIF, WO/CRV + VAG	73	73	71
88108	CYTOPATHOLOGY, CONCENTRATION	102	102	102
88150	CYTOPATHOLOGY, PAP SMEAR, TECH	19	21	21
88151	CYTOPATHOLOGY INTERPRETATION, PHYS	21	21	21
88155	CYTOPATHOLOGY, PAP SMEAR, W/HORMONAL	25	23	21
88160	CYTOPATHOLOGY, ANY OTHER SOURCE	46	46	46
88161	CYTOPATHOLOGY, PREP, SCRN + INTERPET	9	9	9
88170	FINE NEEDLE ASPIRATION, W/WO PREP	136	136	136
88173	INTERPRETATION OF SMEAR	118	118	118
88300	SURGICAL PATHOLOGY, GROSS	28	28	26
88302	SURGICAL PATHOLOGY, COMP, NORM TISS	48	50	48
88304	SURGICAL PATHOLOGY, COMP, ABNORM TSS	73	80	75
88305	SURGICAL PATHOLOGY, COMP, WO/COMPLEX	124	124	129
88307	SURGICAL PATHOLOGY, COMP, COMPLEX	192	192	194
88309	SURGICAL PATHOLOGY, COMP, COMPLX, DIS	269	269	269
88311	DECALCIFY TISSUE, COMPLX, DIS	21	21	21
88312	SPECIAL STAINS, GROUP 1	65	65	65
88313	SPECIAL STAINS, GROUP2 + OTHERS	21	21	21
88346	IMMUNOFLUORESCENT STUDY	42	42	42
88399	SURGICAL PATHOLOGY PROCEDURE	43	43	43
90292	HOSPITAL DISCHARGE DAY	81	81	91
90782	INJECTION SUBCU/(IM)T	27	29	26
90801	DIAGNOSTIC INTERVIEW, PSYCH	197	197	237
90843	INDIVIDUAL PSYCHOTHERAPY, 20-30 MIN	78	78	78
90844	INDIVIDUAL PSYCHOTHERAPY, 45-50 MIN	128	129	129

90900	BIOFEEDBACK TRNG BY	ELECTROMYOGRAM	108	110	110
90935	HEMODIALYSIS, SINGLE	EVAL	1868	1868	1868
92004	EYE EXAM & TREATME	T, NEW PT, COMP	75	75	75
92012	EYE EXAM & TREATME	T, COMP	57	57	59
92014	EYE EXAM & TREATME	T	75	75	75
92020	GONIOSCOPY W/EVALU	TION	59	59	59
92081	VISUAL FIELD EXAM, LI	MITED	57	57	57
92082	VISUAL FIELD EXAM, IN	TERMEDIATE	65	65	65
92083	VISUAL FIELD EXAM, EI	TENDED	89	89	89
92100	SERIAL TONOMETRY, 1	R MORE SESSIONS	42	42	42
92225	OPHTHALMOSCOPY, EX	TENDED, INITIAL	126	126	126
92226	OPHTHALMOSCOPY, EX	TENDED, SUBSEQUENT	65	65	65
92235	OPHTHALMOSCOPY W/A	NGIOGRAPHY	287	287	287
92250	OPHTHALMOSCOPY W/F	NDUS PHOTOGRAPHY	74	74	74
92551	PURE TONE AUDIOMET	Y, AIR ONLY	24	24	24
92552	PURE TONE AUDIOMET	Y, AIR & BONE	33	33	33
92553	AUDIOMETRY, AIR & BC	NE	47	47	47
92557	COMPREHENSIVE AUDI	METRY	80	80	72
92566	IMPEDANCE HEARING T	ST	30	30	32
92567	TYMPANOMETRY		24	22	26
92982	PERCUT TRNSLUMINL C	RN ANGIO; 1 VESL	3207	3207	3241
93000	ELECTROCARDIOGRAM	COMPLETE	54	54	59
93010	ELECTROCARDIOGRAM	REPORT	38	37	43
93014	REPORT ON TRANSMITT	ED ECG	40	40	40
93015	CARDIOVASC STRESS TE	T, TRAC/INTERP	291	269	296
93018	CARDIOVASC STRESS TE	T, INTERP ONLY	182	182	188
93040	RHYTHM ECG WITH REF	RT ONLY	47	47	47
93042	RHYTHM ECG, REPORT		27	27	27
93224	24 HR ECG, SCANNER, RE	CORD/INTERP	322	322	322
93227	24 HR ECG, SCANNER, RE	V/INTERP ONLY	162	162	162
93307	ECHOCARDIOGRAPHY,	EALTIME, COMPLETE	342	308	376
93320	DOPPLER ECHOCARDIO	RAPHY, COMPLETE	257	257	232
93325	DOPPLER COLOR FLOW	ELOCITY MAPPING	162	162	162
93501	HEART CATHETERIZATI	N RIGHT, ONLY	1117	1117	1117
93503	HEART CATH RT; W/SWA	N-GANZ CATH	774	756	809
93545	INJ FOR SELECT CORON	RY ANGIOGRAPHY	1242	1242	1242
93547	HRT CATH LFT COR ANG	& VENT ANG	1583	1620	1566
93548	HRT CAT LFT COR ANG V	ENT AORT RT AO	1539	1539	1539
93549	HRT CAT RT & LFT COR A	NG VENT ANG	1674	1755	1993
93552	LT HRT CAT COR ANG VI	N CIN; VIS BYPS	2183	2183	2183
93553	LT CT COR ANG/VEN CIN	VISL; AORTGPHY	2106	2106	2106
93762	PERIPHERAL THERMOG	AM, INCLUDING ANY SERIES	432	432	432
93870	CAROTID ARTERY IMAG	NG	397	397	432
93910	LOWER LIMB ARTERY ST	UDY	257	257	256
93950	NONINVASIVE EXTREMI	Y VEIN STUDIES	171	171	171
93960	QUANTITATIVE VENOUS	FLOW STUDIES	269	269	269
94010	SPIROMETRY		64	57	65
94060	BRONCHOSPASM EVALU	ATION	127	127	135
94160	VITAL CAPACITY SCREE	ING	25	25	25
94240	RESIDUAL LUNG CAPAC	TY	81	81	81
94375	RESPIRATORY FLOW VO	UME LOOP	88	88	84
94700	BLOOD GAS ANALYSIS, R	ST ONLY	60	60	60
94720	CARBON MONOXIDE DIF	USING CAPACITY	107	107	107
95020	INTRCUT TSTS, EXTRACT	, 15-20 MIN: <11	76	76	76
95021	INTRCUT TSTS, EXTRCTS	15-20 MN:11-20	107	107	107
95117	IMMUNOTHERAPY INJEC	TIONS, PROF SERV	23	23	26
95155	SUPRV/PRV SNG/MLT AN	S, >1 MULT DOSE	133	133	133
95819	EEG, STANDARD/PORTAI	LE, SAME FACILITY	166	162	162
95860	ELECTROMYOGRAPHY,	LIMB	265	265	265
95861	ELECTROMYOGRAPHY,	LIMBS	314	314	314
95869	ELECTROMYOGRAPHY,	PECIFIC MUSCLES	179	179	179
95900	MOTOR NERVE CONDUC	TION TESTING, EACH NERVE	122	116	122
95904	SENSORY NERVE CONDU	CTION TESTING, EACH NERVE	116	110	122
96900	ACTINOTHERAPY (ULTR	VIOLET LIGHT)	21	21	21
96912	PHOTOCHEMOTHERAPY	PSORALENS & PUVA	32	32	32
97010	PHYS MED TRI 1 AREA H	T/COLD PACKS	31	38	34
97012	PHYS MED TRI 1 AREA, T	ACTION MECH	35	35	35
97014	PHY MED TR TO ONE ARI	A; ELEC STIM	27	27	33
97018	PMT TO ONE AREA; PARA	FFIN BATH	37	37	37
97022	PMT TO ONE AREA; WHIF	POOL	30	30	30
97024	PMT TO ONE AREA; DIAT	ERMY	21	21	21

97110	PHYSIOTHERAPY: THERAPEUTIC EXERCISE	55	60	55
97118	PMT ONE AREA; INIT 30 MIN; ELEC STIM	46	46	46
97124	PMT ONE AREA; INIT 30 MIN; MASSAGE	32	32	34
97128	PHYSIOTHERAPY: ULTRASOUND	33	37	37
97145	PHYS MED TRT TO ONE AREA EA ADD'L	17	17	17
97240	POOL THERAPY/HUBBARD TANK W THERAPEUTIC	37	37	37
97260	MANIPULATION, PERFORMED BY PHYSICIAN	45	45	45
97530	KINETIC ACTIV INCREASE COORD, STRENGTH	65	65	72
97700	VISIT WITH ORTHOT/PROSTH/ADL CHECK, 30 MIN	60	60	56
97720	EXTREMITY TEST/STRENGTH, DEXTERITY	60	60	60
99000	SPECIMEN HANDLING, DOC TO LAB	11	10	12
99050	AFTER HOURS, ADD TO BASIC SERVICE	54	54	54
99054	SERV SUNDAY/HOLIDAY, ADD TO BASIC	50	54	57
99058	OFFICE EMERGENCY CARE	52	52	52
99172	CRITICAL CARE, FOLLOW-UP, LIMITED	140	140	140
99173	CRITICAL CARE, FOLLOW-UP, INTERMED	220	220	220
99201	OFF OR O/P VST NP; PROB FOCUSED	66	66	69
99202	OFF OR O/P VST NP; EXP PROB FOCUSED	62	62	74
99203	OFF OR O/P VST NP; DETAILED LOW	89	89	84
99204	OFF OR O/P VST NP; COMPREHENS MOD	114	102	122
99205	OFF OR O/P VST NP; COMPREHENS HIGH	144	147	147
99211	OFF OR O/P VST EST PT; MINIMAL	34	30	34
99212	OFF OR O/P VST EST PT; PROBLM FOCUSED	39	42	44
99213	OFF OR O/P VT EST PT; EXP PRB FOCUSED	47	45	49
99214	OFF OR O/P VST EST PT; DETAILED MOD	64	64	64
99215	OFF OR O/P VST EST PT; COMPREH HIGH	99	86	99
99221	INT HOSP CARE PER DAY; COMPREH LOW	148	148	148
99222	INT HOSP CARE PER DAY; COMPREH MOD	143	143	147
99223	INT HOSP CARE PER DAY; COMPREH HIGH	184	166	196
99231	SUB HOSP CARE PER DAY; PROBLM FOCUSED	61	61	64
99232	SUB HOSP CARE PER DAY; EXP PRB FOCUSED	74	64	74
99233	SUB HOSP CARE PER DAY; DETAILED HIGH	96	96	94
99241	OFF CONSULT; PROBLEM FOCUSED	78	78	78
99242	OFF CONSULT; EXP PROBLEM FOCUSED	98	98	102
99243	OFF CONSULT; DETAILED LOW	133	133	137
99244	OFF CONSULT; COMPREHENSIVE MOD	171	171	171
99245	OFF CONSULT; COMPREHENSIVE HIGH	195	195	196
99252	INT IP CONSULT; EXP PROBLEM FOCUSED	126	126	126
99253	INT IP CONSULT; DETAILED LOW	164	164	171
99254	INT IP CONSULT; COMPREHENSIVE MOD	203	182	221
99255	INT IP CONSULT; COMPREHENSIVE HIGH	214	214	221
99261	FU IP CONSULT EST PT; PROBLEM FOCUSED	53	53	53
99262	FU IP CONSULT EST PT; EXP PROB FOCUS	64	64	64
99282	ER VISIT; EXP PROBLEM FOCUSED LOW	74	74	74
99283	ER VISIT; EXP PROBL FOC LOW-MODERATE	101	99	102
99284	ER VISIT; DETAILED MODERATE	160	160	167
99285	ER VISIT; COMPREHENSIVE HIGH	212	212	221
99291	CRITICAL CARE PROLONGED; FIRST HOUR	207	207	207

[THE DOLLAR AMOUNTS APPEARING ON THIS SCHEDULE ARE THE UPPER LIMITS OF THE INSURANCE COMPANY'S LIABILITY FOR REIMBURSEMENT AND WILL NOT BE EXCEEDED IN ANY CASE. THESE AMOUNTS DO NOT REPRESENT A PROVIDER'S USUAL, CUSTOMARY AND REASONABLE FEE WHICH IN MOST INSTANCES WILL BE BELOW THE UPPER LIMIT AMOUNTS SHOWN ON THE SCHEDULE.]

DOLLAR AMOUNTS ON THE FEE SCHEDULE DEFINE THE AUTOMOBILE INSURER'S UPPER LIMIT OF LIABILITY FOR THE SERVICE PROVIDED. REIMBURSEMENT WILL BE BASED ON WHAT IS USUAL, CUSTOMARY AND REASONABLE WITHIN THE UPPER LIMIT.

(b) The following is the Medical Fee Schedule for dental services:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE—DENTAL SERVICES

ADA Code	Description of Services	Region 1	Region 2	Region 3
0110	INITIAL ORAL EXAM	$24	$26	$28
0120	PERIODIC ORAL EXAM	18	21	21
0121	RECALL EXAM-ADULT (W/X RAYS & PROPHY)	68	70	79
0122	RECALL EXAM-CHILD (W/X RAYS, PROPHY, FLUOR)	68	65	72
0123	RECALL EXAM-CHILD W/X-RAYS, PROPHY, FLUO	54	61	62
0124	RECALL EXAM-ADULT, W/PROPHY	58	54	61
0130	EMERGENCY ORAL EXAM	27	27	30
0210	FULL MOUTH X-RAY SERIES	55	55	61
0220	X-RAY, PERIAPICAL, FIRST FILM	8	10	10
0222	X-RAY INTRA-ORAL TWO FILMS	15	15	16

0223	X-RAY INTRA-ORAL THI EE FILMS	19	19	2
0224	X-RAY INTRA-ORAL FOI R FILMS	24	27	27
0225	X-RAY INTRA-ORAL FIV FILMS	29	30	32
0226	X-RAY INTRA-ORAL SIX ILMS	33	32	37
0227	X-RAY INTRA-ORAL SEV N FILMS	42	40	43
0228	X-RAY INTRA-ORAL EIG IT FILMS	41	43	48
0229	X-RAY INTRA-ORAL NIN FILMS	46	48	48
0230	X-RAY, PERIAPICAL, AD ITIONAL FILM	5	5	6
0240	X-RAY, INTRAORAL OC USAL FILM	18	20	21
0270	X-RAY, BITEWING, SING E FILM	10	10	10
0272	BITEWING X-RAYS, TWO ILMS	16	16	17
0273	BITEWING X-RAYS, THR E FILMS	18	20	22
0274	BITEWING X-RAYS, FOU FILMS	22	21	26
0280	BITEWING X-RAY, ADDI IONAL FILM	5	5	5
0290	X-RAY POST-ANT-LAT-SI L FCL BN SURV	54	54	54
0321	X-RAY TMJ SINGLE FILM	36	36	36
0330	PANORAMIC X-RAY SER ES	48	51	55
0340	CEPHALOMETRIC FILM	50	53	55
0410	BACTERIOLOGIC CULTU RE	22	24	21
0450	HISTOPATHOLOGIC EXA MINATION	63	63	64
0460	PULP VITALITY TESTS	20	21	24
0470	DIAGNOSTIC CASTS	43	46	45
0471	DIAGNOSTIC PHOTOGRA PHS	26	26	25
1110	PROPHYLAXIS, ADULT-I CL. SCALING	42	48	49
1120	PROPHYLAXIS, CHILD-IN CL. SCALING	28	31	32
1201	TOPICAL APPL OF FLUOI IDE W/PROPHYLAXIS	40	40	49
1203	TOPICAL APPL OF FLUOI IDE	17	18	21
1210	FLUORIDE SOD TOP APP 4 EXCL PROPH	16	16	19
1211	TOP APPL SOD FLUOR 4 I ICL PROPHYL	47	53	53
1220	FLUORIDE STAN TOP AP L 1 EXCL PROPH	17	19	21
1221	TOP APPL STAN FLUOR 1 NCL PROPHYL	43	45	53
1230	TOPICAL APPL OF FLUOI DE	17	19	21
1231	APPLICATION OF FLUOR DE W/PROPHYLAXIS	43	44	51
1330	ORAL HYGIENE INSTRUC TION	23	28	25
1340	TRAINING IN PREVENTI E DENTAL CARE	30	30	28
1350	TOPICAL APPL OF SEALA IT, PER QUAD	39	32	37
1351	TOPICAL APPL OF SEALA IT, PER TOOTH	24	26	29
1510	SPACE MAINTAINER-FIX D UNILATERAL	168	196	188
1515	SPACE MAINTAINER-FIX D BILATERAL	285	306	257
1550	RECEMENTATION OF SP CE MAINTAINER	33	33	33
2110	AMALGAM, ONE SURFAC , PRIMARY TOOTH	44	43	44
2120	AMALGAM, TWO SURFAC ES, PRIMARY TOOTH	57	64	64
2130	AMALGAM, THREE SURF CES, PRIMARY TOOTH	76	83	83
2131	AMALGAM, FOUR SURFA ES, PRIMARY TOOTH	98	101	98
2140	AMALGAM, ONE SURFAC , PERM. TOOTH	42	45	49
2150	AMALGAM, TWO SURFAC ES, PERM. TOOTH	57	64	65
2160	AMALGAM, THREE SURF CES, PERM. TOOTH	74	81	86
2161	AMALGAM, 4+ SURFACE , PERMANENT	91	100	107
2170	RESTORATION AMALGA PIN RETAINED	79	79	79
2190	PIN RETENTION, EXCLSV OF AMLGM, PER PIN	20	20	24
2210	SILICATE RESTORATION, ONE SURFACE	18	16	20
2310	ACRYLIC OR PLASTIC RE TORATION	30	30	37
2330	COMPOSITE-ONE SURFAC E	52	55	60
2331	COMPOSITE-TWO SURFA ES	71	77	83
2332	COMPOSITE-THREE SURF CES	92	102	105
2334	PIN RETENTION	22	26	26
2335	COMPOSITE INVOLVING I NCISAL ANGLE	114	125	135
2336	LIGHT CURED COMPOSIT E-INCISAL	137	151	158
2337	LIGHT CURED COMPOSIT E, 1 SUR W/ACID ETCH	59	64	70
2338	LIGHT CURED COMPOSIT E, 2 SUR W/ACID ETCH	81	86	97
2339	LIGHT CURED COMPOSIT E, 3 SUR W/ACID ETCH	112	118	135
2340	ACID ETCH FOR RESTOR TION	28	26	31
2510	GOLD INLAY, 1 SURFACE	294	294	294
2520	GOLD INLAY, 2 SURFACES	423	423	415
2525	2 SURFACE INLAY INCLU ING ONLAY	545	545	551
2530	3-SURFACE GOLD FOIL	507	505	508
2535	3 SURFACE INLAY INCLU ING ONLAY	649	622	643
2540	ONLAY PER TOOTH (IN A D'N TO INLAY)	481	501	505
2620	INLAY, PORCELAIN/CERA MIC, TWO SURFACES	511	511	511
2630	INLAY, PORCELAIN/CERA MIC, THREE SURFACES	495	495	492
2710	CROWN, PLASTIC (ACRYL C)	201	206	246

2711	CROWN, PLASTIC (ACRYLIC-PREFABRICATED)	169	186	157
2720	CROWN, RESIN/HIGH NOBLE METAL	591	550	603
2722	CROWN, RESIN/NOBLE METAL	518	518	518
2740	CROWN, PORCELAIN	567	625	605
2750	CROWN, PORCELAIN/HIGH NOBLE	555	605	628
2751	CROWN, PROCELAIN/BASE METAL	540	552	580
2752	CROWN, PORCELAIN/NOBLE METAL	534	560	588
2790	GOLD/HIGH NOBLE METAL	626	608	648
2791	BASE METAL FULL CAST	474	438	482
2792	NOBLE METAL FULL CAST	553	537	589
2810	CROWN, 3/4 CAST-GOLD	656	613	672
2830	CROWN, STAINLESS STEEL (PREFABRICATED)	131	143	160
2840	TEMPORARY CROWN-FRACTURED TOOTH	106	91	102
2891	CAST POST & CORE (IN ADD'N TO CROWN)	177	201	207
2892	PREFAB. POST & CORE (IN ADD'N TO CROWN)	158	170	182
2910	RE-CEMENT INLAY	39	41	45
2920	RECEMENT CROWN	37	41	42
2930	PREFAB STAINLESS STEEL CROWN-PRIMARY	124	133	151
2932	PREFABRICATED RESIN CROWN	153	153	153
2940	SEDATIVE FILLING	42	43	46
2950	CROWN BUILDUP, PIN OR POST RETAINED	126	134	148
2951	PIN RETN. PER TOOTH IN ADD'N TO RESTOR.	19	19	24
2952	CAST POST & CORE IN ADD'N TO CROWN	187	212	212
2954	PREFAB POST & CORE IN ADD'N TO CROWN	150	159	175
2960	LABIAL VENEER (LAMINATE) CLAIRSIDE	334	314	328
2962	LABIAL VENEER (PORCELAIN LAMINATE) LAB.	373	425	425
2980	REPAIR TO CROWN	133	123	133
3110	PULP CAP, DIRECT-OVER PULP EXPOSURE	31	30	37
3120	PULP CAP, INDIRECT	25	25	30
3130	RECALCIFICATION TEMPORARY PER TOOTH	40	40	40
3220	VITAL PULPOTOMY	85	82	80
3310	ROOT CANAL THERAPY, ONE CANAL	340	319	327
3315	RT CANAL THER 1 EXC RST-TRADITIONAL	324	351	351
3320	ROOT CANAL THERAPY, TWO CANALS	401	399	407
3325	RT CANAL THER 2 EXC RST-TRADITIONAL	405	432	459
3330	ROOT CANAL THERAPY, THREE CANALS	501	516	521
3335	RT CANAL THER 3 EXC RST-TRADITIONAL	497	541	568
3340	ROOT CANAL THERAPY, FOUR CANALS	539	610	591
3410	APICOECTOMY (AND/OR) CURETTAGE, SEP SURG PR	288	300	327
3411	APICOECTOMY PER TOOTH, EA ADD'L ROOT	186	186	186
3420	APICOECTOMY W/ENDODONTIC PROC PER ROOT	314	318	310
3430	RETROGRADE FILLING (PER ROOT)	101	90	92
3440	APICAL CURETTAGE	147	140	132
3450	ROOT AMPUTATION (PER ROOT)	217	195	238
3920	HEMISECTION	177	166	194
3940	RECALCIFICATION	20	20	20
3950	CANAL PREP & PREFITTING PREFORMED POST	56	56	52
3960	BLEACHING DISCOLORED TOOTH	73	72	73
4210	GINGIVECTOMY/GINGIVOPLASTY PER QUAD	259	273	264
4211	GINGIVECTOMY/GINGIVOPLASTY SINGLE SITE	104	106	106
4212	GINGIVECTOMY PER TOOTH LESS THAN 5	71	81	81
4220	GINGIVAL CURETTAGE PER QUADRANT	102	109	104
4240	GINGIVAL FLAP PROCEDURES	309	325	371
4250	MUCOGINGIVAL SURGERY PER QUADRANT	330	330	330
4260	OSSEOUS SURGERY, PER QUADRANT	628	570	597
4261	OSSEOUS GRAFT, SINGLE SITE	271	244	296
4262	OSSEOUS GRAFT, MULTIPLE SITES	380	380	380
4263	OSSEOUS SURGERY, SINGLE SITE	398	398	425
4270	PEDICLE SOFT TISSUE GRAFTS	391	391	391
4271	FREE SOFT TISSUE GRAFTS	365	419	422
4272	APICALLY REPOSITIONING FLAP	334	334	334
4320	PROVISIONAL SPLINT, INTRACORONAL	94	100	97
4321	PROVISIONAL SPLINT, EXTRACORONAL	80	80	98
4330	OCCLUSAL ADJUSTMENT, LIMITED	45	50	52
4331	OCCLUSAL ADJUSTMENT, COMPLETE	199	172	176
4340	PERIO SCALING & ROOT PLANING, FULL MOUTH	112	91	105
4341	PERIO SCALING & ROOT PLANING, PER QUAD	115	108	107
4345	SCALING-GINGIVAL INFLAMMATION	55	55	55
4360	APPLIANCE TO BREAK HARMFUL HABIT	270	270	296
4361	APPLIANCE FOR BRUXISM	266	266	292
4910	PERIODONTAL PROPHYLAXIS	65	69	75

5110	COMPLETE UPPER DEN' URE	630	689	739
5120	COMPLETE LOWER DEN 'URE	633	705	739
5130	IMMEDIATE UPPER DEN 'URE	694	769	796
5140	IMMEDIATE LOWER DE 'TURE	685	745	804
5211	PARTIAL DENTURE, UPI ER	431	468	506
5212	PARTIAL DENTURE, LO' 'ER	569	555	601
5213	PARTIAL DENTURE, UPI ER	872	827	871
5214	LOWER PARTIAL	723	794	830
5215	UPPER PARTIAL DENTU E	780	810	800
5216	PARTIAL DENTURE, LO' 'ER	745	745	781
5217	DENT PART LOWER 2 G(LD CLASPS ACR	718	718	718
5218	PARTIAL DENTURE, LO' 'ER	796	796	847
5230	PARTIAL DENTURE-LO' ER	726	726	702
5231	PARTIAL DENTURE-LO' ER	676	784	730
5240	DENT PART LWR LGL B/ R 2 CLSP CST BS	750	750	750
5241	DENT PART LOWER CHI OME LNGL BAR CST	745	757	757
5250	PARTIAL DENTURE-UPP ER	702	702	701
5251	PARTIAL DENTURE-UPP ER	676	756	703
5261	DENT PART UPPER CHR(OME PLTL BAR CST	750	757	757
5281	UNILATERAL PARTIAL I ENTURE	388	388	388
5310	DENT PART ADDTL CLA P WITH RST EACH	81	81	81
5410	DENTURE ADJUSTMENT	36	35	38
5415	DENT ADJUST COMPL O PART U OR L	35	35	35
5421	LOWER PARTIAL DENTU RE ADJUSTMENT	31	31	31
5510	REPAIR BROKEN COMPI ETE DENTURE BASE	81	74	89
5520	REPL. EA. MISS/BROKEN OOTH COM. DEN.	61	55	68
5610	DENTURE REPAIR	69	80	80
5620	DENTURE REPAIR	83	80	87
5630	DENTURE REPAIR	60	66	74
5640	DENTURE REPAIR	60	64	72
5650	DENTURE REPAIR	75	80	88
5660	DENTURE REPAIR	102	103	123
5670	DENTURE REPAIR	76	76	76
5680	DENTURE REPAIR	84	82	90
5690	DENTURE REPLACE BR(KN CLSP EA ADDTL	80	80	80
5725	REBASE U/L DENTURE P RT OR COMPLETE	190	190	171
5730	DENTURE RELINING: UI 'ER COMPLETE	142	142	145
5731	DENTURE RELINING: LC VER COMPLETE	150	150	150
5735	RELINE U/L DENT PART R COMP OFFICE	162	162	162
5740	DENTURE RELINE PART AL UPPER OFFICE	118	118	121
5741	DENTURE RELINE PART AL LOWER OFFICE	135	135	135
5750	DENTURE RELINE UPPE COMPLETE LAB	195	199	209
5751	DENTURE RELINE LOWI R COMPLETE LAB	205	205	212
5755	RELINE U/L DENT PART R COMP LAB	198	242	216
5760	DENTURE RELINE UPPE PARTIAL LAB	205	201	214
5761	DENTURE RELINE LOWI R PARTIAL LAB	203	203	212
5820	DENTURE, TEMPORARY 'ARTIAL UPPER	266	270	269
5821	DENT TEMP PART-STAYI ATE LOWER	270	270	270
5850	TISSUE CONDITIONING	78	71	86
5974	ENDOSSEOUS IMPLANT (N THE BONE)	948	948	948
6210	BRIDGE PONTIC CAST HI GH NOBLE METAL	594	594	606
6212	BRIDGE PONTIC CAST N(BLE METAL	517	517	517
6240	BRIDGE PONTIC PORCEI AIN FUSED/HI NOBLE	579	604	629
6241	BRIDGE PONTIC PROCEI AIN FUSED/BASE METAL	552	537	581
6242	BRIDGE PONTIC PROCEI AIN FUSED/NOBLE	532	563	586
6250	BRIDGE PONTIC RESIN/I GH NOBLE METAL	579	579	577
6251	BRIDGE PONTIC/PREDOI BASE METAL	438	438	438
6252	BRIDGE PONTIC RESIN W TH NOBLE METAL	533	533	533
6530	GOLD INLAY-THREE SUI FACES	552	552	552
6545	BONDED RESIN RETAINI R (MARYLAND BRIDGE)	197	224	233
6640	REPAIRS REPL BRKN FC G WITH ACRYLIC	102	108	102
6710	BRIDGE ABUTMENT CR(WN, PLASTIC	224	224	224
6720	BRIDGE ABUTMENT CR(WN RESIN/HIGH NOBLE	565	565	574
6721	BRIDGE ABUTMENT CR(WN PLASTIC/NON-PREC	486	486	486
6722	BRIDGE ABUTMENT CR(WN RESIN/BASE METAL	553	553	553
6750	BRIDGE ABUTMENT CR(WN RESIN/NOBLE METAL	588	612	632
6751	BRIDGE ABUTM CROWN 'ORCELAIN/NOBLE MTL	552	546	583
6752	BRIDGE ABUTM CROWN 'ROCELAIN/NOBLE MTL	538	562	588
6780	BRIDGE ABUTMENT CR(WN 3/4 CAST NOBLE MTL	614	614	614
6790	BRIDGE ABUTM CROWN 'ULL CAST HIGH NOBLE	658	592	681
6792	BRIDGE ABUTM CROWN 'ULL CAST NOBLE METAL	566	566	589

6930	RECEMENT BRIDGE	53	55	57
6950	PRECISION ATTACHMENT	217	219	215
6960	DOWEL PIN METAL	161	161	151
6970	REPAIRS TO CROWNS	125	125	135
6980	REPAIR TO FIXED BRIDGE	148	159	154
7110	EXTRACTION, SINGLE TOOTH	60	69	69
7111	TOOTH EXTRACT. W/X-RAY & GENL ANAESTH	114	114	114
7120	SIMPLE EXTRACTION-ADDITIONAL TOOTH	56	64	65
7130	ROOT REMOVAL-EXPOSED ROOTS	78	70	81
7210	SURGICAL EXTRACTION	113	120	132
7220	SURGICAL EXTRACTION-TISSUE IMPACTION	161	176	170
7230	SURGICAL EXTRACTION-PARTIAL IMPACTION	236	234	232
7235	EXTRACTION SURG PARTIAL BONY IMPACT	238	243	216
7240	SURGICAL EXTRACTION-FULL IMPACTION	306	283	293
7241	SURGICAL EXTR-FULL IMPACT.-DIFFICULT	332	322	336
7245	EXTRACTION SURG COMPL BONY IMPACT	324	286	324
7250	SURGICAL REMOVAL, RESIDUAL ROOTS	110	117	124
7270	TOOTH REIMPLANTATION	233	233	233
7280	SURG. EXPOSURE OF TOOTH FOR ORTHO	272	272	296
7281	SURG. EXPOSURE OF TOOTH TO AID ERUPTION	191	207	172
7286	BIOPSY OF ORAL TISSUE, SOFT	124	131	115
7310	ALVEOPLASTY-PER QUAD W/EXTRACTIONS	137	116	138
7320	ALVEOPLASTY-PER QUAD W/O EXTRACTIONS	189	189	177
7425	EXCISION PERICORONAL GINGIVA	119	119	131
7430	SURGICAL EXCISION	214	211	226
7431	SURGICAL EXCISION	271	271	271
7450	REMOVAL OF CYST	168	151	181
7451	REMOVAL OF CYST	359	359	362
7460	REMOVAL OF CYST	238	238	238
7461	REMOVAL OF CYST	559	559	559
7470	REMOVAL OF EXOSTOSIS	355	355	366
7510	INCISION & DRAINAGE, INTRAORAL ABSCESS	65	70	69
7910	SUTURE OF WOUND	78	78	78
7960	FRENECTOMY	227	222	236
7970	SURG. REPAIR EXCISION OF HYPERPLASTIC	158	150	174
8000	ORTHODONTIC PAYMENT	638	638	638
8001	ORTHODONTIC-FIRST PAYMENT	1657	1657	1657
8002	ORTHODONTIC-FINAL PAYMENT	1791	1791	1791
8010	ORTHODONTIC WORK-UP	183	188	186
8110	TOOTH GUIDANCE APPLIANCE REMOVABLE	308	326	293
8120	TOOTH GUIDANCE APPLIANCE FIXED	478	515	478
8210	REMOVABLE APPLIANCE THERAPY	282	278	317
8220	FIXED APPLIANCE THERAPY	357	357	357
8360	REMOVABLE APPLIANCE THERAPY	247	247	247
8370	FIXED APPLIANCE THERAPY	397	397	397
8460	ORTHO TREATMENT MIXED DENT CL 1 MAL	3354	3354	3354
8470	ORTHO TREATMENT MIXED DENT CL 2 MAL	3597	3462	3516
8560	ORTHO TREATMENT PERM DENT CL 1 MAL	3240	3340	3354
8570	ORTHO TREATMENT PERM DENT CL 2 MAL	3408	3354	3462
8580	ORTHO TREATMENT PERM DENT CL 3 MAL	3380	3380	3570
9110	EMERGENCY PALLIATIVE TREATMENT	39	41	46
9210	LOCAL ANESTHESIA	27	25	30
9220	GENERAL ANESTHESIA	115	99	102
9230	ANALGESIA	25	27	30
9240	INTRAVENOUS SEDATION	92	88	102
9310	CONSULTATION	54	47	53
9430	VISITS OFFICE REG HRS-NO OPER SV	36	31	37
9610	DRUGS THERAPEUTIC INJECTION	35	35	35
9630	DRUGS OTHER AND/OR MEDICAMENTS	18	20	21
9910	APPLICATION OF DESENSITIZING MEDICATION	21	22	22
9930	COMPLICATIONS UNUSUAL CIRCUMSTANCES	41	41	41
9950	OCCLUSION ANALYSIS MOUNTED CASE	75	75	75
9951	OCCLUSAL ADJUSTMENT	29	26	32

[THE DOLLAR AMOUNTS APPEARING ON THIS SCHEDULE ARE THE UPPER LIMITS OF THE INSURANCE COMPANY'S LIABILITY FOR REIMBURSEMENT AND WILL NOT BE EXCEEDED IN ANY CASE. THESE AMOUNTS DO NOT REPRESENT A PROVIDER'S USUAL, CUSTOMARY AND REASONABLE FEE WHICH IN MOST INSTANCES WILL BE BELOW THE UPPER LIMIT AMOUNTS SHOWN ON THE SCHEDULE.]

DOLLAR AMOUNTS ON THE FEE SCHEDULE DEFINE THE AUTOMOBILE INSURER'S UPPER LIMIT OF LIABILITY FOR THE SERVICE PROVIDED. REIMBURSEMENT WILL BE BASED ON WHAT IS USUAL, CUSTOMARY AND REASONABLE WITHIN THE UPPER LIMIT.

(e) The following is the Medical Fee Schedule for durable medical equipment and prosthetic devices:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE
DURABLE MEDICAL EQUIPMENT AND PROSTHETIC DEVICES
CODES BEGINNING WITH "A"

HCPCS CODE	DESCRIPTION	FEE FOR NEW EQUIPMENT
A4214	Sterile saline or water, 30 cc vial	$1.37
A4310	Insertion tray without drainage bag nd without catheter (accessories only)	5.56
A4311	Insertion tray without drainage bag ith indwelling catheter, Foley type, two-way latex with coating (teflon, silicone, silicone elastometer, or hydrophi , etc.)	10.68
A4312	Insertion tray without drainage bag ith indwelling catheter, Foley type, two-way, all silicone	12.49
A4313	Insertion tray without drainage bag ith indwelling catheter, Foley type, three-way, for continuous irrigation	12.91
A4314	Insertion tray with drainage bag wit indwelling catheter, Foley type, two-way latex with coating (Teflon, silicone, silicone elastometer, or hydrophil , etc.)	16.19
A4315	Insertion tray with drainage bag wit indwelling catheter, Foley type, two-way, all silicone	17.27
A4316	Insertion tray with drainage bag wit indwelling catheter, Foley type, three-way, for continuous irrigation	19.57
A4320	Irrigation tray for bladder irrigation ith bulb or piston syringe	5.02
A4322	Irrigation syringe, bulb or piston	2.60
A4323	Sterile saline irrigation solution, 10 ml	7.19
A4326	Male external catheter specialty typ e.g., inflatable, faceplate, etc., each	11.02
A4327	Female external urinary collection d vice, metal cup, each	25.38
A4328	Female external urinary collection d vice; pouch, each	10.17
A4329	External catheter starter set, male/f nale, includes catheters/urinary collection device, bag/pouch and accessories (tubing, clamps, etc.) 7 day supply	30.36
A4330	Perianal fecal collection pouch with dhesive	6.12
A4338	Indwelling catheter; Foley type, two- ay latex with coating (Teflon, silicone, silicone elastometer or hydrophilic, etc.)	8.77
A4340	Indwelling catheter; specialty type, (.g., Coude, Mushroom, Wing, etc.)	14.25
A4344	Indwelling catheter, Foley type, two- ay, all silicone	12.86
A4346	Indwelling catheter, Foley type, thre -way, for continuous irrigation	18.74
A4347	Male external catheter with or witho t adhesive, with or without anti-reflux device; per dozen	16.90
A4351	Intermittent urinary catheter; straigl tip	1.72
A4352	Intermittent urinary catheter; Coud (curved) tip	5.36
A4354	Insertion tray with drainage bag but ithout catheter	8.68
A4355	Irrigation tubing set for continuous t adder irrigation through a three-way indwelling Foley catheter	8.69
A4356	External urethral clamp or compress n device (not to be used for catheter clamp)	36.53
A4357	Bedside drainage bag, day or night, v th or without anti-reflux device, with or without tube	6.95
A4358	Urinary leg bag; vinyl, with or witho tube	6.94
A4359	Urinary suspensory; without leg bag	27.63
A4361	Ostomy faceplate	13.88
A4362	Skin barrier; solid, 4 × 4 or equivale t; each	4.19
A4363	Skin barrier; liquid (spray, brush, etc powder or paste; per oz.	4.05
A4364	Adhesive for ostomy or catheter; liq d (spray, brush, etc.) cement, powder or paste; any composition (e.g., silicone, latex, etc.); per oz.	3.83
A4367	Ostomy belt	6.99
A4397	Irrigation supply; sleeve	4.43
A4398	Irrigation supply, bags	9.43
A4399	Irrigation supply, cone/catheter	11.78
A4400	Ostomy irrigation set	42.60
A4402	Lubricant	1.78
A4404	Ostomy rings	1.31
A4454	Tape, all types, all sizes	2.03
A4455	Adhesive remover or solvent (for tap , cement or other adhesive)	2.41
A4560	Pessary	22.66

HCPCS CODE	DESCRIPTION	FEE IF NEW	FEE IF USED	MONTHLY RENTAL
A4611	Battery, heavy duty; replacement for atient-owned ventilator	140.08	121.48	14.01
A4612	Battery cables; replacement for patie -owned ventilator	39.17	38.51	3.92
A4613	Battery charger; replacement for pati nt-owned ventilator	131.80	98.08	13.18
A4618	Breathing circuits	7.97	8.78	.80
A4622	Tracheostomy or laryngectomy tube	64.29	—	—
A4623	Tracheostomy, inner cannula (replac nent only)	7.93	—	—
A4624	Tracheal suction catheter, any type, e ch	2.02	—	—
A4625	Tracheostomy care or cleaning starte kit	6.75	—	—
A4626	Tracheostomy cleaning brush, each	3.05	—	—
A4627	Spacer, bag or reservoir, with or with t mask, for use with metered dose inhaler	18.38	13.77	1.84

A4630	Replacement batteries. Medically necessary T.E.N.S. owned by patient	8.44	—	—
A4631	Replacement batteries for medically necessary electronic wheelchair owned by patient	78.87	59.15	7.89
A4635	Underarm pad, crutch, replacement, each	6.64	4.96	.66
A4636	Replacement, handgrip, cane, crutch, or walker, each	2.93	2.19	.29
A4637	Replacement, tip, cane, crutch, walker, each	1.88	1.41	.19
A4640	Replacement pad for use with medically necessary alternating pressure pad owned by patient	49.50	37.12	4.95
A5051	Pouch, closed; with barrier attached (1 piece)	2.62	—	—
A5052	Pouch, closed; without barrier attached (1 piece)	1.84	—	—
A5053	Pouch, closed; for use on faceplate	2.88	—	—
A5054	Pouch, closed; for use on barrier with flange (2 piece)	2.39	—	—
A5055	Stoma cap	1.69	—	—
A5061	Pouch, drainable; with barrier attached (1 piece)	3.78	—	—
A5062	Pouch, drainable; without barrier attached (1 piece)	3.19	—	—
A5063	Pouch, drainable; for use on barrier with flange (2 piece system)	2.92	—	—
A5064	Pouch, drainable; with faceplate attached; plastic or rubber	7.35	—	—
A5065	Pouch, drainable; for use on faceplate; plastic or rubber	5.37	—	—
A5071	Pouch, urinary; with barrier attached (1 piece)	4.18	—	—
A5072	Pouch, urinary; without barrier attached (1 piece)	4.03	—	—
A5073	Pouch, urinary; for use on barrier with flange (2 piece)	3.65	—	—
A5074	Pouch, urinary; with faceplate attached; plastic or rubber	7.75	—	—
A5075	Pouch, urinary; for use on faceplate; plastic or rubber	3.79	—	—
A5081	Continent device; plug for continent stoma	3.18	—	—
A5082	Continent device; catheter for continent stoma	10.57	—	—
A5093	Ostomy accessory; convex insert	1.68	—	—
A5102	Bedside drainage bottle, rigid or expandable	26.39	—	—
A5105	Urinary suspensory; with leg bag, with or without tube	35.03	—	—
A5112	Urinary leg bag; latex	17.84	—	—
A5113	Leg strap; latex, per set	4.26	—	—
A5114	Leg strap; foam or fabric, per set	9.16	—	—
A5119	Skin barrier; wipes, box per 50	9.73	—	—
A5121	Skin barrier; solid, 6 × 6 or equivalent, each	5.09	—	—
A5122	Skin barrier; solid, 8 × 8 or equivalent, each	7.86	—	—
A5123	Skin barrier; with flange (solid, flexible or accordian), any size, each	5.84	—	—
A5126	Adhesive; disc or foam pad	1.21	—	—
A5131	Appliance cleaner, incontinence and ostomy appliances, per 16 oz.	15.77	—	—

CODES BEGINNING WITH "E"

HCPCS CODE	DESCRIPTION	FEE FOR NEW EQPT	FEE FOR USED EQPT	MONTHLY RENTAL
E0100	Cane, includes canes of all materials, adjustable or fixed, with tip	16.37	12.02	1.64
E0105	Cane, quad or three prong, includes canes of all materials, adjustable or fixed, with tips	40.94	29.99	4.09
E0110	Crutches forearm, includes crutches of various materials, adjustable or fixed, pair, complete with tip	60.06	45.04	6.01
E0111	Crutch forearm, includes crutches of various materials, adjustable or fixed, each, with tip and handgrip	55.60	36.08	5.56
E0112	Crutches underarm, wood, adjustable or fixed, pair, with pads, tips and handgrips	36.96	28.66	3.70
E0113	Crutch underarm, wood, adjustable or fixed, each, with pad, tip and handgrip	24.69	12.67	2.47
E0114	Crutches underarm, aluminum, adjustable or fixed, pair with pads, tips and handgrips	51.53	36.28	5.15
E0116	Crutch underarm, aluminum, adjustable or fixed, each, with pad, tip and handgrip	22.72	14.46	2.27
E0130	Walker, rigid (pickup), adjustable or fixed height	56.05	43.47	5.61
E0135	Walker, folding (pickup), adjustable or fixed height	61.63	45.51	6.16
E0141	Walker, wheeled, without seat	99.41	71.02	9.94
E0142	Rigid walker, wheeled, with seat	231.50	154.39	23.15
E0143	Folding walker, wheeled, without seat	105.43	74.38	10.54
E0145	Walker, wheeled, with seat and crutch attachments	180.70	135.53	18.07
E0146	Walker, wheeled, with seat	116.60	87.45	11.66
E0147	Heavy duty, multiple breaking system, variable wheel resistance walker	255.83	221.57	25.58
E0153	Platform attachment, forearm crutch, each	57.41	49.15	5.74
E0154	Platform attachment, walker, each	64.20	53.32	6.42
E0155	Wheel attachment, rigid pick-up walker attachments	25.64	22.16	2.56
E0156	Seat attachment, walker	21.87	14.06	2.19
E0157	Crutch attachment, walker, each	57.41	44.26	5.74
E0158	Leg extensions for a walker	26.36	21.56	2.64
E0160	Sitz type bath, portable, fits over commode seat	22.17	12.22	2.22
E0161	Sitz type bath, portable, fits over commode seat, with faucet attachments	44.57	17.94	4.21
E0163	Commode chair, stationary, with fixed arms	92.37	63.68	9.24
E0164	Commode chair, mobile, with fixed arms	167.00	86.97	16.70
E0165	Commode chair, stationary with detachable arms	149.90	112.43	14.99
E0166	Commode chair, mobile with detachable arms	220.50	165.38	22.05
E0167	Pail or pan for use with commode chair	10.30	7.93	1.03

E0175	Foot rest, for use with commode ch ir, each	53.65	35.23	4.74
E0176	Air pressure pad or cushion, nonpc itioning	91.90	68.93	9.19
E0177	Water pressure pad or cushion, noi ositioning	91.90	68.93	9.19
E0178	Gel pressure pad or cushion, nonp itioning	101.48	75.38	10.15
E0179	Dry pressure pad or cushion, nonp itioning (e.g., Eggcrate)	55.54	40.26	5.55
E0180	Pressure pad, alternating with pum , light duty	237.90	178.43	23.79
E0181	Pressure pad, alternating with pum , heavy duty	253.90	190.43	25.39
E0182	Pump for alternating pressure pad	288.50	216.38	28.85
E0184	Dry pressure mattress (e.g., Eggcra :)	244.03	74.85	24.40
E0185	Gel pressure pad for mattress	184.83	153.18	18.48
E0186	Air pressure mattress	196.20	147.15	19.62
E0187	Water pressure mattress	198.20	148.65	19.82
E0188	Synthetic sheepskin pad	23.85	14.04	2.39
E0189	Lambswool sheepskin pad, any size	36.30	23.31	3.63
E0191	Heel or elbow protector, each	10.42	6.73	1.04
E0192	Low pressure and positioning pad f r wheelchair	317.96	237.79	31.80
E0193	Powered air flotation bed (low air l ss therapy)	9798.00	7348.50	979.80
E0194	Air fluidized bed	25429.40	19072.05	2542.94
E0196	Gel pressure mattress	221.50	166.13	22.15
E0197	Air pressure pad for mattress	119.99	102.13	12.00
E0198	Water pressure pad for mattress	126.16	106.76	12.62
E0199	Dry pressure pad for mattress (e.g., Eggcrate)	54.52	53.76	5.45
E0200	Heat lamp, without stand (table mo el), includes bulb, or infrared element	70.04	54.44	7.00
E0202	Phototherapy (bilirubin) light with j notometer	906.50	679.88	90.65
E0205	Heat lamp, with stand, includes bull or infrared element	110.92	63.69	11.09
E0210	Electric heat pad, standard	29.16	30.28	2.92
E0215	Electric heat pad, moist	46.64	37.18	4.66
E0220	Hot water bottle	5.51	4.16	.55
E0225	Hydrocollator unit, includes pads	177.95	172.29	16.73
E0230	Ice cap or collar	6.94	5.20	.69
E0235	Paraffin bath unit, portable	161.20	120.90	16.12
E0236	Pump for water circulating pad	316.90	237.68	31.69
E0237	Water circulating heat pad with pun p	339.91	216.43	30.82
E0238	Non-electric heat pad moist	29.56	13.99	2.96
E0239	Hydrocollator unit, portable	372.28	303.77	37.23
E0249	Pad for water circulating heat unit	73.69	96.78	7.37
E0250	Hospital bed, fixed height, with any ype side rails, with mattress	764.50	573.38	76.45
E0251	Hospital bed, fixed height, with any ype side rails, without mattress	624.40	468.30	62.44
E0255	Hospital bed, variable height, Hi-lo, vith any type side rails, with mattress	835.60	626.70	83.56
E0256	Hospital bed, variable height, Hi-lo, vith any type side rails, without mattress	608.80	456.60	60.88
E0260	Hospital bed, semi-electric (head an l foot adjustment), with any type side rails, with mattress	1276.60	957.45	127.66
E0261	Hospital bed, semi-electric (head an l foot adjustment), any type side rails, without mattress	927.10	695.33	92.71
E0265	Hospital bed, total electric (head, fo t and height adjustments), any type side rails, with mattress	1580.40	1185.30	158.04
E0266	Hospital bed, total electric (head, fo t and height adjustments), any type side rails, without mattress	1606.30	1204.73	160.63
E0271	Mattress, innerspring	171.14	131.08	17.11
E0272	Mattress, foam rubber	150.75	101.91	15.08
E0275	Bed pan, standard, metal or plastic	14.46	11.30	1.45
E0276	Bed pan, fracture, metal or plastic	13.07	14.14	1.31
E0277	Alternating pressure mattress	44.18	33.14	4.42
E0280	Bed, cradle, any type	30.63	20.82	3.06
E0290	Hospital bed, fixed height, without s le rails, with mattress	508.20	381.15	50.82
E0291	Hospital bed, fixed height, without s le rails, without mattress	363.50	272.63	36.35
E0292	Hospital bed, variable height, Hi-lo, ithout side rails, with mattress	595.30	446.47	59.53
E0293	Hospital bed, variable height, Hi-lo, ithout side rails, without mattress	565.00	423.75	56.50
E0294	Hospital bed, semi-electric (head an foot adjustment), without side rails, with mattress	922.60	691.95	92.26
E0295	Hospital bed, semi-electric (head an foot adjustment), without side rails, without mattress	917.00	687.75	91.70
E0296	Hospital bed, total electric (head, fo t and height adjustments), without side rails, with mattress	1159.50	869.63	115.95
E0297	Hospital bed, total electric (head, fo t and height adjustments), without side rails, without mattress	1168.50	876.38	116.85
E0305	Bed side rails, half length	124.20	93.15	12.42
E0310	Bed side rails, full length	145.92	128.13	14.59
E0325	Urinal; male, jug type, any material	6.95	6.92	.70
E0326	Urinal; female, jug type, any materia	9.14	7.22	.91
E0430	Portable gaseous oxygen system, incl des regulator with flow guage, humidifier, cannula or mask and tubing	—	—	54.99
E0435	Oxygen system, liquid, portable, incl des portable container, supply reservoir, flow humidifier, cannula or masks, tubing and refil adaptor	—	—	54.99
E0450	Volume ventilator; stationary	—	—	767.32
E0452	Intermittent assist device with contir ious positive airway pressure device (CPAP)	—	—	159.65
E0453	Therapeutic ventilator; suitable for t e 12 hours or less per day	—	—	319.30

E0457	Chest shell (cuirass)	—	—	61.36
E0459	Chest Wrap	437.40	328.05	43.74
E0460	Negative pressure ventilator; portable (e.g., Porta-lung)	—	—	672.75
E0462	Rocking bed with or without side rails	2454.70	1841.02	245.47
E0480	Percussor, electric or pneumatic, home model	385.60	289.20	38.56
E0500	IPPB machines with manual valves, external power source, includes cylinder regulator, built-in nebulization	—	—	99.23
E0550	Humidifier, durable for extensive supplemental humidification during IPPB treatment or oxygen delivery; e.g., Cascade	498.00	373.50	49.80
E0560	Humidifier, durable for supplemental humidification during IPPB treatment or oxygen delivery; e.g., Cascade Jr.	132.10	68.74	13.21
E0565	Compressor, air power source for equipment which is not self-contained or cylinder driven	435.30	326.48	43.53
E0570	Nebulizer, with compressor; e.g., DeVilbiss Pulmo-Aid	—	—	54.62
E0575	Nebulizer, self-contained, ultrasonic	—	—	95.53
E0585	Nebulizer, with compressor and heater	—	—	73.03
E0600	Suction pump, home model, portable	—	—	66.65
E0601	Nasal continuous airway pressure (CPAP) device	—	—	93.23
E0605	Vaporizer, room type	28.60	23.79	2.86
E0606	Postural drainage board	148.00	111.00	14.80
E0607	Home blood glucose monitor	162.28	131.82	16.23
E0608	Apnea monitor	1455.70	1091.78	145.57
E0609	Blood glucose monitor with special features (e.g., voice synthesizers, automatic timers, etc.)	435.50	339.64	43.55
E0610	Pacemaker monitor self-contained, (checks battery depletion, includes audible and visible check systems)	323.85	261.66	32.39
E0615	Pacemaker monitor self-contained, (checks battery depletion and other pacemaker components, includes digital/visible check systems)	357.53	170.77	35.75
E0621	Sling or seat, patient lift, canvas or nylon	65.71	65.88	6.57
E0627	Seat lift mechanism incorporated into a combination liftchair mechanism	273.68	205.27	27.37
E0628	Separate seat lift mechanism for use with patient-owned furniture; electric	273.68	205.27	27.37
E0629	non-electric	273.68	205.27	27.37
E0630	Patient lift, hydraulic, with seat or sling	796.40	597.30	79.64
E0635	Patient lift, electric with seat or sling	914.30	685.73	91.43
E0650	Pneumatic compressor, non-segmental home model, (lymphedema pump)	541.36	406.03	54.14
E0651	Pneumatic compressor, segmental home model (lymphedema pump) without calibrated gradient pressure	992.94	570.07	99.29
E0652	Pneumatic compressor, segmental home model (lymphedema pump) with calibrated gradient pressure	3732.98	3235.90	355.79
E0655	Pneumatic appliance for use with pneumatic compressor, half arm	86.50	93.74	8.65
E0660	Pneumatic appliance for use with pneumatic compressor, full leg	133.96	93.85	13.40
E0665	Pneumatic appliance for use with pneumatic compressor, full arm	94.13	69.80	9.41
E0666	Pneumatic appliance for use with pneumatic compressor, half leg	113.82	96.28	11.38
E0667	Pneumatic appliance for use with segmental pneumatic compressor, leg	299.32	246.51	29.31
E0668	Pneumatic appliance for use with segmental pneumatic compressor, arm	309.67	260.20	29.51
E0690	Ultraviolet cabinet, appropriate for home use	654.39	867.44	65.44
E0720	TENS, two lead, localized stimulation	447.80	—	44.78
E0730	TENS, four lead, larger area/multiple nerve stimulation	453.50	—	45.35
E0731	Form fitting conductive garment for delivery of TENS	249.32	—	24.93
E0744	Neuromuscular stimulator for scoliosis	854.10	640.58	85.41
E0745	Neuromuscular stimulator, electronic shock unit, non-clinical model	780.50	585.38	78.05
E0747	Osteogenesis stimulator (non-invasive)	2813.76	2058.18	281.38
E0749	Osteogenesis stimulator (surgically implanted)	2035.20	1526.40	203.52
E0776	IV pole	94.41	72.32	9.44
E0781	Ambulatory infusion pump with administrative equipment, worn by patient	1877.90	1408.43	187.79
E0782	Infusion pump, implantable	3616.95	2778.64	361.70
E0791	Parenteral infusion pump, stationary, single or multi-channel	1862.80	1397.10	186.28
E0840	Traction frame, attached to headboard, simple cervical traction	50.31	33.21	5.03
E0850	Traction stand, free standing, simple cervical traction	58.36	39.68	5.84
E0860	Traction equipment, overdoor, cervical	28.17	22.15	2.82
E0870	Traction frame, attached to footboard, simple extremity traction (e.g., Buck's)	86.94	52.94	8.69
E0880	Traction stand, free standing, simple extremity traction (e.g., Buck's)	90.73	53.32	9.07
E0890	Traction frame, attached to footboard, simple pelvic traction	93.73	70.17	9.37
E0900	Traction stand, free standing, simple pelvic traction (e.g., Buck's)	93.64	75.79	9.36
E0910	Trapeze bars, A/K/A patient helper, attached to bed, with grab bar	160.90	120.68	16.09
E0920	Fracture frame, attached to bed, includes weights	326.50	244.88	32.65
E0930	Fracture frame, free standing, includes weights	340.60	255.45	34.06
E0935	Passive motion exercise device	—	—	534.50
E0940	Trapeze bar, free standing, complete with grab bar	260.60	195.45	26.06
E0941	Gravity assisted traction device, any type	372.50	279.38	37.25
E0942	Cervical head harness/halter	16.41	12.31	1.64
E0943	Cervical pillow	*[26.52]* **29.95*	*[29.95]* **26.52*	*[2.65]* **3.00*

E0944	Pelvic belt/harness/boot	33.95	23.16	3.40
E0945	Extremity belt/harness	35.83	28.45	3.58
E0946	Fracture, frame, dual with cross bars attached to bed, (e.g., Balken, 4 poster)	547.20	410.40	54.72
E0947	Fracture frame, attachments for com lex pelvic traction	440.23	319.92	44.02
E0948	Fracture frame, attachments for com lex cervical traction	429.31	316.24	42.93
E0950	Tray	85.65	60.78	8.57
E0951	Loop heel, each	13.99	11.70	1.40
E0952	Loop toe, each	13.44	11.70	1.34
E0953	Pneumatic tire, each	56.79	42.59	5.68
E0954	Semi-pneumatic caster, each	42.53	31.18	4.25
E0958	Wheelchair attachment to convert ar wheelchair to one arm drive	348.70	261.53	34.87
E0959	Amputee adapter (device used to co pensate for transfer of weight due to lost limbs to maintain proper balance)	70.88	57.41	7.09
E0961	Brake extension, for wheelchair	13.84	12.56	1.33
E0962	1″ cushion, for wheelchair	49.22	36.92	4.92
R0963	2″ cushion, for wheelchair	58.25	37.36	5.83
E0964	3″ cushion, for wheelchair	60.41	43.54	6.04
E0965	4″ cushion, for wheelchair	67.55	57.15	6.76
E0966	Hook on head rest extension	53.59	41.97	5.36
E0967	Wheelchair hand rims with 8 vertical ubber tipped projection, pair	109.37	82.03	10.53
E0968	Commode seat, wheelchair	150.10	112.58	15.01
E0969	Narrowing device, wheelchair	118.04	90.74	11.80
E0970	No. 2 footplates, except for elevating egrest	61.98	60.08	5.80
E0971	Anti-tipping device wheelchairs	52.14	37.95	5.21
E0972	Transfer board, wheelchair	39.09	28.72	3.91
E0973	Adjustable height detachable arms, d sk or full length, wheelchair	73.49	78.81	7.31
E0974	"Grade-Aid" <device to prevent roll ıg back on an incline> for wheelchair	66.90	50.68	5.08
E0975	Reinforced seat upholstery, wheelch r	47.27	33.99	4.73
E0976	Reinforced back, wheelchair, upholst ry or other material	56.29	33.99	4.81
E0977	Wedge cushion, wheelchair	57.03	38.55	2.91
E0978	Belt, safety with airplane buckle, whe lchair	37.08	26.99	3.39
E0979	Belt, safety with velcro closure, wheel hair	26.88	22.84	2.69
E0980	Safety vest, wheelchair	25.79	20.10	2.58
E0990	Elevating legrest, each	80.00	71.93	8.00
E0991	Upholstery seat	36.93	28.71	3.20
E0992	Solid seat insert	65.01	44.90	6.50
E0993	Back, upholstery	31.70	34.21	2.98
E0994	Arm rest, each	14.51	10.44	1.39
E0995	Calf rest, each	23.05	20.49	2.31
E0996	Tire, solid, each	26.58	18.11	2.61
E0997	Caster with a fork	58.02	44.29	5.80
E0998	Caster without fork	33.42	25.50	3.34
E0999	Pneumatic tire with wheel	91.15	79.60	9.12
E1000	Tire, pneumatic caster	46.48	24.32	4.65
E1001	Wheel, single	79.93	89.39	7.41
E1031	Rollabout chair, any and all types witl castors 5″ or greater	472.20	354.15	47.22
E1050	Fully-reclining wheelchair, fixed full l ıgth arms, swing-away detachable elevating legrests	1062.10	796.57	106.21
E1060	Fully-reclining wheelchair, detachable arms, desk or full length, swing-away detachable elevating legrests	931.90	698.93	93.19
E1065	Power attachment (to convert any wh elchair to motorized wheelchair; e.g., Solo)	2400.62	1728.00	211.01
E1066	Battery charger	205.17	188.65	20.52
E1069	Deep cycle battery	96.43	68.18	8.59
E1070	Fully-reclining wheelchair, detachable arms, desk or full length, swing-away detachable footrests	976.90	732.68	97.69
E1083	Hemi-wheelchair, fixed full length arr s, swing-away detachable elevating legrests	593.60	445.20	59.36
E1084	Hemi-wheelchair, detachable arms, d k or full length arms, swing-away detachable elevating legrests	827.80	620.85	82.78
E1085	Hemi-wheelchair, fixed full length arn s, swing-away detachable footrests	587.40	440.55	58.74
E1086	Hemi-wheelchair, detachable arms, d k or full length, swing-away detachable footrests	786.30	589.73	78.63
E1087	High strength lightweight wheelchair, ixed full length arms, swing-away detachable elevating legrests	954.20	715.65	95.42
E1088	High strength lightweight wheelchair, etachable arms desk or full length, swing-away detachable elevating legrests	1272.10	954.07	127.21
E1089	High strength lightweight wheelchair, xed length arms, swing-away detachable footrest	805.00	603.75	80.50
E1090	High strength lightweight wheelchair, etachable arms desk or full length, swing-away detachable footrests	967.80	725.85	96.78
E1091	Youth wheelchair, any type	854.40	640.80	85.44
E1092	Wide heavy duty wheelchair, detachat e arms, desk or full length, swing-away detachable elevating legrests	1120.10	840.07	112.01
E1093	Wide heavy duty wheelchair, detachat e arms, desk or full length, swing-away detachable footrests	946.20	709.65	94.62
E1100	Semi-reclining wheelchair, fixed full le gth arms, swing-away detachable elevating legrests	840.30	630.23	84.03

E1110	Semi-reclining wheelchair, detachable arms (desk or full length), elevating legrests	909.10	681.83	90.91
E1130	Standard wheelchair, fixed full length arms, fixed or swing-away detachable footrests	374.20	280.65	37.42
E1140	Wheelchair, detachable arms, desk or full length, swing-away detachable footrests	577.20	432.90	57.72
E1150	Wheelchair, detachable arms, desk or full length, swing-away detachable elevating legrests	642.70	482.03	64.27
E1160	Wheelchair, fixed full length arms, swing-away detachable elevating legrests	505.50	379.13	50.55
E1170	Amputee wheelchair, fixed full length arms, swing-away detachable elevating legrests	706.60	529.95	70.66
E1171	Amputee wheelchair, fixed full length arms, without footrests or legrests	642.50	481.88	64.25
E1172	Amputee wheelchair, detachable arms (desk or full length) without footrests or legrests	726.30	544.73	72.63
E1180	Amputee wheelchair, detachable arms (desk or full length), swing-away detachable footrests	776.40	582.30	77.64
E1190	Amputee wheelchair, detachable arms (desk or full length), swing-away detachable elevating legrests	897.00	672.75	89.70
E1195	Heavy duty wheelchair, fixed full length arms, swing-away detachable elevating legrests	814.10	610.58	81.41
E1200	Amputee wheelchair, fixed full length arms, swing-away detachable footrests	668.00	501.00	66.80
E1210	Motorized wheelchair w/micro switch fixed full length arms, swing-away detachable elevating legrests	3122.40	2341.80	312.24
E1211	Motorized wheelchair, detachable arms, desk or full length, swing-away detachable elevating legrests	3359.90	2519.93	335.99
E1212	Motorized wheelchair, fixed full length arms, swing-away detachable footrests	2512.30	1884.23	251.23
E1213	Motorized wheelchair, detachable arms, desk or full length, swing-away detachable footrests	2863.30	2147.48	286.33
E1221	Wheelchair with fixed arm, footrests	344.80	258.60	34.48
E1222	Wheelchair with fixed arm, elevating legrests	680.10	510.08	68.01
E1223	Wheelchair with detachable arms, footrests	639.10	479.33	63.91
E1224	Wheelchair with detachable arms, elevating legrests	1054.40	790.80	105.44
E1225	Semi-reclining back for customized wheelchair	302.50	226.88	30.25
E1226	Full-reclining back for customized wheelchair	499.29	328.84	32.54
E1227	Special height arms for wheelchair	229.67	172.25	22.58
E1228	Special back height for wheelchair	167.30	125.48	16.73
E1230	Power-operated vehicle (3 or 4 wheel non-highway), specify brand name & model number	1684.22	1066.31	168.42
E1240	Lightweight wheelchair, detachable arms (desk or full length), swing-away detachable elevating legrests	848.60	636.45	84.86
E1250	Lightweight wheelchair, fixed full length arms, swing-away detchable footrests	573.70	430.28	57.37
E1260	Lightweight wheelchair, detachable arms (desk or full length), swing-away detachable footrests	809.10	606.83	80.91
E1270	Lightweight wheelchair, fixed full length arms, swing-away detachable elevating legrests	631.90	473.93	63.19
E1280	Heavy duty wheelchair, detachable arms (desk or full length), elevating legrests	1010.20	757.65	101.02
E1285	Heavy duty wheelchair, fixed full length arms, swing-away detachable footrests	800.20	600.15	80.02
E1290	Heavy duty wheelchair, detachable arms (desk or full length), swing-away detachable footrests	993.00	744.75	99.30
E1295	Heavy duty wheelchair, fixed full length arms, elevating legrests	950.70	713.03	95.07
E1296	Special wheelchair seat height from floor	293.10	246.86	29.31
E1297	Special wheelchair seat depth, by upholstery	63.84	68.92	6.38
E1298	Special wheelchair seat depth and/or width, by construction	298.89	256.55	29.89
E1310	Whirlpool, non-portable (built-in type)	3390.32	1782.23	193.11
E1372	Immersion external heater for nebulizer	147.81	83.09	14.78
E1375	Nebulizer portable with small compressor, with limited flow	—	—	296.10
E1400	Oxygen concentrator, mfr spec max flow < = rate ≤ 2 liters/min at 85% or greater concentration	—	—	296.10
E1401	Oxygen concentrator, max flow rate 2-3 liters/min	—	—	296.10
E1402	Oxygen concentrator, max flow rate 3-4 liters/min	—	—	296.10
E1403	Oxygen concentrator, max flow rate 4-5 liters/min	—	—	296.10
E1404	Oxygen concentrator, max flow rate >5 liters/min at > = 85% concentration	—	—	296.10

CODES BEGINNING WITH "L"

HCPCS CODE	DESCRIPTION	FEE FOR NEW EQPT
L0100	Cervical, craniostenosis, helmet molded to patient model	351.53
L0110	Cervical, craniostenosis, helmet, non-molded	88.13
L0120	Cervical, flexible, non-adjustable (foam collar)	16.38
L0130	Cervical, flexible, thermoplastic collar, molded to patient	143.00
L0140	Cervical, semi-rigid, adjustable (plastic collar)	38.82
L0150	Cervical, semi-rigid, adjustable molded chin cup (plastic collar with mandibular/occipital piece)	72.34
L0160	Cervical, semi-rigid, wire frame occipital/mandibular support	126.09
L0170	Cervical, collar, molded to patient model	378.20
L0172	Cervical, collar, semi-rigid, thermoplastic foam, two-piece	90.40
L0174	Cervical, collar, semi-rigid, thermoplastic foam, two-piece with thoracic extension	156.71
L0180	Cervical, multiple post collar, occipital/mandibular supports, adjustable	228.01
L0190	Cervical, multiple post collar, occipital/mandibular supports, adjustable cervical bars (SOMI, Guilford, Taylor types)	325.67
L0200	Cervical, multiple post collar, occipital/mandibular supports, adjustable cervical bars, and thoracic extension	316.70
L0210	Thoracic, rib belt, custom fitted	26.15
L0220	Thoracic, rib belt, custom fabricated	92.33
L0300	Thoracic-lumbar-sacral-orthoses, (TLSO), flexible dorso-lumbar surgical support, custom fitted	115.80

L0310	TLSO, flexible dorso-lumbar surgical support, custom fabricated	282.69
L0315	TLSO, flexible dorso-lumbar surgical support, elastic type, with rigid posterior panel	172.38
L0317	TLSO, flexible dorso-lumbar surgical support, hyperextension, elastic type, with rigid posterior panel	215.10
L0320	TLSO, anterior-posterior control (Ta lor type), with apron front	328.29
L0330	TLSO, anterior-posterior-lateral con ol (Knight-Taylor type), with apron front	350.22
L0340	TLSO, anterior-posterior-lateral-rota y control (Arnold, Magnuson, Steindler types), with apron front	395.88
L0350	TLSO, anterior-posterior-lateral-rota y control, flexion compression jacket, custom fitted	576.00
L0360	TLSO, anterior-posterior-lateral-rota y control, flexion compression jacket, molded to patient	1,035.62
L0370	TLSO, anterior-posterior-lateral-rota y control, hyperextension (Jewett, Lennox, Baker, Cash types)	322.39
L0380	TLSO, anterior-posterior-lateral-rota y control, with extensions	406.53
L0390	TLSO, anterior-posterior-lateral con ol (body jacket), molded to patient model	1,109.97
L0400	TLSO, anterior-posterior-lateral con ol (body jacket), molded to patient model, with interface material	1,253.02
L0410	TLSO, anterior-posterior-lateral con ol (body jacket), two-piece construction, molded to patient model	1,048.73
L0420	TLSO, anterior-posterior-lateral con ol (body jacket), two-piece construction, molded to patient model, with interface material	1,128.02
L0430	TLSO, anterior-posterior-lateral con ol (body jacket), with interface material, custom fitted	914.86
L0440	TLSO, anterior-posterior-lateral con ol (body jacket), with overlapping front section, spring steel front, custom fitted	817.28
L0500	Lumbar-sacral-orthoses, (LSO), flexi le, (lumbo-sacral surgical support), custom fitted	87.07
L0510	LSO, flexible (lumbo-sacral surgical s pport), custom fabricated	163.16
L0515	LSO, flexible (lumbo-sacral surgical s pport), elastic type, with rigid posterior panel	110.30
L0520	LSO, anterior-posterior-lateral contr (Knight, Wilcox types), with apron front	323.18
L0530	LSO, anterior-posterior control (Mac usland type), with apron front	243.05
L0540	LSO, lumbar flexion, (Williams flexic type)	309.87
L0550	LSO, anterior-posterior-lateral contr (body jacket), molded to patient model	989.91
L0560	LSO, anterior-posterior-lateral contr (body jacket), molded to patient model, with interface material	1,135.90
L0565	LSO, anterior-posterior-lateral contr (body jacket), custom fitted	667.17
L0600	Sacroiliac, flexible (sacroiliac surgical upport), custom fitted	58.06
L0610	Sacroiliac, flexible (sacroiliac surgical upport), custom fabricated	172.90
L0620	Sacroliac, semi-rigid, (Goldthwaite, C good types), with aprong front	360.05
L0700	Cervical-thoracic-lumbar-sacral-orth es (CTLSO), anterior-posterior-lateral control, molded to patient model (Minerva type)	1,452.84
L0710	CTLSO, anterior-posterior-lateral co trol, molded to patient model, with interface material, (Minerva type)	1,604.90
L0810	Halo procedure, cervical halo incorpo ated into jacket vest	1,611.09
L0820	Halo procedure, cervical halo incorpo ated into plaster body jacket	1,510.92
L0830	Halo procedure, cervical halo incorpo ated into Milwaukee type orthosis model	1,969.94
L0860	Addition to halo procedures, magneti resonance image compatible system	774.08
L0900	Torso support, ptosis support, custom fitted	92.81
L0910	Torso support, ptosis support, custom fabricated	202.24
L0920	Torso support, pendulous abdomen s pport, custom fitted	125.38
L0930	Torso support, pendulous abdomen s pport, custom fabricated	236.90
L0940	Torso support, post surgical support, ustom fitted	118.26
L0950	Torso support, post surgical support, ustom fabricated	229.10
L0960	Torso support, post surgical support, ads for post surgical support	50.08
L0970	TLSO, corset front	84.49
L0972	LSO, corset front	72.12
L0974	TLSO, full corset	110.68
L0976	LSO, full corset	94.41
L0978	Axillary crutch extension	116.92
L0980	Peroneal straps, pair	10.31
L0982	Stocking supporter grips, set of four ( )	9.78
L1000	Cervical-thoracic-lumbar-sacral ortho s (CTLSO) (Milwaukee), inclusive of furnishing initial orthosis, including model	1,445.62
L1010	Addition to cervical-thoracic-lumbar- cral orthosis (CTLSO) of scoliosis, axilla sling	41.21
L1020	Addition to CTLSO or scoliosis ortho s, kyphosis pad	51.55
L1025	Addition to CTLSO or scoliosis ortho s, kyphosis pad, floating	103.57
L1030	Addition to CTLSO or scoliosis ortho s, lumbar bolster pad	37.53
L1040	Addition to CTLSO or scoliosis, lumb r of lumbar rib pad	45.12
L1050	Addition to CTLSO or scoliosis ortho s, sternal pad	57.21
L1060	Addition to CTLSO or scoliosis ortho s, thoracic pad	73.37
L1070	Addition to CTLSO or scoliosis ortho s, trapeze sling	66.11
L1080	Addition to CTLSO or scoliosis ortho s, outrigger	37.12
L1085	Addition to CTLSO or scoliosis ortho s, outrigger, bilateral with vertical extensions	110.01
L1090	Addition to CTLSO or scoliosis or ort osis, lumbar sling	71.58
L1100	Addition to CTLSO or scoliosis ortho s, ring flange, plastic or leather	113.66
L1110	Addition to CTLSO or scoliosis ortho s, ring flange, plastic or leather, molded to patient model	154.66
L1120	Addition to CTLSO or scoliosis ortho s, cover for upright, each	23.76
L1200	Thoracic-lumbar-sacrai-orthosos (TL), inclusive of furnishing initial orthosis only	971.24
L1210	Addition to TLSO (low profile), later thoracic extension	205.11
L1220	Addition to TLSO (low profile), ante or thoracic extension	207.78
L1230	Addition to TLSO (low profile), Milw ukee type superstructure	476.65

L1240	Addition to TLSO (low profile), lumbar derotation pad	56.37
L1250	Addition to TLSO (low profile), anterior asis pad	54.54
L1260	Addition to TLSO (low profile), anterior thoracic derotation pad	54.54
L1270	Addition to TLSO (low profile), abdominal pad	55.46
L1280	Addition to TLSO (low profile), rib gusset (elastic), each	61.72
L1290	Addition to TLSO (low profile), lateral trochanteric pad	51.23
L1300	Other scoliosis procedure, body jacket molded to patient model	1,307.02
L1310	Other scoliosis procedure, post-operative body jacket	1,298.69
L1500	Thoracic-hip-knee-ankle orthoses (THKAO), mobility frame, (Newington, Parapodium types)	1,138.24
L1510	THKAO, standing frame	747.52
L1520	THKAO, swivel walker	1,443.95
L1600	Hip orthosis (HO), abduction control of hip joints, flexible, freika type with cover	73.52
L1610	HO, abduction control of hip joints, flexible, frejka cover only	35.79
L1620	HO, abduction control of hip joints, flexible, Pavlik harness	103.18
L1630	HO, abduction control of hip joints, semi-flexible (Von Rosen type)	103.02
L1640	HO, abduction control of hip joints, static pelvic band or spreader bar, thigh cuffs	286.38
L1650	HO, abduction control of hip joints, static, adjustable, custom fitted (llfled type)	159.01
L1660	HO, abduction control of hip joints, static, plastic, custom fitted	98.58
L1680	HO, abduction control of hip joints, dynamic, pelvic control, adjustable hip motion control, thigh cuffs (Rancho hip action type)	740.43
L1685	HO, abduction control of hip joints post-operative hip abduction type, custom fabricated	786.30
L1686	HO, abduction control of hip joints post-operative hip abduction type, custom fitted	785.25
L1700	Legg Perthes orthosis, Toronto type	917.50
L1710	Legg Perthes orthosis, Newington type	1,066.91
L1720	Legg Perthes orthosis, trilateral, Tachdijan type	792.45
L1730	Legg Perthes orthosis, Scottish Rite type	687.24
L1750	Legg Perthes orthosis, Legg Perthes sling (Sam Brown type)	157.98
L1755	Legg Perthes orthosis, pattern bottom type	1,097.88
L1800	Knee orthosis, KO, elastic with stays	38.86
L1810	KO, elastic with joints	61.52
L1815	KO, elastic with condylar pads	59.34
L1820	KO, elastic with condylar pads and joints	94.31
L1825	KO, elastic knee cap	34.34
L1830	KO, immobilizer, canvas longitudinal	62.17
L1832	KO, adjustable knee joints, positional orthosis, rigid support, custom fitted	476.27
L1834	KO, without knee joint, rigid, molded to patient model	521.71
L1840	KO, derotation, medial-lateral, anterior cruciate ligament, custom fabricated to patient model	682.12
L1845	KO, double upright, thigh and calf, with adjustable flexion and extension joint, medial-lateral and rotation control, custom fitted	623.14
L1846	KO, double upright, thigh and calf, with adjustable flexion and extension joint, medial-lateral and rotation control, molded to patient model	737.98
L1850	KO, Swedish type	197.66
L1855	KO, molded plastic, thigh and calf sections, with double upright knee joints, molded to patient model	834.87
L1858	KO, molded plastic, polycentric knee joints, pneumatic knee pads (CTL)	808.65
L1860	KO, modification of supracondylar prosthetic socket, molded to patient model (SK)	752.94
L1870	KO, double upright, thigh and calf lacers, molded to patient model with knee joints	684.44
L1880	KO, double upright, non-molded thigh and calf cuffs/lacers with knee joints	491.55
L1900	Ankle-foot orthosis (AFO), spring wire, dorsiflexion assist, calf band	161.65
L1902	AFO, ankle gauntlet, custom fitted	64.64
L1904	AFO, molded ankle gauntlet, molded to patient model	356.61
L1906	AFO, multiligamentus ankle support	72.94
L1910	AFO, posterior, single bar, clasp attachment to shoe counter	234.93
L1920	AFO, single upright with static or adjustable stop, (Phelps or Perlstein type)	215.09
L1930	AFO, custom fitted, plastic	143.47
L1940	AFO, molded to patient model, plastic	435.59
L1945	AFO, molded to patient model, plastic, rigid anterior tibial section (floor reaction)	671.58
L1950	AFO, spiral, molded to patient model, (IRM type), plastic	546.81
L1960	AFO, posterior, solid ankle, molded to patient model, plastic	494.86
L1970	AFO, plastic molded to patient model, with ankle joint	450.40
L1980	AFO, single upright, free dorsiflexion, solid stirrup, calf band/cuff (single bar "BK" orthosis)	293.83
L1990	AFO, double upright free plantar dorsiflexion, solid stirrup, calf band/cuff (double bar "BK" orthosis)	373.71
L2000	Knee-ankle-foot-orthosis (KAFO), single upright, free ankle, solid stirrup, thigh and calf bands/cuffs (single bar "AK" orthosis)	747.92
L2010	KAFO, single upright, free ankle, solid stirrup, thigh and calf bands/cuffs (single bar "AK" orthosis), without knee joint	676.31
L2020	KAFO, double upright, free knee, free ankle, solid stirrup, thigh and calf hands/cuffs (double bar "AK" orthosis)	743.31
L2030	KAFO, double upright, free ankle, solid stirrup, thigh and calf bands/cuffs (double bar "AK" orthosis), without knee joint	919.05
L2036	KAFO, full plastic, double upright, free knee, molded to patient model	1,399.25
L2037	KAFO, full plastic, single upright, free, molded to patient model	1,236.66
L2038	KAFO, full plastic, without knee joint, multi-axis, molded to patient model (lively orthosis or equal)	1,282.70

L2040	HKAFO, torsion control, bilateral ro	ation straps, pelvic band/belt	137.71
L2050	HKAFO, torsion control, bilateral to	sion cables, hip joint, pelvic band/belt	290.62
L2060	HKAFO, torsion control, bilateral to	sion cables, ball bearing hip joint, pelvic band/belt	349.52
L2070	HKAFO, torsion control, unilateral r	tation straps, pelvic band/belt	89.24
L2080	HKAFO, torsion control, unilateral,	rsion cables, hip joint, pelvic band/belt	282.87
L2090	HKAFO, torsion control, unilateral t	rsion cables, ball bearing hip joint, pelvic band/belt	270.88
L2102	Ankle-foot-orthosis (AFO), fracture	rthosis, tibial fracture cast orthosis, plaster type casting material, molded to patient	280.90
L2104	AFO, fracture orthosis, tibial fractur	cast orthosis, synthetic type casting material, molded to patient	300.98
L2106	AFO, fracture orthosis, tibial fractur	cast orthosis, thermoplastic type casting material, molded to patient	420.32
L2108	AFO, fracture orthosis, tibial fractur	cast orthosis, molded to patient model	765.61
L2112	AFO, fracture orthosis, tibial fractur	orthosis, soft custom fitted	334.57
L2114	AFO, fracture orthosis, tibial fractur	orthosis, semi-rigid custom fitted	439.58
L2116	AFO, fracture orthosis, tibial fractur	orthosis, rigid custom fitted	495.75
L2122	Knee-ankle-foot-orthosis (KAFO), fr	cture orthosis, femoral fracture cast orthosis, plaster type casting material, molded to patient	656.03
L2124	KAFO, fracture orthosis, femoral fra	ure cast orthosis, synthetic type casting material, molded to patient	734.37
L2126	KAFO, fracture orthosis, femoral fra	ure cast orthosis, thermoplastic type casting material, molded to patient	902.15
L2128	KAFO, fracture orthosis, femoral fra	ure cast orthosis, molded to patient model	1,209.09
L2132	KAFO, fracture orthosis, femoral fra	ure cast orthosis, soft custom fitted	663.70
L2134	KAFO, fracture orthosis, femoral fra	ure cast orthosis, semi-rigid custom fitted	739.97
L2136	KAFO, fracture orthosis, femoral fra	ure cast orthosis, rigid custom fitted	880.56
L2180	Addition to lower extremity fracture	thosis, plastic shoe insert with ankle joints	73.22
L2182	Addition to lower extremity fracture	thosis, drop lock knee joint	62.13
L2184	Addition to lower extremity fracture	thosis, limited motion knee joint	85.93
L2186	Addition to lower extremity fracture	thosis, adjustable motion knee joint, lerman type	125.95
L2188	Addition to lower extremity fracture	thosis, quadrilateral brim	249.24
L2190	Addition to lower extremity fracture	thosis, waist belt	62.86
L2192	Addition to lower extremity fracture	thosis, hip joint, pelvic band, thigh flange, and pelvic belt	272.37
L2200	Addition to lower extremity, limited a	kle motion, each joint	42.96
L2210	Addition to lower extremity, dorsiflex	n assist, (plantar flexion resist), each joint	53.95
L2220	Addition to lower extremity, dorsiflex	n and plantar flexion assist/resist, each joint	71.09
L2230	Addition to lower extremity, split flat	aliper stirrups and plate attachment	68.56
L2240	Addition to lower extremity, round ca	per and plate attachment	55.90
L2250	Addition to lower extremity, foot plat	molded to patient model, stirrup attachment	253.37
L2260	Addition to lower extremity, reinforce	l solid stirrup (Scott-Craig type)	164.08
L2265	Addition to lower extremity, long ton	ıe stirrup	74.03
L2270	Addition to lower extremity, varus/val	us correction ("T") strap, padded/lined or malleolus pad	47.36
L2280	Addition to lower extremity, molded i	ner boot	282.70
L2300	Addition to lower extremity, abductio	bar (bilateral hip involvement), jointed, adjustable	222.95
L2310	Addition to lower extremity, abductio	bar, straight	80.56
L2320	Addition to lower extremity, non-mol	ed lacer	134.72
L2330	Addition to lower extremity, lacer, mc	ded to patient model	253.59
L2335	Addition to lower extremity, anterior	ving band	155.45
L2340	Addition to lower extremity, pre-tibial	shell, molded to patient model	351.01
L2350	Addition to lower extremity, prostheti	type "BK" socket, molded to patient model (used for "PTB" "AFO" orthosis)	627.52
L2360	Addition to lower extremity, extended	steel shank	46.52
L2370	Addition to lower extremity, patten bc	tom	222.30
L2375	Addition to lower extremity, torsion c	ntrol, ankle joint and half solid stirrup	80.97
L2380	Addition to lower extremity, torsion c	ntrol, straight knee joint, each joint	70.17
L2385	Addition to lower extremity, straight k	ee joint, heavy duty, each joint	79.30
L2390	Addition to lower extremity, offset kn	joint, each joint	70.52
L2395	Addition to lower extremity, offset kn	joint, heavy duty, each joint	92.90
L2405	Addition to knee joint, drop lock, eacl	joint	32.97
L2415	Addition to knee joint, cam lock (Swis	French, Bail types), each joint	122.01
L2425	Addition to knee joint, disc or dial loc	for adjustable knee flexion, each joint	146.57
L2435	Addition to knee joint, polycentric joi	, each joint	118.41
L2492	Addition to knee joint, lift loop for dr	lock ring	86.12
L2500	Addition to lower extremity, thigh/wei	ht bearing, gluteal/ischial weight bearing, ring	186.08
L2510	Addition to lower extremity, thigh/wei	ht bearing, quadrilateral brim, molded to patient model	473.01
L2520	Addition to lower extremity, thigh/wei	ht bearing, quadrilateral brim, custom fitted	309.95
L2525	Addition to lower extremity, thigh/wei	ht bearing, ischial containment/narrow M-L brim, molded to patient model	872.97
L2526	Addition to lower extremity, thigh/wei	ht bearing, ischial containment/narrow M-L brim, custom fitted	458.59
L2530	Addition to lower extremity, thigh/wei	ıt bearing, lacer, non-molded	192.13
L2540	Addition to lower extremity, thigh/wei	ıt bearing, lacer, molded to patient model	262.44
L2550	Addition to lower extremity, thigh/wei	ıt bearing, high roll cuff	173.11
L2570	Addition to lower extremity, pelvic cor	rol, hip joint, clevis type, two position hip joint, each	352.15
L2580	Addition to lower extremity, pelvic cor	rol, pelvic sling	323.83
L2600	Addition to lower extremity, pelvic cor	rol, hip joint, clevis type or thrust bearing, free, each	158.91
L2610	Addition to lower extremity, pelvic cor	rol, hip joint, clevis type or thrust bearing, lock, each	152.57

L2620	Addition to lower extremity, pelvic control, hip joint, heavy duty, each	219.37
L2622	Addition to lower extremity, pelvic control, hip joint, adjustable flexion, each	210.12
L2624	Addition to lower extremity, pelvic control, hip joint, adjustable flexion, extension, abduction control, each	197.31
L2627	Addition to lower extremity, pelvic control, plastic, molded to patient model, reciprocating hip joint and cables	1,158.68
L2628	Addition to lower extremity, pelvic control, metal frame, reciprocating hip joint and cables	1,169.36
L2630	Addition to lower extremity, pelvic control, band and belt unilateral	152.53
L2640	Addition to lower extremity, pelvic control, band and belt bilateral	280.63
L2650	Addition to lower extremity, pelvic and thoracic control, gluteal pad, each	87.36
L2660	Addition to lower extremity, thoracic control, thoracic band	105.59
L2670	Addition to lower extremity, thoracic control, paraspinal uprights	125.23
L2680	Addition to lower extremity, thoracic control, lateral support uprights	112.35
L2750	Addition to lower extremity orthosis, plating chrome or nickel, per bar	54.80
L2760	Addition to lower extremity orthosis, extension, per extension, per bar (for lineal adjustment for growth)	43.74
L2770	Addition to lower extremity orthosis, stainless steel, per bar or joint	43.46
L2780	Addition to lower extremity orthosis, non-corrosive finish, per bar	39.55
L2785	Addition to lower extremity orthosis, drop lock retainer, each	21.95
L2795	Addition to lower extremity orthosis, knee control, full knee cap	66.92
L2800	Addition to lower extremity orthosis, knee control, knee cap, medial or lateral pull	80.00
L2810	Addition to lower extremity orthosis, knee control, condylar pad	57.66
L2820	Addition to lower extremity orthosis, soft interface for molded plastic, below knee section	55.81
L2830	Addition to lower extremity orthosis, soft interface for molded plastic, above knee section	58.53
L2840	Addition to lower extremity orthosis, tibial length sock, fracture or equal, each	35.78
L2850	Addition to lower extremity orthosis, femoral length sock, fracture or equal each	43.65
L3215	Orthopedic footwear, ladies shoes, oxford	79.32
L3219	Orthopedic footwear, mens shoes, oxford	82.12
L3650	Shoulder orthosis (SO), figure of "8" design abduction restrainer	42.46
L3660	SO, figure of "8" design abduction restrainer, canvas and webbing	76.06
L3670	SO, acromio/clavicular (canvas and webbing type)	87.42
L3700	Elbow orthosis (EO), elastic with stays	48.44
L3710	EO, elastic with metal joints	79.85
L3720	EO, double upright with forearm/arm cuffs, free motion	510.77
L3730	EO, double upright with forearm/arm cuffs, extension/flexion assist	544.70
L3740	EO, double upright with forearm/arm cuffs, adjustable position lock with active control	652.96
L3800	Wrist-hand-finger-orthosis (WHFO) short opponens, no attachments	112.58
L3805	WHFO, long opponens, no attachment	265.19
L3810	WHFO, addition to short and long opponens, thumb abduction "C" bar	38.30
L3815	WHFO, addition to short and long opponens, second M.P. abduction assist	37.53
L3820	WHFO, addition to short and long opponens, I.P. extension assist with M.P. extension stop	74.42
L3825	WHFO, addition to short and long opponens, M.P. extension stop	38.39
L3830	WHFO, addition to short and long opponens, M.P. extension assist	56.63
L3835	WHFO, addition to short and long opponens, M.P. spring extension assist	60.95
L3840	WHFO, addition to short and long opponens, spring swivel thumb	41.41
L3845	WHFO, addition to short and long opponens, thumb I.P. extension assist, with M.P. stop	47.75
L3850	WHFO, addition to short and long opponens, action wrist with dorsiflexion assist	99.93
L3855	WHFO, addition to short and long opponens, adjustable M.P. flexion control	70.27
L3860	WHFO, addition to short and long opponens, adjustable M.P. flexion control and I.P.	97.11
L3900	WHFO, dynamic flexor hinge; reciprocal wrist extension/flexion, finger flexion/extension, wrist or finger driven	984.26
L3901	WHFO, dynamic flexor hinge; reciprocal wrist extension/flexion, finger flexion/extension, cable driven	1,156.39
L3902	WHFO, external powered, compressed gas	1,423.90
L3904	WHFO, external powered, electric	1,713.93
L3906	WHFO, wrist gauntlet, molded to patient model	345.54
L3907	WHFO, wrist gauntlet with thumb spica, molded to patient model	372.72
L3908	WHFO, wrist extension control cock-up, canvas or leather design, non-molded	47.88
L3910	WHFO, Swanson design	278.37
L3912	WHFO, flexion glove with elastic finger control	69.72
L3914	WHFO, wrist extension cock-up	57.04
L3916	WHFO, wrist extension cock-up, with outrigger	89.91
L3918	WHFO, knuckle bender	47.31
L3920	WHFO, knucle bender, with outrigger	77.23
L3922	WHFO, knuckle bender, two segment to flex joints	58.67
L3924	WHFO, Oppenheimer	75.78
L3926	WHFO, Thomas suspension	71.89
L3928	WHFO, finger extension with clock spring	50.57
L3930	WHFO, finger extension, with wrist support	45.22
L3932	WHFO, safety pin, spring wire	27.49
L3934	WHFO, safety pin, modified	29.05
L3936	WHFO, Palmer	61.81
L3938	WHFO, dorsal wrist	61.81
L3940	WHFO, dorsal wrist, with outrigger attachment	74.80
L3942	WHFO, reverse knuckle bender	46.28
L3944	WHFO, reverse knuckle bender, with outrigger	73.51

L3946	WHFO, composite elastic	58.39
L3948	WHFO, finger knuckle bender	45.82
L3950	WHFO, combination Oppenheimer with knuckle bender and two attachments	118.44
L3952	WHFO, combination Oppenheimer with reverse knuckle bender and two attachments	119.21
L3954	WHFO, spreading hand	65.20
L3960	Shoulder-elbow-wrist-hand orthosis EWHO, abduction positioning, airplane design	566.85
L3962	SEWHO, abduction positioning, Erl s Palsey design	526.63
L3963	SEWHO, molded shoulder, arm, fo arm, and wrist, with articulating elbow joint	965.08
L3964	SEWHO, mobile arm support attacl d to wheelchair, balanced and fitted to patient, adjustable	517.74
L3965	SEWHO, radial arm support attach l to wheelchair, balanced and fitted to patient, adjustable Rancho type	710.17
L3966	SEWHO, mobile arm support attacl d to wheelchair, balanced and fitted to patient, reclining	697.49
L3968	SEWHO, mobile arm support attacl d to wheelchair, balanced and fitted to patient, friction arm support, (friction dampening to proximal and distal oints)	846.68
L3969	SEWHO, mobile arm support, mon suspension arm and hand support, overhead elbow forearm hand sling support, yoke type arm suspensio support	523.46
L3970	SEWHO, addition to mobile arm su port, elevating proximal arm	253.02
L3972	SEWHO, addition to mobile arm su port, offset or lateral rocker arm with elastic balance control	170.60
L3974	SEWHO, addition to mobile arm su port, supinator	139.07
L3980	Upper extremity fracture orthosis, h meral	272.10
L3982	Upper extremity fracture orthosis, r lius/ulnar	255.57
L3984	Upper extremity fracture orthosis, w ist	201.68
L3985	Upper extremity fracture orthosis, f earm, hand with wrist hinge	486.86
L3986	Upper extremity fracture orthosis, c nbination of humeral, radius/ulnar, wrist, (example—Colles fracture)	368.78
L3995	Addition to upper extremity orthosis sock, fracture or equal, each	21.47
L4000	Replace gridle for Milwaukee ortho s	891.37
L4010	Replace trilateral socket brim	413.32
L4020	Replace quadrilateral socket brim, n olded to patient model	618.99
L4030	Replace quadrilateral socket brim, c stom fitted	310.53
L4040	Replace molded thigh lacer	252.65
L4045	Replace non-molded thigh lacer	193.44
L4050	Replace molded calf lacer	274.16
L4055	Replace non-molded calf lacer	157.66
L4060	Replace high roll cuff	195.37
L4070	Replace proximal and distal upright or "AKO"	162.83
L4080	Replace metal bands "KAFO", prox nal thigh	75.31
L4090	Replace metal bands "KAFO-AFO' calf or distal thigh	59.44
L4100	Replace leather cuff "KAFO", proxi ial thigh	80.40
L4110	Replace leather cuff "KAFO-AFO" calf or distal thigh	69.59
L4130	Replace pretibial shell	302.79
L4310	Multi-Podus or equal orthotic prepa tory management system for lower extremities	275.13
L4320	Addition to AFO, Multi-Podus (or e ual) orthotic preparatory management system for lower extremities, flexible foot positioner w/soft interface fo AFO, with velcro closure, custom fitted	94.23
L4350	Pneumatic ankle control splint (airca t or equal)	64.30
L4360	Pneumatic walking splint (aircast or qual)	203.25
L4370	Pneumatic full leg splint (aircast or e ual)	115.96
L4380	Pneumatic knee splint (aircast or eq l)	76.28
L5000	Partial foot, shoe insert with longitu nal arch, toe filler	310.43
L5010	Partial foot, molded socket, ankle he ght, with toe filler	939.85
L5020	Partial foot, molded socket, tibial tub rcle height, with toe filler	1,336.23
L5050	Ankle Symes, molded sock, Sach foo	1,767.70
L5060	Ankle Symes, metal frame, molded l ather socket, articulated ankle/foot	1,966.12
L5100	Below knee, molded socket, shin, Sa n foot	1,425.79
L5105	Below knee, plastic socket, joints an thigh lacer, Sach foot	2,688.46
L5150	Knee disarticulation (or through kne), molded socket, external knee joints, shin, Sach foot	3,294.44
L5160	Knee disarticulation (or through kne), molded socket, bent knee configuration, external knee joints, shin, Sach foot	2,461.44
L5200	Above knee, molded socket, single a s constant friction knee, shin, Sach foot	2,010.07
L5210	Above knee, short prosthesis, no kne joint ("stubbies"), with foot blocks, no ankle joints, each	1,938.78
L5220	Above knee, short prosthesis, no kne joint ("stubbies"), with articulated ankle/foot, dynamically aligned, each	2,168.99
L5230	Above knee, for proximal femoral fo al deficiency, constant friction knee, shin, Sach foot	2,429.79
L5250	Hip disarticulation, Canadian type; n olded socket, hip joint, single axis constant friction knee, Sach foot	3,964.65
L5270	Hip disarticulation, tilt table type; m ded socket, locking hip joint, single axis constant friction knee, shin, Sach foot	3,329.66
L5280	Hemipelvectomy, Canadian type; mo ded socket, hip joint, single axis constant friction knee, shin, Sach foot	3,313.07
L5300	Below knee, molded socket, Sach foo , endoskeletal system including soft cover and finishing	1,800.81
L5310	Knee disarticulation (or through kne), molded socket, Sach foot endoskeletal system, including soft cover and finishing	3,522.65
L5320	Above knee, molded socket, open en , Sach foot, endoskeletal system, single axis knee, including soft cover and finishing	2,611.90
L5330	Hip disarticulation, Canadian type; n olded socket, endoskeletal system, single axis knee, hip joint, Sach foot, including soft cover and finishing	3,729.91

L5340	Hemipelvectomy, Canadian type; molded socket, endoskeletal system, single axis knee, hip joint, Sach foot, including soft cover and finishing	5,070.18
L5400	Immediate post surgical or early fitting, application of initial rigid dressing including fitting, alignment, suspension, and one cast change, below knee	875.51
L5410	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension, below knee, each additional cast change and realignment	344.27
L5420	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension and one cast change "AK" or knee disarticulation	986.87
L5430	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension, "AK" or knee disarticulation, each cast change and realignment	472.21
L5450	Immediate post surgical or early fitting, application of non-weight bearing rigid dressing, below knee	276.28
L5460	Immediate post surgical or early fitting, application of non-weight bearing rigid dressing, above knee	326.14
L5500	Initial, below knee "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, direct formed	922.17
L5505	Initial, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, direct formed	1,224.84
L5510	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, plaster cover, molded to model	969.62
L5520	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, direct formed	1,252.59
L5530	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, molded to model	1,256.38
L5535	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, prefabricated, adjustable open end socket	1,306.05
L5540	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, laminated socket, molded to model	1,269.86
L5560	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, molded to model	1,500.31
L5570	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, direct formed	1,581.76
L5580	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, molded to model	1,753.04
L5585	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, prefabricated adjustable open end socket	1,638.70
L5590	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, laminated socket, molded to model	1,608.83
L5595	Preparatory, hip disarticulation—hemipelvectomy, pylon, no cover, Sach foot, thermoplastic or equal, molded to patient model	2,844.43
L5600	Preparatory, hip disarticulation—hemipelvectomy, pylon, no cover, Sach foot, laminated socket, molded to patient model	3,045.18
L5610	Addition to lower extremity, above knee, hydracadence system	1,361.24
L5611	Addition to lower extremity, above knee—knee disarticulation, "OHC" 4-bar linkage, with friction swing phase control	1,037.38
L5613	Addition to lower extremity, above knee—knee disarticulation, "OHC" 4-bar linkage, with hydraulic swing phase control	1,618.35
L5616	Addition to lower extremity, above knee, universal multiplex system, friction swing phase control	925.39
L5618	Addition to lower extremity, test socket, Symes	209.39
L5620	Addition to lower extremity, test socket, below knee	193.07
L5622	Addition to lower extremity, test socket, knee disarticulation	324.49
L5624	Addition to lower extremity, test socket, above knee	304.51
L5626	Addition to lower extremity, test socket, hip disarticulation	371.26
L5628	Addition to lower extremity, test socket, hemipelvectomy	381.54
L5629	Addition to lower extremity, below knee, acrylic socket	297.65
L5630	Addition to lower extremity, Symes type, expandable wall socket	355.27
L5631	Addition to lower extremity, above knee or knee disarticulation, acrylic socket	404.25
L5632	Addition to lower extremity, Symes type, "PTB" brim design socket	180.23
L5634	Addition to lower extremity, Symes type, posterior opening (Canadian) socket	217.05
L5636	Addition to lower extremity, Symes type, medial opening socket	166.63
L5637	Addition to lower extremity, below knee, total contact	219.90
L5638	Addition to lower extremity, below knee, leather socket	338.09
L5639	Addition to lower extremity, below knee, wood socket	831.38
L5640	Addition to lower extremity, knee disarticulation, leather socket	572.60
L5642	Addition to lower extremity, above knee, leather socket	443.84
L5643	Addition to lower extremity, hip disarticulation, flexible inner socket, external frame	1,011.85
L5644	Addition to lower extremity, above knee, wood socket	378.79
L5645	Addition to lower extremity, below knee, flexible inner socket, external frame	490.59
L5646	Addition to lower extremity, below knee, air cushion socket	357.30
L5647	Addition to lower extremity, below knee, suction socket	523.36
L5648	Addition to lower extremity, above knee, air cushion socket	422.90
L5649	Addition to lower extremity, ischial containment/narrow M-L socket	1,413.30
L5650	Addition to lower extremity, total contact, above knee or knee disarticulation socket	477.00
L5651	Addition to lower extremity, above knee, flexible inner socket, external frame	760.91

L5652	Addition to lower extremity, suction uspension, above knee or knee disarticulation, socket	279.79
L5653	Addition to lower extremity, knee di: rticulation, expandable wall socket	372.39
L5654	Addition to lower extremity, socket i sert, Symes (Kemblo, Pelite, Aliplast, Plastazote or equal)	218.93
L5655	Addition to lower extremity, socket i sert, below knee (Kemblo, Pelite, Aliplast, Plastazote or equal)	228.29
L5656	Addition to lower extremity, socket i sert, knee disarticulation (Kemblo, Pelite, Aliplast, Plastazote or equal)	281.78
L5658	Addition to lower extremity, socket i sert, above knee (Kemblo, Pelite, Aliplast, Plastazote or equal)	245.52
L5660	Addition to lower extremity, socket i sert, Symes, silicone gel or equal	407.19
L5661	Addition to lower extremity, socket i sert, multi-durometer, Symes	442.77
L5662	Addition to lower extremity, socket i sert, below knee, silicone gel or equal	384.40
L5663	Addition to lower extremity, socket i sert, knee disarticulation, silicone gel or equal	497.21
L5664	Addition to lower extremity, socket i sert, above knee, silicone gel or equal	497.21
L5665	Addition to lower extremity, socket i sert, multi-durometer, below knee	330.99
L5666	Addition to lower extremity, below k ee, cuff suspension	51.44
L5668	Addition to lower extremity, below k ee, molded distal cushion	77.28
L5670	Addition to lower extremity, below k ee, molded supracondylar suspension ("PTS" or similar)	194.85
L5672	Addition to lower extremity, below k ee, removable medial brim suspension	241.93
L5674	Addition to lower extremity, below k ee, latex sleeve suspension, each	43.05
L5675	Addition to lower extremity, below k ee, latex sleeve suspension or equal, heavy duty, each	54.04
L5676	Addition to lower extremity, below k ee, knee joints, single axis, pair	219.04
L5677	Addition to lower extremity, below k ee, knee joints, polycentric, pair	309.38
L5678	Addition to lower extremity, below k ee, joint covers, pair	24.23
L5680	Addition to lower extremity, below k ee, thigh lacer, non-molded	229.02
L5682	Addition to lower extremity, below k ee, thigh lacer, gluteal/ischial, molded	488.16
L5684	Addition to lower extremity, below k ee, fork strap	39.59
L5686	Addition to lower extremity, below k ee, back check (extension control)	44.11
L5688	Addition to lower extremity, below k ee, waist belt, webbing	55.16
L5690	Addition to lower extremity, below k ee, waist belt, padded and lined	69.30
L5692	Addition to lower extremity, above k ee, pelvic control belt, light	90.91
L5694	Addition to lower extremity, above k ee, pelvic control belt, padded and lined	118.09
L5695	Addition to lower extremity, above k ee, pelvic control, sleeve suspension, neoprene or equal, each	130.45
L5696	Addition to lower extremity, above k ee or knee disarticulation, pelvic joint	147.87
L5697	Addition to lower extremity, above k ee or knee disarticulation, pelvic band	50.65
L5698	Addition to lower extremity, above k ee or knee disarticulation, silesian bandage	87.99
L5699	All lower extremity prosthesis, shoul r harness	117.93
L5710	Addition, exoskeletal knee-shin syste 1, single axis, manual lock	229.69
L5711	Addition, exoskeletal knee-shin syste 1, single axis, manual lock, ultra-light material	376.27
L5712	Addition, exoskeletal knee-shin syste 1, single axis, friction swing and stance phase control (safety knee)	304.92
L5714	Addition, exoskeletal knee-shin syste 1, single axis, variable friction swing phase control	351.58
L5716	Addition, exoskeletal knee-shin syste 1, polycentric mechanical stance phase lock	514.95
L5718	Addition, exoskeletal knee-shin syste 1, polycentric friction swing and stance phase control	595.55
L5722	Addition, exoskeletal knee-shin syste 1, single axis, pneumatic swing, friction stance phase control	601.20
L5724	Addition, exoskeletal knee-shin syste 1, single axis, fluid swing phase control	1,195.58
L5726	Addition, exoskeletal knee-shin syste 1, single axis, external joints, fluid swing phase control	1,268.89
L5728	Addition, exoskeletal knee-shin syste 1, single axis, fluid swing and stance phase control	1,980.69
L5780	Addition, exoskeletal knee-shin syste 1, single axis, pneumatic hydrapneumatic swing phase control	767.47
L5785	Addition, exoskeletal system, below k iee, ultra-light material (Titanium, carbon fiber or equal)	320.90
L5790	Addition, exoskeletal system, above k iee, ultra-light material (Titanium, carbon fiber or equal)	451.75
L5795	Addition, exoskeletal system, hip dis: ticulation, ultra-light material (Titanium, carbon fiber or equal)	642.84
L5810	Addition, endoskeletal knee-shin syst m, single axis, manual lock	344.91
L5811	Addition, endoskeletal knee-shin syst m, single axis, manual lock, ultra-light material	457.76
L5812	Addition, endoskeletal knee-shin syst m, single axis, friction swing and stance phase control (safety knee)	370.46
L5816	Addition, endoskeletal knee-shin syst m, polycentric, mechanical stance phase lock	535.54
L5818	Addition, endoskeletal knee-shin syst m, polycentric, friction swing and stance phase control	715.25
L5822	Addition, endoskeletal knee-shin syst m, single axis, pneumatic swing, friction stance phase control	1,358.75
L5824	Addition, endoskeletal knee-shin syst m, single axis, fluid swing phase control	1,006.78
L5828	Addition, endoskeletal knee-shin syst m, single axis, fluid swing and stance phase control	1,996.04
L5830	Addition, endoskeletal knee-shin syst m, single axis, pneumatic swing phase control	1,397.62
L5850	Addition, endoskeletal system, above :nee or hip disarticulation, knee extension assist	86.19
L5910	Addition, endoskeletal system, below :nee, alignable system	331.16
L5920	Addition, endoskeletal system, above :nee or hip disarticulation, alignable system	326.39
L5940	Addition, endoskeletal system, below :nee, ultra-light material (Titanium, carbon fiber or equal)	319.24
L5950	Addition, endoskeletal system, above :nee, ultra-light material (Titanium, carbon fiber or equal)	607.51
L5960	Addition, endoskeletal system, hip di rticulation, ultra-light material (Titanium, carbon fiber or equal)	678.32
L5970	All lower extremity prosthesis, foot, e ternal keel, Sach foot	124.87
L5972	All lower extremity prosthesis, flexibl keel foot (Safe, Sten, Bock, Dynamic or equal)	225.20
L5974	All lower extremity prosthesis, foot, s ngle axis ankle/foot	149.30
L5976	All lower extremity prosthesis, energ storing foot (Seattle Carbon Copy II or equal)	400.31
L5978	All lower extremity prosthesis, foot, r ulti-axial ankle/foot (Greissinger or equal)	187.15
L5980	All lower extremity prosthesis, flex fo t system	2,828.85
L5982	All exoskeletal lower extremity prostl :sis, axial rotation unit	478.23
L5984	All endoskeletal lower extremity pros hesis, axial rotation unit	377.66

L5986	All lower extremity prosthesis, multi-axial rotation unit ("MCP" or equal)	414.95
L6000	Partial hand, Robin-Aids, thumb remaining (or equal)	881.85
L6010	Partial hand, Robin-Aids, little and/or ring finger remaining (or equal)	968.62
L6020	Partial hand, Robin-Aids, no finger remaining (or equal)	890.81
L6050	Wrist disarticulation, molded socket, flexible elbow hinges, triceps pad	1,491.49
L6055	Wrist disarticulation, molded socket with expandable interface, flexible elbow hinges, triceps pad	2,047.43
L6100	Below elbow, molded socket, flexible elbow hinge, triceps pad	1,558.79
L6110	Below elbow, molded socket (Muenster or Northwestern suspension types)	1,928.42
L6120	Below elbow, molded double wall split socket, step-up hinges, half cuff	1,589.40
L6130	Below elbow, molded double wall split socket, stump activated locking hinge, half cuff	1,801.47
L6200	Elbow disarticulation, molded socket, outside locking hinge, forearm	1,871.18
L6205	Elbow disarticulation, molded socket with expandable interface, outside locking hinges, forearm	3,168.40
L6250	Above elbow, molded double wall socket, internal locking elbow, forearm	2,050.61
L6300	Shoulder disarticulation, molded socket, shoulder bulkhead, humeral section, internal locking elbow, forearm	2,879.35
L6310	Shoulder disarticulation, passive restoration (complete prosthesis)	2,377.99
L6320	Shoulder disarticulation, passive restoration (shoulder cap only)	1,474.39
L6350	Interscapular thoracic, molded socket, shoulder bulkhead, humeral section internal locking elbow, forearm	3,344.81
L6360	Interscapular thoracic, passive restoration (complete prosthesis)	1,958.57
L6370	Interscapular thoracic, passive restoration (shoulder cap only)	1,876.84
L6380	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension of components and one cast change, wrist disarticulation or below elbow	914.24
L6382	Immediate post surgical or early fitting, application of initial rigid dressing including fitting, alignment and suspension of components and one cast change, elbow disarticulation or above elbow	1,154.60
L6384	Immediate post surgical or early fitting, application of initial rigid dressing including fitting, alignment and suspension of components and one cast change, shoulder disarticulation	1,406.05
L6386	Immediate post surgical or early fitting, each additional cast change and realignment	313.90
L6388	Immediate post surgical or early fitting, application of rigid dressing only	273.65
L6400	Below elbow, molded socket, endoskeletal system, including soft prosthetic tissue shaping	1,638.59
L6450	Elbow disarticulation, molded socket, endoskeletal system, including soft prosthetic tissue	1,993.94
L6500	Above elbow, molded socket, endoskeletal system, including soft prosthetic tissue shaping	2,047.91
L6550	Shoulder disarticulation, molded socket, endoskeletal system, including soft prosthetic tissue shaping	2,487.09
L6570	Interscapular thoracic, molded socket, endoskeletal system, including soft prosthetic tissue shaping	2,942.19
L6580	Preparatory, wrist disarticulation or below elbow, single wall plastic socket, friction wrist, flexible elbow hinges, figure of eight harness, humeral cuff, Bowden cable control, USMC or equal pylon, no cover, molded to patient model	1,064.80
L6582	Preparatory, wrist disarticulation or below elbow, single wall socket, friction wrist, flexible elbow hinges, figure of eight harness, humeral cuff, Bowden cable control, USMC or equal pylon, no cover, direct formed	914.24
L6584	Preparatory, elbow disarticulation or below elbow, single wall plastic socket, friction wrist, locking elbow, figure of eight harness, fair lead cable control, USMC or equal pylon, no cover, molded to patient model	1,494.44
L6586	Preparatory, elbow disarticulation or above elbow, single wall socket, friction wrist, locking elbow, figure of eight harness, fair lead cable control, USMC or equal pylon, no cover, direct formed	1,297.97
L6588	Preparatory, shoulder disarticulation or interscapular thoracic, single wall plastic socket, shoulder joint, locking elbow, friction wrist, chest strap, fair lead cable control, USMC or equal pylon, no cover, molded to patient model	2,189.21
L6590	Preparatory, shoulder disarticulation or interscapular thoracic, single wall socket, shoulder joint, locking elbow, friction wrist, chest strap, fair lead cable control, USMC or equal pylon, no cover, direct formed	2,012.22
L6600	Upper extremity additions, polycentric hinge, pair	140.17
L6605	Upper extremity additions, single pivot hinge, pair	159.25
L6610	Upper extremity additions, flexible metal hinge, pair	103.86
L6615	Upper extremity addition, disconnect locking wrist unit	138.56
L6616	Upper extremity addition, additional disconnect insert for locking wrist unit, each	59.40
L6620	Upper extremity addition, flexible-friction wrist unit	288.58
L6623	Upper extremity addition, spring assisted rotational wrist unit with latch release	467.97
L6625	Upper extremity addition, rotation wrist unit with cable lock	321.96
L6628	Upper extremity addition, quick disconnect hook adapter, Otto Bock or equal	321.81
L6629	Upper extremity addition, quick disc lamin collar w/coupling piece, Otto Bock or equal	101.79
L6630	Upper extremity addition, stainless steel, any wrist	142.36
L6632	Upper extremity addition, latex suspension sleeve, each	41.94
L6635	Upper extremity addition, lift assist for elbow	153.57
L6637	Upper extremity addition, nudge control elbow lock	253.99
L6640	Upper extremity additions, shoulder abduction joint, pair	195.19
L6641	Upper extremity addition, excursion amplifier, pulley type	132.56
L6642	Upper extremity addition, excursion amplifier, lever type	190.09
L6645	Upper extremity addition, shoulder flexion-abduction joint, each	206.87
L6650	Upper extremity addition, shoulder universal joint, each	214.36
L6655	Upper extremity addition, standard control cable, extra	47.80
L6660	Upper extremity addition, heavy duty control cable	59.15
L6665	Upper extremity addition, teflon or equal, cable lining	32.96
L6670	Upper extremity addition, hook to hand, cable adapter	43.80
L6672	Upper extremity addition, harness, chest or shoulder, saddle type	142.05
L6675	Upper extremity addition, harness, figure of "8" type, for single control	71.86

L6676	Upper extremity addition, harness, fi	ure of "8" type, for dual control	78.27
L6680	Upper extremity addition, test socke	wrist disarticulation or below elbow	157.50
L6682	Upper extremity addition, test socke	elbow disarticulation or above elbow	192.76
L6684	Upper extremity addition, test socke	shoulder disarticulation or interscapular thoracic	223.60
L6686	Upper extremity addition, suction so	ket	452.96
L6687	Upper extremity addition, frame typ	socket, below elbow or wrist disarticulation	356.55
L6688	Upper extremity addition, frame typ	socket, above elbow or elbow disarticulation	371.44
L6689	Upper extremity addition, frame typ	socket, shoulder disarticulation	482.14
L6690	Upper extremity addition, frame typ	socket, interscapular thoracic	490.33
L6691	Upper extremity addition, removabl	insert, each	301.77
L6692	Upper extremity addition, silicone g	insert or equal, each	364.95
L6700	Terminal device, hook, dorrance, or	qual Model #3	325.28
L6705	Terminal device, hook, dorrance, or	qual Model #5	196.82
L6710	Terminal device, hook, dorrance, or	qual Model #5X	263.89
L6715	Terminal device, hook, dorrance, or	qual Model #5Xa	221.37
L6720	Terminal device, hook, dorrance, or	qual Model #6	556.04
L6725	Terminal device, hook, dorrance, or	qual Model #7	265.84
L6730	Terminal device, hook, dorrance, or	qual Model #7L0	431.23
L6735	Terminal device, hook, dorrance, or	qual Model #8	195.72
L6740	Terminal device, hook, dorrance, or	qual Model #8X	247.97
L6745	Terminal device, hook, dorrance, or	qual Model #88X	226.63
L6750	Terminal device, hook, dorrance, or	qual Model #10P	223.39
L6755	Terminal device, hook, dorrance, or	qual Model #10X	224.49
L6765	Terminal device, hook, dorrance, or	qual Model #12P	233.05
L6770	Terminal device, hook, dorrance, or	qual Model #99X	225.85
L6775	Terminal device, hook, dorrance, or	qual Model #555	273.03
L6780	Terminal device, hook, dorrance, or	qual Model #SS555	308.63
L6790	Terminal device, hook, "ACCU" hoo	or equal	372.54
L6795	Terminal device, hook "2" load or ec	al	875.24
L6800	Terminal device, hook—APRL VC c	equal	707.35
L6805	Terminal device, modifier, wrist flexi	n unit	252.08
L6806	Terminal device, hook, TRS grip, VC		1,176.87
L6807	Terminal device, hook, TRS adept, c	ild, VC	895.05
L6808	Terminal device, hook, TRS adept, in	ant, VC	744.49
L6809	Terminal device, hook, TRS Super S	ort, passive	284.88
L6810	Terminal device, hook, pincher tool,	tto Bock or equal	130.35
L6825	Terminal device, hand, dorrance, VC		859.12
L6830	Terminal device, hand, APRL, VC		993.53
L6835	Terminal device, hand, Sierra, VO		869.14
L6840	Terminal device, hand, Becker Impe	al	562.76
L6845	Terminal device, hand, Becker Lock	rip	585.60
L6850	Terminal device, hand, Becker Plylit		536.26
L6855	Terminal device, hand, Robin-Aids, '	O	553.52
L6860	Terminal device, hand, Robin-Aids, '	O soft	514.41
L6865	Terminal device, hand, passive hand		247.26
L6867	Terminal device, hand, Detroit infan	hand, (mechanical)	780.11
L6868	Terminal device, hand, Passive infan	and, (Steeper, Hosmer or equal)	162.92
L6870	Terminal device, hand, child mitt		221.05
L6872	Terminal device, hand, NYU child ha	id	752.69
L6873	Terminal device, hand, mechanical ir	ant hand, Steeper or equal	295.27
L6875	Terminal device, hand, Bock, VC		705.53
L6880	Terminal device, hand, Bock, VO		435.00
L6890	Terminal device, glove for above han	s, production glove	125.56
L6895	Terminal device, glove for above han	s, custom glove	379.27
L6900	Hand restoration (cast, shading and r	easurements included), partial hand, with glove, thumb or one finger remaining	1,295.70
L6905	Hand restoration (casts, shading and	easurements included), partial hand, with glove, multiple fingers remaining	1,292.16
L6910	Hand restoration (cast, shading and r	easurements included), partial hand, with glove no fingers remaining	1,122.97
L6915	Hand restoration (shading, and meas	rements included), replacement glove for above	407.73
L6920	Wrist disarticulation, external power,	elf-suspended inner socket, removable forearm shell, Otto Bock or equal switch, cables, two batteries and or charger, switch control of terminal device	4,877.49
L6925	Wrist disarticulation, external power,	elf-suspended inner socket, removable forearm shell, Otto Bock or equal electrodes, cables, two batteries an one charger, myoelectronic control of terminal	5,479.18
L6930	Below elbow, external power, self-sus	ended inner socket, removable forearm shell, Otto Bock or equal switch, cables, two batteries and one charg r, switch control of terminal device	4,499.94
L6935	Below elbow, external power, self-sus	ended inner socket, removable forearm shell, Otto Bock or equal electrodes, cables, two batteries and one charg r, myoelectronic control of terminal device	5,371.69
L6940	Elbow disarticulation, external powe	molded inner socket, removable humeral shell, outside locking hinges, forearm, Otto Bock or equal switcl cables, two batteries and one charger, switch	6,343.68
L6945	Elbow disarticulation, external powe	molded inner socket, removable humeral shell, outside locking hinges, forearm, Otto Bock or equal electr des, cables, two batteries and one charger	7,000.80

L6950	Above elbow, external power, molded inner socket, removable humeral shell, internal locking elbow, forearm, Otto Bock or equal switch, cables, two batteries and one charger, switch control of	6,592.75
L6955	Above elbow, external power, molded inner socket removable humeral shell, internal locking elbow, forearm, Otto Bock or equal electrodes, cables, two batteries and one charter, myoelectronic	7,861.37
L6960	Shoulder disarticulation, external power, molded inner socket, removable shoulder shell, should bulkhead, humeral section, mechanical elbow, forearm, Otto Bock or equal switch, cables, two	8,585.21
L6965	Shoulder disarticulation, external power, molded inner socket, removable shoulder shell, shoulder shell, shoulder bulkhead, humeral section, mechanical elbow, forearm, Otto Bock or equal	9,850.27
L6970	Interscapular-thoracic, external power, molded inner socket, removable shoulder shell, shoulder bulkhead, humeral section, mechanical elbow, forearm, Otto Bock or equal switch, cables, two	10,616.81
L6975	Interscapular-thoracic, external power, molded inner socket, removable shoulder shell, shoulder bulkhead, humeral section, mechanical elbow, forearm, Otto Bock or equal electrodes, cables, two	11,783.36
L7010	Electronic hand, Otto Bock, Steeper or equal switch controlled	2,225.07
L7015	Electronic hand, Systemteknik, Variety Village or equal switch controlled	4,117.35
L7020	Electronic Greifer, Otto Bock or equal switch controlled	2,556.81
L7025	Electronic hand, Otto Bock or equal, myoelectronically controlled	2,507.23
L7030	Electronic hand, Systemteknik, Variety Village or equal, myoelectronically controlled	4,255.34
L7035	Electronic Greifer, Otto Bock or equal, myoelectronically controlled	2,468.65
L7040	Prehensile actuator, Hosmer or equal, switch controlled	1,956.78
L7045	Electronic hook, child, Michigan or equal, switch controlled	947.19
L7160	Electronic elbow, Boston or equal, switch controlled	10,781.93
L7165	Electronic elbow, Boston or equal, myoelectronically controlled	12,233.01
L7170	Electronic elbow, Hosmer or equal, switch controlled	3,893.67
L7180	Electronic elbow, Utah or equal, myoelectronically controlled	23,158.53
L7185	Electronic elbow, adolescent, Variety Village or equal, switch controlled	4,178.52
L7186	Electronic elbow, child, Variety Village or equal, switch controlled	6,585.92
L7190	Electronic elbow, adolescent, Variety Village or equal, myoelectronically controlled	5,747.84
L7191	Electronic elbow, child, Variety Village or equal, myoelectronically controlled	6,915.81
L7260	Electronic wrist rotator, Otto Bock or equal	1,625.89
L7261	Electronic wrist rotator, for Utah arm	2,826.48
L7266	Servo control, Steeper or equal	618.60
L7272	Analogue control, UNB or equal	1,496.06
L7274	Proportional control, 12 volt, Utah or equal	4,656.89
L7360	Six volt battery, Otto Bock or equal, each	215.51
L7362	Battery charger, six volt, Otto Bock or equal	183.20
L7364	Twelve volt battery, Utah or equal, each	370.97
L7366	Battery charger, 12 volt, Utah or equal	472.71
L8000	Breast prosthesis, mastectomy bra	23.24
L8010	Breast prosthesis, mastectomy sleeve	59.82
L8020	Breast prosthesis, mastectomy form	169.82
L8030	Breast prosthesis, silicone or equal	200.15
L8300	Truss, single with standard pad	58.20
L8310	Truss, double with standard pads	119.68
L8320	Truss, addition to standard pad, water pad	36.38
L8330	Truss, addition to standard pad, scrotal pad	32.71
L8400	Prosthetic sheath, below knee, each	15.37
L8410	Prosthetic sheath, above knee, each	15.52
L8415	Prosthetic sheath, upper limb, each	15.28
L8420	Prosthetic sock, wool, below knee, each	17.40
L8430	Prosthetic sock, wool, above knee, each	18.76
L8435	Prosthetic sock, wool, upper limb, each	13.73
L8440	Prosthetic shrinker, below knee, each	37.82
L8460	Prosthetic shrinker, above knee, each	47.66
L8465	Prosthetic shrinker, upper limb, each	40.26
L8470	Stump sock, single ply, fitting, below knee, each	4.64
L8480	Stump sock, single ply, fitting, above knee, each	5.86
L8500	Artificial larynx, any type	596.58
L8501	Tracheostomy speaking valve	72.92
L8600	Implantable breast prosthesis, silicone or equal	245.90
L8605	Other prosthetic procedures-devices: tissue expander	305.06
L8610	OPPD: ocular	426.64
L8613	OPPD: ossicula	222.38
L8615	OPPD: temporomandibular joint	188.17
L8620	OPPD: radial head	179.61
L8622	OPPD: proximal ulna/radius	192.44
L8623	OPPD: distal ulna	192.44
L8624	OPPD: distal radius	205.27
L8625	OPPD: trapezium	179.61
L8626	OPPD: wrist	491.80
L8627	OPPD: lunate	325.02
L8628	OPPD: carpus	179.61

L8629	OPPD: scaphoid	179.61
L8630	OPPD: metacarpophalangeal joint	192.44
L8640	OPPD: patella	102.00
L8641	OPPD: metatarsal joint	179.61
L8642	OPPD: haliux implant	179.61
L8655	OPPD: flexor tendon in hand or fin; :r	102.64
L8656	OPPD: extensor tendon in hand or f nger	102.64
L8657	OPPD: tendon other than hand or f ıger	102.64
L8658	OPPD: interphalangeal joint	188.17
L8690	OPPD: testicle	149.68

CODES BEGINNING WITH "Q" THRU "V"

HCPCS CODE	DESCRIPTION	FEE FOR NEW EQPT	MONTHLY RENTAL FEE
Q0036	Oxygen concentrator high humidity	—	296.10
Q0038	Oxygen contents, gaseous, per unit (or use with owned gaseous stationary systems or when both a stationary and portable gaseous s; :tem are owned; 1 unit = 50 cubic feet)	204.80	—
Q0039	Oxygen contents, liquid, per unit (fc use with owned stationary liquid systems or when both a stationary and portable liquid system are ow ed; 1 unit = 10 lbs.)	204.80	—
Q0040	Portable oxygen contents, gaseous p r unit (for use only with portable gaseous systems when no stationary gas system is used; 1 ur t = 5 cubic ft.)	30.81	—
Q0041	Portable oxygen contents, liquid, pe unit (for use with portable liquid systems when no stationary liquid system is used; 1 unit = 1 lb.)	30.81	—
Q0042	Stationary compressed gas system re ıtal, includes contents (per unit), regulator with flow gauge, humidifier, nebulizer, cannula or ıask and tubing, 1 unit = 50 cubic ft.	—	296.10
Q0043	Stationary liquid oxygen system rent l, includes content (per unit), use of reservoir, contents indicator, flowmeter, humidifier, nebulizer, annula or mask and tubing; 1 unit of contents = 10 lbs.	—	296.10
Q0046	Portable liquid oxygen system renta includes flowmeter, refill adapter, contents gauge, cannula and tubing	—	54.99
V2620	Prosthetic, eye, glass, stock	304.96	—
V2621	Prosthetic, eye, plastic, stock	293.40	—
V2622	Prosthetic, eye, glass, custom	671.89	—
V2623	Prosthetic, eye, plastic, custom	671.89	—

LABOR

(a)

OFFICE OF PUBLIC SAFETY COMF .IANCE

Carnival and Amusement Rides
Bungee Jumping

Adopted Concurrent Amendments: N.J.A.C. 12:195-2.1, 3.22 and 6.1
Adopted Concurrent New Rules: N. .A.C. 12:195-7

Proposed: May 17, 1993 at 25 N.J.R. 2128(a .

Adopted: July 2, 1993 by Raymond L. Bran ıcci, Commissioner, Department of Labor.

Filed: July 2, 1993 as R.1993 d.374, **without** :hange.

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

Effective Date: July 2, 1993.

Expiration Date: June 14, 1998.

On May 3, 1993, the Commissioner of La or adopted emergency amendments to the rules governing carnival anc amusement rides found at N.J.A.C. 12:195 and adopted emergency new ules, N.J.A.C. 12:195-7, for the safe operation of bungee jumping rides in this State; the Commissioner concurrently proposed these amendm :nts and new rules. The rules were adopted on an emergency basis to void imminent peril to the public health, safety and welfare. The eme ;ency adopted and concurrently proposed amendments and new rules ppeared in the May 17, 1993 issue of the New Jersey Register at 25 J.J.R. 2128(a).

Comment on the proposal was received fro ı only one commenter, Sports Tower of Logan, Utah, during the publi comment period which ended on June 16, 1993. The full record of the)pportunity to be heard can be inspected by contacting the Office of] xternal and Regulatory Affairs, New Jersey Department of Labor, CN] 0, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:

COMMENT: The rules define a "jumper" as a person at least 18 years old. It is recommended that an individual eight years old should be able to participate with the parent's or guardian's signature.

RESPONSE: The rules at N.J.A.C. 12:195-1.8 are designed to protect minor children from the hazards inherent in major rides. To allow eight year olds to bungee jump would expose them to these hazards. Moreover, verifying the validity of the authorization provided by the parent or guardian would create delays during the operation of the bungee jumping ride and expand the potential liability of the owner/operator. The Department believes the State's interest in both the safety of minor children and the effective operation of bungee jumping rides is best served by limiting participation in bungee jumping to individuals who are at least 18 years old. Accordingly, the Department adopts the definition as proposed.

COMMENT: The specifications covering anchors found at N.J.A.C. 12:195-7.8(g) require that two anchors attach the bungee cord to the structure. However, Sports Tower has a cable/cord hook-up unique to its system that uses a single carabiner hook-up, with a safety back-up rope. This system is very safe and the rules should be changed to accommodate this unique system.

RESPONSE: The Department's rules are designed for general applicability. Since the double carabiner system is universally available to all operators and the suggested method is unique to one company, the Department has determined to retain the system that is readily available to the greatest number of operators.

However, pursuant to N.J.S.A. 5:3-48, an owner may apply to the Department for a modification of the rules governing carnival and amusement rides in a specific circumstance if compliance with the rules poses practical difficulties or unnecessary hardships. The owner makes such application by submitting a written request for a modification of the rule(s) in question along with information supporting the request.

This mechanism will provide for the requisite review of the regulatory requirements as applied to this unique system.

Full text of the adoption follows:

12:195-2.1 Definitions

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

"Accepted engineering practice" means that which conforms to accepted principles, tests, or standards of accredited authorized agencies, and to standards or generic principles and practices of safety engineering.

...

"Air bag" means a device which cradles the body using a multi-cell release breather system to dissipate the energy due to a fall, thereby allowing the jumper to land without an abrupt stop or bounce.

...

"Approved operating site" means the area including the preparation area, the jump space, the landing area and the recovery area as reflected on the site plan drawings submitted by the operator pursuant to this chapter in conjunction with the registration of a bungee jumping operation and as approved by the Commissioner.

"Approving authority" means the Commissioner of Labor.

"Binding" means material used to wrap and hold together the jumper's ankles which is tied together and attached to the bungee cord.

...

"Bungee cord" means the elastic rope attached to the jumper which lengthens and shortens to produce a bouncing action.

"Bungee cord loop end connections" means the loop of cord generally provided by the manufacturer.

"Bungee cord end connections" means a static line runner commonly made from tubular nylon webbing.

"Bungee jumping" means the activity where a person free falls from a height and the person's descent is limited by his or her attachment to a bungee cord.

"Bungee jumping operation" means all activity associated with bungee jumping.

"Carabine*[e]*r" means a shaped metal device of the spring loaded design with a gate used to connect sections of the bungee cord, jump rigging, equipment, or safety gear as well as all other life supporting activities.

...

"Catapulting, launching or reverse jumping" means the practice of stretching the bungee cord while attached to the jumper who is held on the ground, then released and propelled upward.

...

"Controlled load lowering" means a system or device on the power train, other than the load hoist brake, which can regulate the lowering rate of speed of the hoist mechanism.

"Department" means the New Jersey Department of Labor.

...

"Double or tandem jumping" means the practice of two or more individuals jumping simultaneously from the same jump platform, whether from a common bungee cord or individual bungee cords.

"Dynamic load" means the load placed on the rigging and attachments by the free fall, including the bouncing movements, of the jumper.

"Equipment" means each component which is utilized in a bungee jumping operation, including power or manually operated devices to raise, lower and hold loads.

"Fence" means a permanent or temporary structure designed and constructed to prevent public intrusion.

...

"Harness" means an assembly to be worn by a jumper and attached to a bungee cord.

...

"Incident" means an event that does or could result in injury to a person, damage to equipment, or the interruption or stopping of a bungee jumping operation.

"Jump area" means the ground level area of the jump zone.

"Jump height" means the distance from the jump point to the position on the ground at which an object dropped from the jump point would impact, exclusive of any air bag or other impediments.

"Jump master" means a person at least 18 years of age who is responsible for the supervision and control of the entire bungee jumping operation.

"Jump operator" means a person at least 18 years of age who assists the jump master to prepare a jumper for jumping.

"Jump point" means the position from which the jumper leaps from the platform.

"Jumper" means a person at least 18 years of age who leaps from a platform while attached to a bungee cord.

"Jumper weight" means the weight of the jumper, exclusive of any bungee jumping equipment or apparatus, which is used to select the proper bungee cord.

"Jump zone" means the space allowed for the maximum possible movements of the jumper or any part of the jumper while attached to a bungee cord.

...

"Landing area" means the surface area on which the jumper is lowered.

"Launching." See "catapulting."

"Lowering system" means any manual or mechanical equipment capable of lowering a jumper to the designated landing area.

...

"Operating manual" means the document that contains the required procedures and forms for the safe operation of the bungee jumping activity at the stated site.

"Owner" means a person who owns or leases the operations of a carnival or amusement ride, including the State or any of its subdivisions.

...

"Platform" means the designated part of the structure from which the jumper leaps.

"Preparation area" means a separate area on the support structure or part where the jumper is prepared for jumping.

...

"Recovery area" means an area near the landing area where the jumper may choose to recover from the jump before exiting the bungee jumping operation site.

...

"Reverse jumping." See "catapulting."

...

"Rigging system" means a combination of components that connect the bungee cord to the jumper and the bungee cord to the structure, lowering/raising device or platform. The rigging system includes ropes, pulleys, *[carbineers]* **carabiners***, shackles and lowering/raising devices.

"Rope" means wire rope.

"Safety hook" means a hook with a latch to prevent the rigging or loads from accidentally slipping off the hook.

"Sandbagging" means the practice of loading excess weight to a jumper intending to release the excess weight at the bottom of the jump, thus gaining extra momentum on the rebound.

"Scale" means a weighing device or apparatus which has been approved as to type, construction and operation by the Superintendent of the State Office of Weights and Measures pursuant to N.J.S.A. 51:1-93.

...

"Structure" means a permanent building or tower used for bungee jumping.

"Stunt jumping" means the combining of any other activity with bungee jumping.

"Tandem jumping." See "double jumping."

...

12:195-3.22 Hydraulic or pneumatic systems

(a) Hydraulic or pneumatic systems and other related equipment used in connection with amusement rides shall be free of leaks and maintained to insure safe operation at all times.

(b) An amusement ride which depends upon hydraulic or pneumatic pressure to maintain safe operation shall be provided with a positive means of preventing loss in pressure that could result in injury to a passenger.

(c) Hydraulic and pneumatic lines shall be g arded so that sudden leaks or breakage will not endanger the pas: ngers or the public.

12:195-6.1 Documents referred to by refere ice

(a) (No change.)

1.-12. (No change.)

13. N.J.S.A. 34:6-47.1 et seq., High Volta: Proximity Act;

14. N.J.A.C. 5:18, Uniform Fire Code; an

15. N.J.S.A. 51:1-83 and 93, Standards, W ights, Measures and Containers.

SUBCHAPTER 7. SPECIAL PROVISIONS FOR BUNGEE JUMPING OPERATIONS

12:195-7.1 Purpose

The purpose of this subchapter is to maxi ize safety to bungee jumpers and spectators while bungee jumpi g operations are in progress.

12:195-7.2 Scope

The scope of this subchapter is to set forth s ecific rules applicable to bungee jumping operations which shall be a lhered to in addition to the general provisions of the rules governin carnival and amusement rides in this chapter. Where a specific provision is provided covering bungee jumping which conflicts with he general provisions of this chapter, the provisions set forth in his subchapter shall govern.

12:195-7.3 Prohibited activities

(a) The following practices and activities re prohibited:

1. Catapulting;

2. Double jumping;

3. Launching;

4. Reverse jumping;

5. Sandbagging;

6. Stunt jumping;

7. Tandem jumping;

8. More than two persons on the jump oint, except for the allowance of one additional employee approve for training purposes only;

9. A bungee jumping operation which is ex osed to wind velocity exceeding 25 miles per hour or other danger is weather condition;

i. Wind velocity shall be measured by an nemometer mounted on the tower at least as high as the jump poin and capable of being read from ground level as well as the jump point;

10. Bungee jumping from a mobile or fixe -type crane or lifting device not designed, approved and/or manufa tured to carry, transport or in any fashion move a person;

11. A bungee jumping operation which i in violation of any Federal, State or local law or regulation wit respect to any part of its operation; and

12. Any bungee type ride not specifically a proved by the Commissioner.

12:195-7.4 Inspection fee and permit

An owner of a bungee jumping operation hall adhere to all of the provisions pertaining to the inspection and ermitting procedures and requirements found at N.J.A.C. 12:19 1.9, except that the inspection fee for a bungee jumping operatio shall be $500.00 and the duplicate permit fee shall be $25.00.

12:195-7.5 Operating manual

(a) Each site shall have an operating manu l for the safe operation of bungee jumping on the site. The manu l and all amendments shall be held on the site and shall be freely vailable to staff and the Commissioner.

(b) The manual shall include, but not be lir ited to, the following:

1. Site plan;

2. Description of operating system and e uipment;

3. Job procedures for each task in the o erating system;

4. Job descriptions;

5. Maintenance inspection records;

6. Testing procedures and recording;

7. Criteria for the periodic maintenance or replacement of rigging, hardware, bungee cords, harnesses, or lifelines as required by the manufacturer;

8. Emergency plan and procedures;

9. Reports of injuries, damage, and incidents;

10. Bungee cord and equipment log books;

11. Inspection procedures, standards, and follow-up actions;

12. Setting up the site equipment;

13. Lists of all staff including their qualifications and training; and

14. Testing and checking for the following:

i. Personnel protective equipment including gloves, harnesses, and life lines;

ii. The communication system(s)—communications must be maintained between all operations personnel involved with the actual jump. For example, the jump master and jump operator must be in communication at all times by way of telephone or radio;

iii. Examine the jump equipment and rigging;

iv. Telephone service to reach emergency medical personnel;

v. Carry out test jumps and check the bungee cord performance;

vi. Staff briefing for the day's operations; and

vii. Ensure the exclusion of the public from the operating areas.

12:195-7.6 Insurance, bond or other security

An owner of a bungee jumping operation shall adhere to all of the provisions pertaining to insurance, bond or other security found at N.J.A.C. 12:195-1.14, except that the amount of insurance liability shall be not less than $1,000,000 for injury suffered by persons participating in a bungee jumping operation.

12:195-7.7 Engineering certification

(a) Prior to approval of a bungee jump operation, a New Jersey licensed professional engineer shall forward to the Department two signed and sealed submittals of the following (Note: Only the embossed seal of a professional engineer shall be acceptable):

1. Certification of hoisting equipment, tower or other methods of hoisting or suspension;

2. Plot plan of jump site within 200 feet of a bungee operation;

3. Schematic drawings of structure foundation and load bearing certification;

4. Elevation schematic and calculations of G forces, bungee height and safety zone betweem maximum bungee elongation and air bag;

5. Certification of all equipment used in a bungee operation such as bungee ropes, harnesses, *[carbineers,]* ***carabiners,*** straps, etc.;

6. Certification of operation, training and maintenance manuals;

7. Certification of inspection of entire bungee operation and equipment;

8. Certification that design and construction is in accordance with accepted engineering practices and that all reasonable foreseeable hazards have been guarded against in design; and

9. Definitive statement by a professional engineer that the bungee operation is safe and acceptable to operate with the equipment identified in the submittal.

12:195-7.8 Mechanical equipment

(a) Scales:

1. Scales shall be tested and sealed by a New Jersey Weights and Measures officer at least once a year.

2. Scales shall be tested using certified test weights before the opening of the ride each day.

(b) Weights:

1. Each bungee jumping operation shall obtain test weights in the aggregate capacity of 300 pounds which have been tested and sealed by the Superintendent of the State Office of Weights and Measures.

(c) Bungee cords:

1. Operating testing: All commercial operators shall follow the inspection and testing recommendations set forth by the cord manufacturer;

2. All bungee cord manufacturers must provide specifications to purchasers on maximum usage of bungee cords expressed in number of jumps;

3. Bungee cords shall be retired when the cords exhibit deterioration or damage, do not react according to specifications or have reached the maximum usage expressed in number of jumps as

specified by the manufacturer. All commercial operators must have an auditable system for recording the number of jumps on each individual cord in use. This data must be readily available to the Commissioner upon request.

4. Bungee cords retired from use shall be destroyed by cutting the cord into five foot lengths.

(d) Bungee cord end connections:

1. All end connections shall be of a size and shape to allow easy attachment to the jumper harnesses and to the rigging. On multiple cord systems, each cord must meet its own independent end connection.

2. All end attachment points subject to wear are to be retired when the cord is retired.

3. On multiple cord systems, all end attachment points shall be bound together in a protective sheath that allows the individual ends to move with respect to each other.

4. All cords shall be inspected each day for wear, slippage, or any other abnormalities, unless the manufacturer specifies more frequent inspections.

(e) Jump harnesses:

1. A jump harness shall be either:

i. A full body harness; or

ii. An ankle harness or ankle strapping that is tied off in such a manner so as to secure the jumper to the cord end connection. The ankle harness/strapping must evidence redundancy. A link to a waist harness is required.

2. Neither harness shall cause bruising.

3. Harnesses shall be available to fit the range of jumper sizes accepted for jumping.

4. The harness shall have a minimum breaking strength of 4,000 pounds, be suitable for the type of jumping conducted and shall be manufactured by an organization approved to manufacture similar harnesses to an approved standard.

5. Each harness shall be inspected prior to harnessing a jumper and shall be removed from service when it exhibits signs of excessive wear, damage, or when it has met the manufacturer's maximum usage allowance.

(f) Carabine*[e]*rs and locking devices:

1. Specification—carabine*[e]*rs shall be of the screw type lock with a minimum main axis breaking strength of 8,000 pounds.

2. Use—a minimum of two carabine*[e]*rs shall be used at each bungee end connection point.

3. Design and construction—all carabine*[e]*rs shall be designed and constructed using the existing standards for mountaineering and rescue gear.

4. Testing—all carabine*[e]*rs shall be inspected daily and shall be removed from service when the locking mechanisms fail to lock properly, the springs are worn or the locking gates deform.

(g) Anchors:

1. Specification: There shall be two anchors that attach the bungee cord to the structure. Each shall have a minimum strength of 8,000 pounds or shall be designed with a minimum factor of safety of five, whichever is more. There shall be a carabine*[e]*r that attaches each anchor to the bungee cord end. The two carabine*[e]*rs shall not be connected to each other.

2. Where wire rope is used, it shall have staged ends with a thimble eye or be continuous. Other connection systems are acceptable if they meet the aforementioned strength specifications.

3. Daily inspection of the anchors shall be carried out and any portion showing sign of excessive wear shall be removed from service immediately.

(h) Air bags:

1. An air bag shall be provided.

2. A minimum of a 10 foot safety zone shall be maintained above the air bag.

(i) Platforms:

1. Platforms shall be constructed so as to provide safety and security to the public by providing the following. Every platform shall:

i. Be completely enclosed except for the jumping off area;

ii. Have a nonskid floor surface;

iii. Be provided with a gate equipped with locking devices to prevent accidental openings;

iv. Be provided with anchor rails or points to secure the jumper prior to jump;

v. Have no more than two persons on the platform during bungee jumping operations, the jumper and jump master. A third (employee only) may be added for training and instruction purposes only;

vi. Be permanently attached to a structure; and

vii. Be constructed so that the jump point shall not exceed 100 feet above the ground surface.

(j) Rescue procedures: All operations regardless of jump platform in use must have a secondary retrieval system. All appropriate staff must be trained on proper rescue procedures. Prior to bungee jumping operations, all appropriate staff must conduct a test rescue.

12:195-7.9 Communication

Radio communication shall be provided between the jump master and the jump operator(s).

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Driver Control Service

Administrative Hearings

Adopted Amendments: N.J.A.C. 13:19-1.1 and 1.7

Proposed: March 1, 1993 at 25 N.J.R. 893(a).

Adopted: May 26, 1993 by Stratton C. Lee, Jr., Director, Division of Motor Vehicles.

Filed: July 12, 1993 as R.1993 d.389, **without change.**

Authority: N.J.S.A. 39:2-3, 39:5-30 and 52:14B-10.

Effective Date: August 2, 1993.

Expiration Date: August 18, 1994.

Summary of Public Comments and Agency Responses:

Opportunity to be heard with regard to the proposal was invited via notice published in the previously cited edition of the New Jersey Register. A media advisory was also prepared by the Division of Motor Vehicles with regard to the proposal. **No comments were received** from the public with regard to the proposal.

Full text of the adoption follows:

13:19-1.1 Applicability

The provisions of this subchapter shall apply to administrative hearings in cases involving revocation, suspension or refusal to renew licenses, including cases involving imposition of insurance surcharges pursuant to N.J.S.A. 17:29A-35. However, the provisions of this subchapter shall not apply to hearings in fatal accident cases in which the Division has initiated administrative suspension action against a licensee pursuant to subsection b, c, or e of N.J.S.A. 39:5-30; requests for hearings and the scheduling and conduct of same in such cases are governed by the provisions of subsection b or e of N.J.S.A. 39:5-30.

13:19-1.7 Driver improvement analyst

(a) (No change.)

(b) The person conducting such prehearing conference shall be referred to as a driver improvement analyst.

(a)

DIVISION OF MOTOR VEHICLES

Executive and Administrative Servic es
Dimensional Standards for Automo ile Transporters
Adopted Repeals and New Rules: N J.A.C. 13:20-38.1, 38.2 and 38.3
Adopted New Rules: N.J.A.C. 13:20 38.4, 38.5 and 38.6

Proposed: April 5, 1993 at 25 N.J.R. 1342(a .
Adopted: June 22, 1993, by Stratton C. Lee Jr., Director, Division of Motor Vehicles.
Filed: July 2, 1993 as R.1993 d.380, **without hange.**
Authority: N.J.S.A. 39:3-84a(10).
Effective Date: August 2, 1993.
Expiration Date: December 13, 1995.

Summary of Public Comments and Age y Responses:
No comments received. Opportunity to be h ard with regard to the proposal was invited via notice published in the previously cited edition of the New Jersey Register. A media advisory as also prepared by the Division of Motor Vehicles. The record of the roceeding is located at the Office of the Director, Division of Moto Vehicles, 225 E. State Street, Trenton, New Jersey 08666, and may e inspected by making an appointment with the Secretary to the Di ctor.

Full text of the adoption follows:

13:20-38.1 Purpose

The purpose of this subchapter is to co orm the rules of this State to the national policy governing truck ize as set forth in the Federal "Surface Transportation Assistance Act of 1982," Pub. L. 97-424 (49 App. U.S.C. §2311), as amende ., and the regulations promulgated pursuant to that Federal law by establishing dimensional standards for automobile transp rters that are in compliance with Federal standards contained 23 C.F.R. §658.13, revised as of February 1, 1991. The purpos of this subchapter is also to facilitate interstate commerce on th National Network of highways that can safely and efficiently accom nodate the automobile transporters authorized by the "Surface Tr nsportation Assistance Act of 1982."

13:20-38.2 Definitions

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

"Automobile transporter" means any ve icle combination designed and used specifically for the transport of assembled (capable of being driven) highway vehicles.

"Fullmount" means a smaller vehicle mou ted completely on the frame of either the first or last vehicle i a saddlemount combination.

"Saddlemount combination" means a con bination of vehicles in which a truck or truck tractor tows one o more trucks or truck tractors, each connected by a saddle to the ame or fifth wheel of the vehicle in front of it. The saddle is a m chanism that connects the front axle of the towed vehicle to the f ame or fifth wheel of the vehicle in front and functions like a fifth wheel kingpin connection. When two vehicles are towed in this m nner the combination is called a double saddlemount combinatio When three vehicles are towed in this manner, the combination i called a triple saddlemount combination.

"Stinger-steered combination" means an utomobile transporter consisting of a truck tractor semitrailer wh ein the fifth wheel is located on a drop frame located behind a d below the rearmost axle of the power unit.

"Traditional automobile transporter" mea s an automobile transporter wherein the fifth wheel is located on he frame of the truck tractor over the rear axle(s) of said truck ractor.

13:20-38.3 Vehicle combination lengths; traditional automobile transporters; stinger-steered combination

(a) A traditional automobile transporter when operated on the highways of this State shall not exceed 65 feet in overall length, excluding the load.

(b) An automobile transporter consisting of a stinger-steered combination when operated on the highways of this State shall not exceed 75 feet in overall length, excluding the load.

13:20-38.4 Automobile transporter; load overhang

(a) Automobile transporters when operated on the highways of this State may have a load overhang of no more than three feet to the front and/or no more than four feet to the rear.

(b) Automobile transporters shall be exempt from the overhang standards set forth at N.J.A.C. 13:18-8.1.

13:20-38.5 Drive-away saddlemount vehicle transporter combinations; drive-away saddlemount with fullmount vehicle transporter combinations; overall length

(a) Drive-away saddlemount vehicle transporter combinations when operated on the highways of this State shall not exceed 75 feet in overall length.

(b) Drive-away saddlemount with fullmount vehicle transporter combinations when operated on the highways of this State shall not exceed 75 feet in overall length.

13:20-38.6 Application of Department of Transportation standards for 102-inch standard trucks to automobile transporters

Automobile transporters, drive-away saddlemount vehicle transporter combinations and drive-away saddlemount with fullmount transporter combinations having an overall length of the combination of vehicles, including load, or contents or any part or portion thereof, which exceed 62 feet shall be subject to the provisions of N.J.A.C. 16:32-3.2 (General provisions), N.J.A.C. 16:32-3.3 (Through routes for 102-inch standard trucks), and N.J.A.C. 16:32-3.4 (Access from through routes), as amended, which have been adopted by the Commissioner of Transportation.

(b)

DIVISION OF CONSUMER AFFAIRS
AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY ADVISORY COMMITTEE

Audiology and Speech-Language Pathology Advisory Committee Rules
Readoption with Amendments: N.J.A.C. 13:44C

Proposed: April 19, 1993 at 25 N.J.R. 1668(a).
Adopted: June 30, 1993 by Emma N. Byrne, Director, Division of Consumer Affairs.
Filed: July 8, 1993 as R.1993 d.383, **without change.**
Authority: N.J.S.A. 45:3B-24.
Effective Date: July 8, 1993, Readoption;
August 2, 1993, Amendments.
Expiration Date: July 8, 1998.

The Division of Consumer Affairs afforded all interested parties an opportunity to comment on the proposed readoption of N.J.A.C. 13:44C, the rules of the Audiology and Speech-Language Pathology Advisory Committee, as proposed in the New Jersey Register on April 19, 1993 at 25 N.J.R. 1668(a). The official comment period ended on May 19, 1993. Announcements of the opportunity to respond to the Division were also forwarded to the Star Ledger, the Trenton Times, the Courier-Post, the Bergen Record, the New Jersey Speech-Language-Hearing Association and to other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Audiology and Speech-Language Pathology Advisory Committee, Post Office Box 45002, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:
During the 30-day comment period, the Board received one letter in response to the proposed readoption from the New Jersey Speech-Language Hearing Association (the Association). While expressing its

support for the proposed amendments, which it believes will ensure that licensed professionals continue to meet high ethical and professional standards, the Association sought guidance regarding implementation of advertising regulations set forth at N.J.A.C. 13:44C-8.1(b)1. Specifically, the Association raised the following questions:

(1) What is the "phase-in" period for including the license number in existing advertisements; for example, business cards, yellow pages, etc.?; and

(2) What are the Committee's recommendations for educating licensees about these changes? The Association stated its interest in supporting and coordinating these efforts.

The Committee acknowledges and appreciates the Association's support for the amendments proposed upon adoption. The amendments will become effective, and therefore subject to enforcement, upon publication of this notice of adoption (August 2, 1993). Initial enforcement efforts will, of necessity, be subject to practical considerations such as publication dates of telephone directories and consideration of the licensee's efforts to comply in a timely manner. The Committee will notify licensees of the amendments by distributing to all licensees, in booklet form, all Committee regulations and the enabling legislation. Licensees would, of course, benefit from any additional educational efforts which the Association may wish to make.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:44C.

Full text of the adopted amendments follows:

13:44C-3.2 Requirements for licensure

(a) An applicant for licensure shall submit the following to the Advisory Committee:

1. (No change.)

2. If the master's degree was earned prior to January 1, 1993, transcripts from one or more accredited educational institutions evidencing the completion of a total of 60 semester hours of academic credit that demonstrate that the applicant has obtained a well-integrated program of course study dealing with the normal aspects of human communication, development and disorders thereof and clinical techniques for evaluation and management of such disorders, as follows:

i.-v. (No change.)

3. If the master's degree was earned subsequent to January 1, 1993, transcripts from one or more accredited educational institutions evidencing the completion of a total of 75 semester hours of academic credit that demonstrate that the applicant has obtained a well-integrated program of course study dealing with the normal aspects of human communication development and disorders thereof and clinical techniques for evaluation and management of such disorders, as follows:

i. At least 27 of the 75 semester credit hours shall be in basic science coursework as follows:

(1) Biological/physical science: three hours;

(2) College-level mathematics: three hours;

(3) Behavioral and/or social sciences: six hours; and

(4) Basic human communication processes, to include course work in each of the following three areas of speech, language and hearing: the anatomic and physiological bases; the physical and psychosocial bases; and the linguistic and psycholinguistic aspects: 15 hours;

ii. At least 36 of the 75 semester credit hours shall be in courses that concern the nature, prevention, evaluation and treatment of speech, language and hearing disorders. The courses shall include courses in disorders primarily affecting children as well as disorders primarily affecting adults.

(1) At least 30 of the 36 hours shall be in courses for which graduate credit was received, and at least 21 of the 30 graduate credit hours shall be in the professional area for which licensure is sought.

(2) For a license in speech-language pathology, at least 30 of the 36 semester credit hours of professional coursework shall be in speech-language pathology. At least six of the 30 credits shall be in speech disorders and at least six shall be in language disorders. At least six of the 36 semester credit hours of professional coursework shall be in audiology, with three of the six in hearing disorders and hearing evaluation and three in habilitative/rehabilitative procedures with individuals who have a hearing impairment.

(3) For a license in audiology, at least 30 of the 36 semester credit hours of professional coursework shall be in audiology. At least six of the 30 shall be in hearing disorders and hearing evaluation, and at least six shall be in habilitative/rehabilitative procedures with individuals who have a hearing impairment. At least six of the 36 semester credit hours of professional coursework shall be in speech-language pathology, with three in speech disorders and three in language disorders;

iii. A minimum of 25 clock hours of supervised observation of the evaluation and treatment of children and adults with disorders of speech, language or hearing; and

iv. A minimum of 350 clock hours of supervised clinical experience with individuals who present a variety of communication disorders. The experience shall have been obtained within the training institution or in one of its cooperating programs. No more than 25 of the clock hours may be obtained from participation in staffings in which evaluation, treatment and/or recommendations are discussed or formulated, with or without the client present.

4. Satisfactory proof of completion of a clinical internship, in accordance with the provisions of N.J.A.C. 13:44C-3.3, in the professional area for which the license is sought.

5. (No change in text.)

13:44C-3.3 Requirements for clinical internship

(a) For purposes of this section, "professional employment" means direct clinical work with patients, consultations, recordkeeping, and any other duties relevant to a bona fide program of clinical work.

(b) For purposes of this section, "full-time employment" means a minimum of 30 clock hours of work per week or part time equivalent employment as follows:

1. Work of 15 to 19 hours per week over 18 months;

2. Work of 20 to 24 hours per week over 15 months;

3. Work of 25 to 29 hours per week over 12 months.

(c) The clinical internship shall comprise no less than nine months of full-time professional employment.

(d) In the event that part-time employment is used to fulfill a part of the clinical internship, 100 percent of the minimum hours of the weekly part-time work must be spent in direct professional employment, and the internship must be completed within a maximum period of 18 consecutive months.

(e) Clinical internship shall be under the direct supervision of a person licensed to practice audiology or speech-language pathology, as appropriate, by this State or another state which has standards substantially equivalent to those of this State. If the clinical internship takes place in an exempt setting or in a state without licensure or comparable requirements, the supervisor shall be a person who holds a Certificate of Clinical Competence (C.C.C.) by the American Speech-Language-Hearing Association (ASHA), or its equivalent.

(f) The supervisor shall be responsible for the professional practices of the temporary licensee.

(g) The supervisor shall provide a minimum of one hour of on-site direct supervision for each 20 hours of direct, face-to-face evaluation or therapeutic services rendered by the supervisee. Supervision shall take place not less than once a month.

13:44C-3.4 Waiver

(No change in text.)

13:44C-5.2 Requirements for temporary licensure

(a) (No change.)

(b) An applicant for temporary licensure during a clinical internship shall submit the following to the Advisory Committee:

1.-2. (No change.)

3. A clinical internship plan signed by the applicant and supervisor in compliance with N.J.A.C. 13:44C-3.3;

4. Proof of a master's degree or its equivalent in audiology or speech-language pathology from an accredited college or university acceptable to the Department of Higher Education; and

5. (No change.)

13:44C-6.3 Excess hours credited to subseq ent renewal period

In the event that a candidate for license enewal shall complete in two years a number of hours in excess the number required in N.J.A.C. 13:44C-6.1, a maximum of five ours in excess of those required shall be credited toward license re ewal requirements for subsequent years; provided, however, that th five hours were earned within the six months immediately prior t license renewal.

13:44C-7.2 Exemptions

(a) The following are exempt from the pr visions of this chapter, pursuant to N.J.S.A. 45:3B-17:

1.-3. (No change.)

4. Any person certified as a speech corre tionist or its successor title, speech-language specialist, by the State Department of Education. However, such person is not exempt un ler this section for that portion of his or her time spent as a private p actitioner or providing services for which a fee may be paid by a r cipient of the service.

5.-7. (No change.)

13:44C-8.1 Business practices

(a) The following acts or business practi s shall be deemed to be unprofessional conduct:

1.-5. (No change.)

6. Charges for interest on unpaid accour s: Requiring a patient or a third party payor to pay interest on an unpaid account unless the patient has been notified of this policy n writing prior to the initiation of audiology or speech-language athology services.

7. Charges for unkept appointments: Re uiring a patient or a third party payor to pay a full or partial fee f r unkept appointments unless the patient has been notified of t s policy prior to the initiation of audiology or speech-language athology services.

8. Charges for unrecorded services: Requi ng a patient or a third party payor to pay for any evaluation, testi g, treatment or other services not documented in a patient char

9.-10. (No change.)

11. Advertising: Use or participation in t e use of any form of public communication regarding professional ervices, via print, electronic media or in-person solicitation, whicl does not comply with the provisions of (b) below or which conta ns a false, fraudulent, misleading or deceptive statement or clair . A false, fraudulent, misleading or deceptive statement includes b t is not limited to any statement or claim which:

i.-ii. (No change.)

iii. In the case of a testimonial containing n objective, verifiable statement of fact, cannot be verified by th advertiser;

ix.-x. (No change.)

12.-15. (No change.)

(b) The following shall apply in connect n with advertising:

1. All advertisements shall contain the ense number of the licensee or the licensee in charge.

2. An advertisement may contain either a l y or an expert testimonial, provided that such testimonial is ased upon personal knowledge or experience obtained from a pr vider relationship with the licensee or direct personal knowledge o the subject matter of the testimonial.

3. A lay person's testimonial shall not test to any technical matter beyond the testimonial giver's compet nce to comment upon.

4. An expert testimonial shall be rendere only by an individual possessing specialized expertise sufficient to llow the rendering of a bona fide statement or opinion.

5. An advertiser shall be able to substantia e any objective, verifiable statement of fact appearing in a testim nial, and failure to do so, if required by the Advisory Commit ee, may be deemed professional misconduct.

6. Copies of all printed advertisements an video or audio tapes of every advertisement communicated by el tronic media shall be retained by the licensee and made availa le for review by the Advisory Committee or its designee upon r quest for a period of three years. All advertisements in the lice see's possession shall indicate the accurate date and place of pu lication.

13:44C-8.2 Professional practices

(a) (No change.)

(b) The representation of a speech-language pathologist or audiologist as a physician rendering medical opinion or medical services shall be deemed to be outside the scope of speech-language pathology and audiology and, upon proof that a licensee is engaging in such conduct, he or she may be subject to disciplinary action.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS AND BENEFITS

Administration

Adopted New Rules: N.J.A.C. 17:1

Proposed: May 17, 1993 at 25 N.J.R. 1955(a).
Adopted: June 30, 1993 by Margaret M. McMahon, Director, Division of Pensions and Benefits.
Filed: July 2, 1993 as R.1993 d.376, **without change.**

Authority: N.J.S.A. 52:18A-96 et seq.

Effective Date: August 2, 1993.
Expiration Date: May 1, 1998.

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

Full text of the adopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 17:1.

(b)

DIVISION OF PENSIONS AND BENEFITS

State Health Benefits Commission

Prescription Drug Program

Adopted Recodification with Amendments: N.J.A.C. 17:1-10.1 and 10.2 to N.J.A.C. 17:9-8.1 and 8.2

Adopted Repeal: N.J.A.C. 17:1-10.3

Adopted New Rule: N.J.A.C. 17:9-8.3

Adopted Recodification: 17:1-11 to N.J.A.C. 17:9-9

Proposed: February 16, 1993 at 25 N.J.R. 675(b).
Adopted: May 7, 1993, by the State Health Benefits Commission, Patricia Chiacchio, Acting Secretary.
Filed: May 12, 1993 as R.1993 d.268, **without change.**

Authority: N.J.S.A. 52:14-17.27.

Effective Date: August 2, 1993.
Expiration Date: October 3, 1993, N.J.A.C. 17:9.

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

Full text of the adoption follows:

17:9-8.1 State Prescription Drug Program comparable to State Health Benefits Program

In accordance with the guidelines issued by the State Health Benefits Commission under terms of Chapter 12, Public Law 1975, and as those guidelines establish eligibility for coverage, the opportunity for an annual enrollment period, continuation of coverage during a leave of absence without pay, and circumstances concerning the change in, or the termination of, coverage on a basis identical to that of the State Health Benefit Program as administered by the Commission in accordance with the provisions of Chapter 49, Public Law 1961, as such apply to active State employees, the administration of the State Prescription Drug Program shall in all possible respects be identical to the State Health Benefits Program for such State employees. Any enrollment, application for a change in, or a termi-

nation of, coverage in the State Health Benefits Program shall be considered for a comparable result in the State Prescription Drug Program, except for the lack of rights of conversion. The annual enrollment period, or the effective date of coverage in the State Health Benefits Program for State employees shall likewise pertain to the State Prescription Drug Program.

17:9-8.2 Prescription drug cards and booklets

(a) All identification cards shall be issued by the carrier upon initial enrollment or change of coverage. Each issue shall reflect the bargaining unit in which the State employee participates. All cards and booklets will be distributed through the payroll and personnel officers. Requests for the general booklet shall be made to the Division.

17:1-10.3 (Reserved)

17:9-8.3 Termination; effective date

(a) The effective date of termination shall be the last day of the coverage period corresponding to the payroll period or month in which the last payroll deduction was made from the employee's salary for the coverage of dependents, if any are required, or the last charge shall have been paid by the State for employee's and/or his or her dependents' coverage or by the local employer for the employee and/or his or her dependents, as the case may be.

(b) Eligibility shall be terminated as follows:

1. In the case of leave of absence without pay, the coverage of an eligible employee and of an employee's dependents during any period of authorized leave of absence without pay shall terminate on the last day of the second coverage period following the last payroll period or month for which the employee received a salary payment; except that coverage of such employee and such employee's dependents may be continued by such employee, provided that the employee shall pay in advance the total charge required for the employee's coverage and coverage of the employee's dependents during such period of authorized leave of absence without pay; provided that no period of continued coverage, as provided above, shall exceed a total of 20 biweekly payroll periods, or nine months, during which the employee receives no pay.

2. In the event that an employee's active full-time employment shall cease and employee shall become a "part-time" employee, such employee's coverage, and the coverage of such employee's dependents, shall be terminated.

3. An employee whose coverage terminated as a result of a change from full-time to part-time status cannot be reenrolled until he or she has reestablished his or her eligibility for coverage by serving the normal waiting period as prescribed for new enrollees. In no event will the waiting period include any part-time service rendered by the employee.

4. The coverage of an employee whose eligibility has ceased because of his or her resignation, temporary layoff, separation through a reduction in force, or any other reason, and the coverage of his or her dependents, shall be terminated.

5. An employee, who has an award pending, or who received an award of periodic benefits under Workers' Compensation, may continue his or her coverage and the coverage of his or her dependents, provided that the employee shall pay to his or her employer in advance that portion, if any, of the charges due from the employees to continue the coverage under his or her existing coverage.

(a)

DIVISION OF PENSIONS AND BENEFITS

Judicial Retirement System

Adopted New Rules: N.J.A.C. 17:10

Proposed: May 17, 1993 at 25 N.J.R. 1956(a).
Adopted: June 30, 1993 by the Judicial Retirement System, Margaret M. McMahon, Secretary.
Filed: July 2, 1993 as R.1993 d.375, **without change.**

Authority: N.J.S.A. 43:6A-29d.

Effective Date: August 2, 1993.
Expiration Date: May 1, 1998.

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

Full text of the adopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 17:10.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Hearings

Notice of Defense; Multiple Party Representation

Adopted Amendment: N.J.A.C. 19:42-5.3

Proposed: March 15, 1993 at 25 N.J.R. 1082(b).
Adopted: July 8, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: July 12, 1993 as R.1993 d.387, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63c, 69a, 70d and 70k.

Effective Date: August 2, 1993.
Expiration Date: August 15, 1995.

Summary of Public Comments and Agency Responses:

Comments on the proposed amended rule were submitted by the Division of Gaming Enforcement (Division), Boardwalk Regency Corporation (BRC), Adamar of New Jersey, Inc. (Adamar), Resorts International Hotel, Inc. (Resorts) and Greate Bay Hotel and Casino, Inc. (Greate Bay). BRC, Adamar, Resorts and Greate Bay occasionally may be referred to collectively as "the casino licensees."

COMMENT: The Division generally supports adoption of the proposed amended rule and comments favorably on the changes made from an earlier draft proposal (since abandoned) which had addressed the same subject but which, in describing the petition process, had failed to identify any role for the Division. Thus, the Division applauds the fact that the proposed amendment requires any attorney who files a petition for multiple party representation with the Commission or the Office of Administrative Law (OAL) to serve a copy thereof with the Division as well (N.J.A.C. 19:42-5.3(c)). The Division also extols its inclusion in the intra-agency appeal process (N.J.A.C. 19:42-5.3(i)).

RESPONSE: The Commission acknowledges that the Division is an interested party in the subject petitions, just as it is in the underlying contested case from which the multiple representation issue arose. See N.J.S.A. 5:12-76b(4) and 110(a). Its right to notice and participation therein will neither be abridged nor abrogated. Indeed, the inadvertent failure to include any reference to the Division in the precursor of the proposed amendment was one of several problems that caused the Commission to abandon that proposal prior to publication.

COMMENT: The Division suggests several technical changes to further clarify the Division's role in proceedings on multiple party representation petitions. Specifically, the Division suggests that subsection (f) be amended to specify that the Division may respond to the petition within the time allotted for decision thereon (10 days, unless extended in accordance with subsection (h), (see N.J.A.C. 19:42-5.3(g)), and to specify further that any response filed by the Division shall be considered by the Commissioner hearing the matter initially or forwarded to the OAL if the matter is to be decided by an Administrative Law Judge.

RESPONSE: The Commission agrees that additional specificity regarding the time frame within which the Division shall file any response to the petition is desirable. However, such a change is substantive and therefore requires either republication or adoption and subsequent amendment. The Commission believes the latter approach is best under the circumstances and will therefore propose further amendments.

COMMENT: Lastly, the Division urges the further amendment of subsection (g) of the proposed amendment to include notification to the Division, as well as the petitioner, of the initial decision.

RESPONSE: The Commission acknowledge that providing notice of the disposition of the matter to all parties is a propriate. Therefore, an appropriate modification to the proposed am ndment has been made to N.J.A.C. 19:42-5.3(g) providing that all ir erested parties shall be advised of the decision.

COMMENT: Each of the casino licensees ch lenges the Commission's authority to adopt the proposed amended ru :, essentially contending that the rule infringes upon the exclusive aut ority of the New Jersey Supreme Court to regulate the practice of l: v.

RESPONSE: The Commission fully recogni es and respects the ultimate and pervasive authority of the New J rsey Supreme Court to regulate the practice of law in this State. H wever, the Commission rejects any suggestion that this amended rule i any way infringes upon the court's jurisdiction. In the *Matter of Teni e Hearing of Onorevole,* 103 *N.J.* 548, 554 (1986), the Court itself exp essly acknowledged that administrative agencies such as the Commissic can establish standards governing ethics qualifications of attorneys app aring before it. Further, the Court proclaimed that an attorney's ethi l status in a particular matter is best addressed in the first instance by he agency tribunal. The Court also observed that the agency has a vita interest in the integrity of the administrative proceedings over which t presides. Few, if any, enabling acts express greater concern for the ublic interest or for the integrity of the regulatory process than does he Casino Control Act. These heightened concerns fully justify the Commission's efforts to identify and rectify actual and potential cor licts that may arise in contested cases against persons who are alleged o have violated the Act.

COMMENT: The proposed amended rule cc nflicts with certain Rules of Professional Conduct (RPC), specifically F PC 1.7 and 1.13.

RESPONSE: The Commission recognizes tl it RPC 1.7 (Conflict of Interest; General Rule) and 1.13 (Organizati n as the Client) allow multiple representation in certain circumstance where the client's consent to the multiple representation after full disc osure from the attorney. However, the interests of the clients are not a one controlling in every circumstance under the RPC. Given that the proposed rule requires petitions for approval only in cases involving alle ed regulatory violations, and given the infusion of public interests inhe nt in such matters, the Commission believes that the proceedings gover ed by the amended rule are matters where consent to continued repres ntation may not always be determinative. See RPC 1.7(c)(1) and (2). Even absent analogy to RPC 1.7(c), there is no "conflict" between th proposed amendment and the RPC. These court rules are incorpo ated into the proposed amended rule as part of the substantive stan rds by which petitions for multiple party representation are to be d scribed.

COMMENT: BRC and, to a lesser extent, l esorts acknowledge the general proposition that agencies have inhere authority to prescribe procedures governing, among other things, attor ey ethics, but assert that the *Onorevole* decision also notes that any f mulation of standards relating to ethics qualifications must be "within he limitations imposed by paramount-judicial authority . . . ." The esse ce of these comments is that, because the Supreme Court addressed th issue of multiple party representation and specifically representation of corporate directors, officers and employees (RPC 1.13(e)), the RPCs supersede" or preempt any Commission rule on the same subject.

RESPONSE: As previously noted, the Comr ission finds no conflict between its amended rule and the RPC.

COMMENT: BRC, Resorts and Sands note hat the proposed rule unfairly presumes a conflict in every situation c vered by the amended rule. Sands found this presumption insulting t casino counsel which, in its assessment, has traditionally handled etl cal matters "well and truly." Resorts asserts a similar position.

RESPONSE: The Commission agrees that, y and large, industry counsel have proven sensitive to ethical concer in the past. No insult or slight was intended by the proposal or its adc tion. Nevertheless, the Commission believes the amended rule con erning multiple party representation petitions is a reasonable and arranted prophylactic measure designed to advance and assure public c nfidence in the integrity of the regulatory process.

COMMENT: BRC finds the amended rule "e pecially inappropriate" because liability of the casino is generally ba d on the acts of an individual employee, thereby creating identical ir erests between casinos and their employees. Resorts makes the same p int observing that the employees' conduct is imputed to the casino, t us rendering their interests "closely tied."

RESPONSE: The Commission does not ag e that the employer-employee relationship establishes, in the majori of the cases, a unity of interests as would minimize conflict situations. Because personal accountability for regulatory compliance is a hallmark of our regulatory scheme, the interests of the employer and one or more of its employees involved in a violation complaint are often quite adverse. A few examples will illustrate the point. Assuming, as is often the case, the regulatory violation is manifest or admitted, the ultimate question both in settled and adjudicated contested cases is the proper assessment of penalties. Did the employee commit the violation because she didn't know (or care) what she was doing or was she inadequately trained? Did he do it because he chose to or was he directed to by a superior (who may or may not be a party respondent)? Did the employees make errors in judgment or were they acting beyond the scope of their employment? Answers to these and other such questions could greatly affect the penalty-assessment issue. The Commission believes that the representation of multiple respondents by the same counsel, in these and other circumstances raise important public interest concerns which the Commission is obligated to address. The amended rule provides a procedural mechanism for doing so.

COMMENT: BRC acknowledges that the goal of the amended rule might be worthy, but points out there has been no demonstration to the public of past failure to obtain prompt resolution of real or potential conflicts. Sands termed the proposal "overkill."

RESPONSE: As noted previously, the measure is viewed by the Commission as a reasonable prophylactic measure put to good purpose.

COMMENT: BRC suggests that a more "traditional approach" to the problem would be preferable. Rather than requiring the filing of a petition in every instance where counsel seeks to represent multiple party respondents, BRC would prefer a system that would permit Division or Commission staff counsel to raise the issue of actual or potential conflict where the situation warranted it in a particular case. The issue could be raised, posits BRC, at the settlement/prehearing conference which is routinely scheduled early in the contested case process. Thereafter, counsel for the respondents would be given the opportunity to remedy the perceived conflict, failing which the matter would be presented to the Commission.

RESPONSE: The Commission recognizes that this suggestion is not without merit, but nevertheless remains convinced that the better approach at this time is to require the filing in every instance contemplated by the amended rule. Over time, after considerable knowledge and experience in these matters is garnered by industry counsel, Division and Commission staff alike, as well as the Commission itself, it may well be appropriate to revisit this rule and consider a "call forward" system such as BRC advocates here.

COMMENT: Adamar and Sands assert that the amended rule will increase costs incurred by casino licensees in defending violation cases before the Commission.

RESPONSE: It is unclear whether the increased costs the commenters are referring to relates only to the petition process (in which case the Commission rejects the comment out of hand) or to the provisions of counsel to individual respondents whose separate representation is required. The issue of the costs of separate representations raises a number of concerns that are beyond the scope of this amended rule. However, it suffices to note here that the possibility of financial strain upon individuals required to obtain independent counsel is a factor relevant to proper resolution of a petition under this amended rule. See *Petition for Review of Opinion,* 552, 102 *N.J.* 194, 206 (1986).

COMMENT: Resorts' comments that, if the Commission's authority were to be extended to determining whether a conflict exists in multiple party representation situations, arguably there would be nothing to preclude extension of authority into other critical areas of attorney-client relationships such as attorney-client privilege, an attorney's work product privilege or other areas adequately and effectively addressed by current ethics rules.

RESPONSE: As previously noted, the New Jersey Supreme Court has already acknowledged the right if not the obligation of administrative agencies to render determinations "as to an attorney's ethical status or qualifications in a particular case . . . ."

Moreover, although the comments regarding privileges was probably facetious and is in any event beyond the scope of the amended rule under consideration, the Commission notes that, as an agency with quasi-judicial authority and one subject to the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, it may indeed be required to pass upon matters such as attorney-client privilege. See N.J.A.C. 1:1-15.4.

COMMENT: Assuming *arguendo* the legality of the rule, Resorts' comments that it is problematic in that it requires the attorney to file

a petition for approval at a time early in the process when knowledge of "all relevant facts" is "generally not possible."

RESPONSE: The Commission recognizes the difficulty involved, but believes that the need for prompt, efficient resolution of potential conflict of interest situations outweighs any such concerns.

COMMENT: Although noting the "extraordinary qualifications" and unquestioned ability of the current Chairman, Resorts observes that non-lawyer Commissioners might also be called upon to evaluate and render determinations upon legal ethics issues, matters which they may not be experienced in making.

RESPONSE: Many matters which the Commissioners are required to rule upon involve complex even arcane legal issues. Moreover, under the amended rule such decisions are made upon the advice of the General Counsel, which would compensate for the lack of any technical legal training or experience. Lastly, the Commission would note that legal training is not a requirement for ruling on attorney ethics matters in any event. The Supreme Court Advisory Committee on Professional Ethics consists of eighteen members, three of whom are required by rule to be non-lawyers. R.1:19-1.

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

19:42-5.3 Notice of defense; multiple party representation

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

(c) In any circumstance described in (d) below, an attorney who intends to represent more than one party in the same or a substantially related matter shall file a petition for approval no later than 10 days after filing a pleading or entering an appearance in the matter, whichever is earlier. The petitioner shall file such petition with the Commission, or with the Office of Administrative Law if the matter has been transmitted to it, and one copy with the Division.

(d) No attorney shall represent the following parties respondent, unless the petition is granted:

1. A casino licensee or applicant and any person who at the time of the alleged violation was an employee of said licensee or applicant;

2. A casino service industry enterprise licensee or applicant and any person who at the time of the alleged violation was employed by said licensee or applicant;

3. Two persons who at the time of the alleged violation were employed by the same casino licensee or applicant where one such employee had supervisory responsibility over the other employee; or

4. Two persons who at the time of the alleged violation were employed by the same casino service industry enterprise licensee or applicant where one such employee had supervisory responsibility over the other employee.

(e) Any petition filed pursuant to this section shall be in writing and shall include:

1. The nature of the petition and the reasons therefor;

2. The name and docket number of the matter involved;

3. The name and address of the parties represented;

4. A concise statement of the nature of the allegations raised in the complaint and the reasons why no conflict of interest is presented;

5. The certification of the attorney/petitioner detailing the basis of his or her belief that the representation will not adversely affect his or her relationship with each party respondent; and

6. The certification of each respondent acknowledging full disclosure of the potential conflict of interest and consenting to his or her representation by the attorney/petitioner.

(f) Upon receipt of a petition under (e) above:

1. If the matter will be heard by the Commission, the matter shall be forwarded to the Chair or to such other Commission member as the Chair may designate. Thereafter, with the advice and recommendation of the General Counsel of the Commission, the petition shall be evaluated on the papers submitted and in conformity with the Rules of Professional Conduct governing conflict of interest, R.P.C. 1.7 through 1.10, and any applicable statutory provisions, judicial decisions, rules of court, or determinations of the Supreme Court's Advisory Committee on Professional Ethics or other appropriate authority.

2. If the matter has been transmitted to the Office of Administrative Law for hearing, the petition shall be forwarded to the Office of Administrative Law for determination by an administrative law judge.

(g) *[The attorney/petitioner]* ***All interested parties*** shall be advised of the decision of the Chair or the Chair's designee either orally or in writing no later than 10 days after receipt of the petition. If the decision is communicated orally, it shall be reduced to writing and mailed to the petitioner within five days.

(h) Any time limitations imposed by (c) and (g) above may be extended by the Chair or the Chair's designee for good cause, upon notice to all parties.

(i) Any party may appeal from the determination of the Chair or the Chair's designee to the full Commission upon written notice filed within five days. If the petition is determined by an administrative law judge, appeal shall be to the Director of the Office of Administrative Law pursuant to N.J.A.C. 1:1-14.10.

COMMUNITY AFFAIRS

(a)

OFFICE OF HUMAN RESOURCES

Disability Discrimination Grievance Procedure

Adopted New Rules: N.J.A.C. 5:5

Proposed: April 5, 1993 at 25 N.J.R. 1315(a).

Adopted: June 28, 1993 by Stephanie R. Bush, Commissioner, Department of Community Affairs.

Filed: June 30, 1993 as R.1993 d.373, **without change.**

Authority: N.J.S.A. 52:27D-3(e), 42 U.S.C. Sec. 12101 et seq. and 28 C.F.R. §35.107.

Effective Date: August 2, 1993.

Expiration Date: Exempt (see 28 C.F.R. Part 35).

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

CHAPTER 5
DISABILITY DISCRIMINATION GRIEVANCE PROCEDURE

SUBCHAPTER 1. DEFINITIONS

5:5-1.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Department of Community Affairs.

"Designated decision maker" means the Commissioner of Community Affairs or his or her designee.

SUBCHAPTER 2. GENERAL PROVISIONS

5:5-2.1 Purpose

(a) These rules are adopted by the agency in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, 28 C.F.R. 35.107.

(b) The purpose of these rules is to establish a designated coordinator whose duties shall include assuring that the agency complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint filed with the agency pursuant to N.J.A.C. 5:5-4.

5:5-2.2 Required ADA notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone

who inquires regarding the agency's compli ıce with the ADA or the availability of accommodation which w uld allow a qualified individual with a disability to receive servi :s or participate in a program or activity provided by the agency

AGENCY NOTICE OF ADA PI OCEDURE

The agency has adopted an internal grievan e procedure providing for prompt and equitable resolution of compl nts alleging any action prohibited by the U.S. Department of Justice egulations implementing Title II of the Americans with Disabilit s Act. Title II states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded fr n participation in, be denied the benefits of or be subjected to discr nination" in programs or activities sponsored by a public entity.

Rules describing and governing the intern l grievance procedure can be found in the New Jersey Adminis ative Code, N.J.A.C. 5:5-1.1 et seq. As those rules indicate, con plaints should be addressed to the agency's designated ADA Coo dinator, who has been designated to coordinate ADA compliance e forts, at the following address:

ADA Coordinator
New Jersey Department of Comm nity Affairs
CN 800
Trenton, New Jersey 08625

1. A complaint may be filed in writing or or lly, but should contain the name and address of the person filing . and briefly describe the alleged violation. A form for this purpos is available from the designated ADA coordinator. In cases of em loyment related complaints, the procedures established by the De artment of Personnel, N.J.A.C. 4A:7-1.1 et seq. will be followed v here applicable.

2. A complaint should be filed promptly w hin 20 days after the complainant becomes aware of the alleged vi lation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered or a case-by-case basis).

3. An investigation, as may be appropriate will follow the filing of a complaint. The investigation will be con ucted by the agency's designated ADA Coordinator. The rules cor emplate informal but thorough investigations, affording all interes ed persons and their representatives, if any, an opportunity to sul nit evidence relevant to a complaint.

4. In most cases a written determination a to the validity of the complaint and a description of the resolution if any, will be issued by the designated decision maker and a c py forwarded to the complainant no later than 45 days after its iling.

5. The ADA coordinator will maintain th files and records of the agency relating to the complaints filed.

6. The right of a person to a prompt an equitable resolution of the complaint filed hereunder will not be in paired by the person's pursuit of other remedies such as the filing f an ADA complaint with the responsible Federal department or ag ncy or the New Jersey Division on Civil Rights. Use of this grievan e procedure is not a prerequisite to the pursuit of other remedie .

7. The rules will be construed to protect he substantive rights of interested persons, to meet appropriate ıe process standards and to assure that the agency complies wi the ADA and implementing Federal rules.

SUBCHAPTER 3. DESIGNATED ADA (OORDINATOR

5:5-3.1 Designated ADA coordinator

(a) The designated coordinator of ADA ompliance and complaint investigation for the agency is:

ADA Coordinator
New Jersey Department of Commı ity Affairs
CN 800
Trenton, New Jersey 08625

(b) All inquiries regarding the agency's com liance with the ADA and the availability of accommodation which w uld allow a qualified individual with a disability to receive servic or participate in a program or activity provided by the agency ıould be directed to the designated coordinator identified in (a) bove.

(c) All complaints alleging that the agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in N.J.A.C. 5:5-4.

SUBCHAPTER 4. ADA COMPLAINT PROCEDURE

5:5-4.1 Complaint procedure

A complaint alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or orally to the designated ADA coordinator identified in N.J.A.C. 5:5-3.1. A complaint alleging employment discrimination will be processed pursuant to the rules of the Department of Personnel, N.J.A.C. 4A:7-1.1 through 3.4, if those rules are applicable.

5:5-4.2 Complaint contents

(a) A complaint submitted pursuant to this subchapter may be submitted in or on the form set forth at N.J.A.C. 5:5-4.3.

(b) A complaint submitted pursuant to this subchapter shall include the following information:

1. The name of the complainant, and/or any alternate contact person designated by the complainant to receive communication or provide information for the complainant;

2. The address and telephone number of the complainant or alternate contact person; and

3. A description of manner in which the ADA has not been complied with or has been violated, including times and locations of events and names of witneses if appropriate.

5:5-4.3 Complaint form

The following form may be utilized for the submission of a complaint pursuant to this subchapter:

Americans with Disabilities Act Grievance Form

Date: _____

Name of grievant: _____

Address of grievant: _____

Telephone number of grievant: _____

Disability of grievant: _____

Name, address and telephone number of alternate contact person:

_____

_____

Agency alleged to have denied access:

Department: _____

Division: _____

Bureau or office: _____

Location: _____

Incident or barrier:

Please describe the particular way in which you believe you have been denied the benefits of any service, program or activity or have otherwise been subject to discrimination. Please specify dates, times and places of incidents, and names and/or positions of agency employees involved, if any, as well as names, addresses and telephone numbers of any witnesses to any such incident. Attach additional pages if necessary.

_____

_____

_____

_____

_____

_____

Proposed access or accommodation:

If you wish, describe the way in which you feel access may be had to the benefits described above, or that accommodation could be provided to allow access.

A copy of the above form may be obtained by contacting the designated ADA coordinator identified at N.J.A.C. 5:5-3.1.

5:5-4.4 Investigation

(a) Upon receipt of a complaint submitted pursuant to this subchapter, the designated ADA coordinator will notify the complainant of the receipt of the complaint and the initiation of an investigation into the matter. The designated ADA coordinator will also indicate a date by which it is expected that the investigation will be completed, which date shall not be later than 45 days from the date of receipt of the complaint, unless a later date is agreed to by the complainant.

(b) Upon completion of the investigation, the designated ADA coordinator shall prepare a report for review by the designated decision maker for the agency. The designated decision maker shall render a written decision within 45 days of receipt of the complaint, unless a later date is agreed to by the complainant, which decision shall be transmitted to the complainant and/or the alternate contact person if so designated by the complainant.

EDUCATION

(a)

STATE BOARD OF EDUCATION

School Ethics Commission

Adopted New Rules: N.J.A.C. 6:3-9

Proposed: May 17, 1993 at 25 N.J.R. 1924(a).

Adopted: July 9, 1993 by State Board of Education, Mary Lee Fitzgerald, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: July 12, 1993 as R.1993 d.394, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:12-21 et seq.

Effective Date: August 2, 1993.

Expiration Date: June 7, 1998.

Summary of Public Comments and Agency Responses:

Two individuals, Mr. Mel Kreps, Chairman, Administrative Code Committee, and Mr. Eugene Keyek, Assistant Executive Director, New Jersey Association of School Business Officials, spoke at the April 21, 1993 public testimony session provided by the State Board of Education. Three letters with comments were received from New Jersey Association of School Business Officials, Dr. Robert Boose, Executive Director, New Jersey School Boards Association and Ms. Jean Paashaus.

COMMENT: A commenter raised concern with the definition of the term "school official," which refers to a board member or administrator, in N.J.A.C. 6:3-9.2. The commenter felt that school board members should be defined separately from other "school officials," and as such, not subject to the Commissioner's affirmance of recommendations for sanctions as it could undermine their independence as public representatives.

RESPONSE: N.J.S.A. 18A:12-23 of the School Ethics Act defines school board members as school officials and this definition may not be changed by the regulations. Furthermore, school board members have historically been subject to the Commissioner's recommendations for sanctions as evidenced by case law, including *Edgar Brown and Oliver Brown et al. v. Board of Education of City of Newark, 1984 S.L.D.* 671, *aff'd State Board* 683. This case states that the Commissioner is obliged to act to disqualify any such individual found to be in conflict with his or her duties as a board member.

COMMENT: Two commenters disagree with the requirement under N.J.A.C. 6:3-9.3(a), which requires that three copies of the ethics disclosure forms be made, one to be retained by the local district, one with the county superintendent's office, and one with the School Ethics Commission office in Trenton. The commenters felt that this work was duplicative since copies can be made at the State level.

RESPONSE: The forms are public documents and, thus, must be made available to the public for review and by photocopy. The Department does not feel people should have to travel to Trenton simply to look at public documents but that they should be available at the local district office and at the county office level.

COMMENT: One commenter raised concern that N.J.A.C. 6:3-9.3(g) presents a conflict of interest since it requires board secretaries, before transmitting disclosure forms to the county superintendent, to certify that each form has been received, that all forms have been filed, and that all questions have been answered or indicated as not being complete.

RESPONSE: It is inefficient for the Commission staff to review over 15,000 forms when board secretaries can simply review the forms for completion prior to transmitting them. The task of checking forms by board secretaries is an efficient method of distributing this workload among the districts. However, the Board has made a change upon adoption from certifying to simply checking the disclosure forms, thereby addressing the commenter's concern regarding conflict of interest.

COMMENT: N.J.A.C. 6:3-9.3(g) requires that board secretaries certify that all forms have been filed and that all questions have been answered or indicated as not being applicable, and that each copy is signed by an original signature. Two commenters asked that the section be amended to delete the review and certification requirement since the regulation may place a board secretary in an adversarial relationship with his or her employers.

RESPONSE: The Department agrees that some level of modification is appropriate. N.J.A.C. 6:3-9.3(g) has been changed upon adoption so that it does not require board secretaries to certify, but instead to assist Commission staff in its review of these 15,000 forms, by simply checking the forms for completion prior to transmitting them.

COMMENT: One commenter requested clarification of N.J.A.C. 6:3-9.4 to define what constitutes a newly elected or appointed board member with regard to the board member training mandate.

RESPONSE: The Department agrees that as written N.J.A.C. 6:3-9.4 may cause some uncertainty in determining who is considered a newly elected or appointed board member. To address this concern the Department has added to N.J.A.C. 6:3-9.2 a definition for newly elected or appointed board members.

COMMENT: One commenter requested clarification of N.J.A.C. 6:3-9.4(b) to define the length of prior service that would render an individual a newly elected or appointed board member and require that individual to attend the board member training seminar.

RESPONSE: Since N.J.A.C. 6:3-9.4(b) requires a newly elected or appointed board member to attend the board member training, the Department feels that any type of service for any length of time would constitute prior service. The Department believes N.J.A.C. 6:3-9.4(b) is self-explanatory; thus, there is no need to place anything more in the regulations.

COMMENT: Two commenters felt that N.J.A.C. 6:3-9.4(b), which requires the board secretary to certify in writing to the county superintendent that his or her board members have completed the mandated New Jersey School Boards Association (NJSBA) training requirement, is an excess effort when these names can be transmitted to the county superintendent directly from the NJSBA.

RESPONSE: The Department disagrees. The board secretary is in the best position to keep track of his or her board member attendance at the New Jersey School Boards Association training. The Department is, however, recommending that N.J.A.C. 6:3-9.4(b) be amended to lessen the burden of responsibility on the board secretary by eliminating the certification requirement.

COMMENT: A commenter asked that N.J.A.C. 6:3-9.15(d)3, which discusses frivolous complaints, be amended to include the amount of penalty that may be charged against an individual for a frivolous claim directly on the complaint form.

RESPONSE: The Department disagrees. Placing the amount that may be charged for a frivolous claim could have a "chilling effect" on those persons that intend to file a claim. The Commission feels that the forms are already designed to discourage complaints because they require

individuals alleging complaints to seek a notary to swear to the truthfulness of the content. Adding the amount of per lty that may be charged would further discourage people from filing.

Full text of the adopted new rules fol)ws (additions to the proposal indicated in boldface with asterisks ***thus***; deletions from the proposal indicated in brackets with ast risks *[thus]*):

SUBCHAPTER 9. SCHOOL ETHICS C)MMISSION

6:3-9.1 Scope and purpose

(a) The rules set forth in this subchapter ıave been adopted for the purpose of effectuating the legislati e intent of N.J.S.A. 18A:12-21 et seq., the School Ethics Act (I L. 1991, c.393), which seeks to "... ensure and preserve public onfidence ..." in the integrity of elected and appointed school boa d members and school administrators.

(b) To achieve this goal the Legislature has adopted N.J.S.A. 18A:12-24 which prescribes a code of ethics l / which school officials are to be guided in the conduct of their of ces and positions and created a School Ethics Commission specifi ılly for the purpose of enforcing those ethical standards through a p ·ocedure for reviewing complaints of ethical violations, investigatin those complaints and ultimately rendering recommendations to tl : Commissioner as to the imposition of sanctions when violation: are demonstrated.

6:3-9.2 Definitions

The following words and terms, when used ı this subchapter, shall have the following meanings unless the cc ıtext clearly indicates otherwise.

"Administrator" means any officer, other han a board member, or employee of a local school district who:

1. Holds a position which requires a certifi ate that authorizes the holder to serve as school administrator, princ)al, or school business administrator; or

2. Holds a position which does not requir that the person hold any type of certificate but is responsible for making recommendations regarding hiring or the purchase or acq sition of any property or services by the local school district; or

3. Holds a position which requires a certifi ıte that authorizes the holder to serve as supervisor and who is r sponsible for making recommendations regarding hiring or the pu hase or acquisition of any property or services by the local schoo district.

"ALJ" means an administrative law judg from the Office of Administrative Law.

"Board member" means any person holdin membership, whether by election or appointment, on any board o education other than the State Board of Education.

"Censure" means a formal public action r ad into the record of the School Ethics Commission to rebuke a s hool official who has been determined by the Commission to hav been in violation of N.J.S.A. 18A:12-21 et seq.

"Commission" means the School Ethics Cc nmission and its staff as created pursuant to N.J.S.A. 18A:12-21 (seq.

"Commissioner" means the Commissioner f Education or his or her designee.

"Complainant" means the person bringing complaint of alleged violation of N.J.S.A. 18A:12-21 et seq.

"Financial Disclosure Statement" means the statement of personal finances which school officials are required to ınnually file pursuant to N.J.S.A. 18A:12-21 et seq.

"Income" for purposes of these rules shall be as defined by the Internal Revenue Service except as otherwis provided in N.J.S.A. 18A:12-26a(1).

"Local School District" for purposes of thes rules means any local or regional school district established pursu ınt to Chapter 8 or Chapter 13 of Title 18A of the New Jersey Sta ıtes and shall include jointure commissions, county vocational sc ools, county special services districts, educational service commis ions, educational research and demonstration centers, environme al education centers, and educational information and resource c ıters.

"Member of the immediate family" means he spouse or dependent child of a school official residing in ıe same household. Dependent child shall be defined as any child claimed as a dependent on the school official's Federal and state tax returns.

Newly elected or appointed board member" means any board member who has never served as a member of either a elected or appointed school board.

"OAL" means the Office of Administrative Law.

"Personal/Relative Disclosure Statement" means the statement required by N.J.S.A. 18A:12-21 et seq. of a school official setting forth whether said official has a relative or any other person related to the school official by marriage, employed by the district in which he or she serves; whether said official or a relative is a party to a contract with the school district in which the school official holds office or position; or whether the school official or a relative is employed by, receives compensation from, or has an interest in, any business which is a party to a contract with the school district in which the school official holds office or position.

"Related to the school official by marriage" as used in the statute shall be limited to mother-in-law, father-in-law, brother-in-law and sister-in-law.

"Relative" means the spouse, natural or adopted child, parent or sibling of a school district.

"Reprimand" as a sanction imposed by the Commissioner upon recommendation of the School Ethics Commission shall consist of a letter from the Commission rebuking a school official for having been found to have breached the standards of conduct prescribed by N.J.S.A. 18A:12-21 et seq.

"Respondent" means the board member or administrator against whom a complaint is made pursuant to N.J.S.A. 18A:12-21 et seq.

"School official" means a board member or an administrator.

"Spouse" means the person to whom the school official is legally married under New Jersey law.

6:3-9.3 Filing of disclosure statements and procedures in the event of incomplete filing or failure to file disclosure statements

(a) Annually, on or before April 30th of each year or as otherwise provided in these rules all school officials shall file, on forms provided through the county superintendent both a Financial Disclosure Statement and a Personal/Relative Disclosure Statement with the Commission. Additional copies of the aforesaid statements shall be prepared by the school official and maintained on file at the local district and the office of the county superintendent in order to facilitate public access to the documents. All disclosure statements filed in accordance with N.J.S.A. 18A:12-21 et seq. and these rules shall be public records.

(b) In order to comply with the requirement in (a) above, each local district board secretary shall annually, on or before February 1, cause to be developed and transmitted to the county superintendent a list of names of those school officials, by office and position, whose responsibilities would require the filing of the Financial and Personal/Relative Disclosure Statements pursuant to the criteria contained in N.J.S.A. 18A:12-21 et seq. and these rules. Offices and positions vacant or to become vacant by virtue of expiration of terms or personnel leaving the district are to be listed.

(c) Board members in Type II school districts elected to their positions in the annual April school election shall file within 30 days of taking office. The board secretary shall, upon election of new board members, inform the county superintendent of the names of the newly elected members and the county superintendent shall provide the forms necessary for compliance.

(d) Board members in Type II districts who are appointed to fill vacancies will file the requisite disclosure forms within 30 days of taking office. The board secretary will upon such appointment inform the county superintendent of the appointment. The county superintendent shall provide the member with the required disclosure statements.

(e) Board members in Type I school districts who are initially appointed to take office on May 16 or June 1 as the case may be, shall file the required disclosure statements within 30 days of taking office. Board members in Type I districts appointed to fill vacancies shall likewise file within 30 days of taking office. The board secretary shall inform the county superintendent of the appointment of new

board members and the county superintendent shall provide the required forms.

(f) Administrators as defined in this subchapter, appointed to fill vacancies after the April 30 filing date shall file the required disclosure forms within 30 days of the appointment. The board secretary shall inform the county superintendent of the appointment of any new administrators or supervisors subject to the requirement to file disclosure statements under the School Ethics Act.

(g) On or before April 30, May 16 or June 1 as the case may be, the board secretary of each local school district shall, before transmitting the completed disclosure forms to the county superintendent, *[certify]* ***check*** that he or she has reviewed each disclosure form to assure that both required forms have been filed; that all questions have been answered or indicated as not being applicable; and that each copy is signed by an original signature. Further, the board secretary shall provide to the county superintendent the names of all persons on the February 1 list of school officials compiled in accordance with (b) above and all newly elected or appointed persons who have failed to file as required by N.J.S.A. 18A:12-21 et seq.

(h) Failure to file as prescibed by N.J.S.A. 18A:12-21 et seq. shall constitute a violation of the School Ethics Act and shall result in the suspension and/or removal of a school official upon recommendation of the Commission and affirmance of the Commissioner.

(i)Prior to any action taken by the Commission for failure to file, the Commission shall direct that the school official show cause in writing under oath within 20 days why the penalty of suspension and/or removal should not be imposed. The Order to Show Cause shall be considered the equivalent of the complaint required by N.J.S.A. 18A:12-29.

(j) Upon receipt of the response to the Order to Show Cause or upon expiration of the time period for so filing the Commission shall proceed to a determination. The school official shall be advised of his or her right to appear before the Commission, be represented by counsel and present witnesses on his or her behalf prior to the Commission's making its probable cause determination.

(k) If the Commission determines that a filing is incomplete, it shall first return the filing to the school official for completion within 20 days of receipt of the returned filing. At the expiration of such time period or upon further receipt of a filing which fails to provide such information as required by statute, the Commission shall issue an order directing the school official in writing under oath to show cause within 20 days why the Commission should not impose such sanctions as permitted pursuant to N.J.S.A. 18A:12-29. If such order is not returned within the 20-day period, or if the response is returned with the school official's refusal to properly file, the Commission may assume that the school official's incomplete filing is in effect a failure to file and the Commission shall proceed to a determination. The school official shall be advised of his/her right to appear before the Commission, be represented by counsel and present witnesses on his/her behalf.

(l) If the school official responds to the Order to Show Cause by asserting either that the filing is complete or other appropriate factors, the matter shall be included as a contested case under N.J.S.A. 18A:12-29(b) and transmitted to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 6:3-9.18 and 9.19.

6:3-9.4 Board member training

(a) Each newly elected or appointed board member shall during the first year of his or her first full term on any board complete a training program prepared and offered by the New Jersey School Boards Association which shall include in its content instruction relative to the board members responsibilities under the School Ethics Act.

(b) The New Jersey School Boards Association shall notify the board secretary in writing, when newly elected or appointed board members have attended a training program that satisfies the training mandate. The board secretary shall *[certify in writing]* ***transmit the names*** to the county superintendent *[that]* ***of*** the board member(s) ***who*** have completed the requirement.

(c) By March 31 of each year the New Jersey School Boards Association shall present to the School Ethics Commission a list of those board members who have not fulfilled the training mandate for the previous filing period.

(d) Board members failing to comply with the training mandate shall be considered in violation of N.J.S.A. 18A:12-33. The Commission shall proceed thereafter in conformance with the procedures set forth in N.J.A.C. 6:3-9.3(i).

6:3-9.5 Functions and authority of School Ethics Commission

(a) Pursuant to the provisions of N.J.S.A. 18A:12-21 et seq. the School Ethics Commission shall:

1. Prescribe a Financial Disclosure Statement and a Personal/Relative Disclosure Statement in accordance with N.J.S.A. 18A:12-26 and 25 respectively, to be filed by all school officials as defined herein on or before April 30 of each year or at such other times as these rules may require;

2. Appoint such professional and clerical staff and incur such expenses as may be necessary to carry out the provisions of N.J.S.A. 18A:12-21 et seq. within the limits of funds appropriated or otherwise made available to it. All appointments shall be made in accordance with the provisions of Title 11A of the New Jersey Statutes;

3. Issue advisory opinions, receive and investigate complaints raised pursuant to section 9 of the School Ethics Act (N.J.S.A 18A:12-29) and conduct such hearing as may be necessary to determine whether probable cause exists to credit the allegation raised in any complaint brought before it;

4. Receive and retain disclosure statements required by the Act. Requests for copies of disclosure statements will be subject to copying fees pursuant to N.J.S.A. 47:1A-1 et seq.;

5. Have the authority to compel the attendance of such witnesses and the production of such documents as it may deem necessary and relevant to carrying out its duties under the Act;

6. Be empowered, along with the persons appointed by it, to administer oaths and examine witnesses under oath; and

7. Recommend to the Commissioner the reprimand, censure, suspension or removal of school officials found to have violated the School Ethics Act.

6:3-9.6 Membership of school ethics commission

The School Ethics Commission shall consist of nine members appointed for three year terms in the configuration and manner prescribed by N.J.S.A. 18A:12-21 et seq.

6:3-9.7 Officers of School Ethics Commission

(a) In accord with the provisions of N.J.S.A. 18A:12-21 et seq. the Commission, by majority vote, shall elect one member to serve as chairperson for a term not to exceed one year.

(b) Should the chairperson resign or otherwise be unable to serve out his or her term, the remaining Commission members shall, by majority vote, elect a chairperson from among their membership to fill out the remainder of the unexpired term.

(c) Should the chairperson be unable to attend any regular or special meeting of the Commission, the Commission, by majority vote of the quorum present, shall select a temporary chairperson to preside over the meeting.

6:3-9.8 Duties of chairperson

The chairperson shall preside over the meetings of the Commission and shall perform all duties incidental to that office.

6:3-9.9 Term of office of chairperson

The chairperson shall serve a one-year term which shall commence on July 1 of each year.

6:3-9.10 Regular meetings

Regular monthly meetings shall be held at such time, place and on such dates as established by the Commission and notice of such regular meetings shall be made in accordance with N.J.S.A. 10:4-6 et seq., Open Public Meetings Act.

6:3-9.11 Special meetings

Special meetings may be called by the Commission chairperson at any time or at the request of any three members. Three days notice of any special meeting shall be given to each member. Public notice of such special meeting shall be made pursuant to N.J.S.A. 10:4-8.

6:3-9.12 Quorum

A quorom shall consist of a majority of the number of voting members of the Commission.

6:3-9.13 Committee structure

(a) The Commission shall act as a comi ittee of the whole.

(b) The Commission chairperson shall se :ct a nominating committee of three persons whose function it shal be to select a nominee for chairperson to present to the committee s a whole for approval at its May meeting.

(c) Special committees may be appointec by the chairperson to consider and make recommendations to th : Commission on any matter.

6:3-9.14 Advisory options

(a) Any school official may request an ad sory opinion from the Commission as to whether any proposed co duct or activity would constitute a violation of the provisions of ıe School Ethics Act.

(b) Request for advisory opinions must cl arly set forth in detail the specific conduct or activity the school off ial seeks to undertake and the exact role he or she will play in tl ıt activity or conduct.

(c) Upon receipt of a request for an advi ory opinion, the Commission shall assign a file number to the r quest.

1. During the course of any staff work a d/or Commission deliberation with regard to the request for ar advisory opinion, the request shall be identified for purposes of pı blic access only by file number and not by the name(s) of school fficial(s) involved.

2. No information regarding any request f r an advisory opinion shall be made public unless the information i incorporated into the advisory opinion and made public in accor(ınce with (e) and (f) below.

(d) The Commission and/or its staff reser :s the right to require additional information from the person see ng an advisory or to require the person's appearance before it (its staff.

(e) Advisory opinions issue by the Commis ion shall not be made public unless six members shall vote to direc the opinion be made public.

(f) Advisory opinions made public by the C mmission shall delete the name and district of the school official r questing the advisory.

(g) The Commission shall render a respo se to the request for an advisory opinion at its next monthly meeti g following its receipt of all relevant information and documentati n needed to make a determination on the request.

(h) Notwithstanding the foregoing, the Co mission may respond to a request for an advisory opinion by ref ring the issue raised to the Office of the Attorney General.

6:3-9.15 Filing and service of a complaint

(a) To file a complaint with the School Et cs Commission alleging a violation of the School Ethics Act, N.J. A. 18A:12-21 et seq., a complainant must file an original and two c ies of such complaint using the form set forth in N.J.A.C. 6:3-9.1(Any member of the Commission may also file a complaint.

(b) No complaint shall be accepted by the Commission unless it is signed under oath by the complainant.

(c) Upon receipt of the complaint the Co mission shall serve a copy of the complaint on the school officia or officials named.

(d) Upon receipt of a complaint the Com nission shall assign a file number to the complaint.

1. During the course of any staff work a d/or Commission deliberation with regard to the complaint, th complaint shall be identified only by file number for purposes of public access and not by the name(s) of the school official(s) inv ved.

2. No information regarding any complain shall be made public until the Commission takes action in acco dance with N.J.A.C. 6:3-9.18(d).

3. Pursuant to N.J.S.A. 18A:12-29(e) the C nmission may impose a fine not to exceed $500.00 for the filing of frivolous complaint.

6:3-9.16 Complaint form

(a) The form used to file a complaint is as follows:

NAME OF COMPLAINANT(S), : BEFORE THE SCHOOL
v. : ETHICS COMMISSION
NAME OF RESPONDENT(S): OF NEW JERSEY
_____ : COMPLAINT FORM

I, (Name of Complainant), residing at (Address and Phone Number of Complainant), request the School Ethics Commission to consider a complaint against the above-named Respondent whose address is (address of respondent), in accordance with the authority of the School Ethics Commission to entertain such complaints under N.J.S.A. 18A:12-21 et seq.

The facts upon which this complaint is based are as follows: (Set down below in individually numbered paragraphs the specific facts which cause you to believe that a violation of the School Ethics Act has occurred. Cite, if known to you, the section(s) of the Act which you believe to have been violated.)

1. _____
_____
2. _____
_____
3. _____
_____
4. _____
_____

WHEREFORE, I, as Complainant, request that the School Ethics Commission find and determine that the above-named Respondent has violated the School Ethics Act and that he/she be subject to such penalty as the Commission and the Commissioner of Education deem appropriate.

Date _____ _____
Signature of Complainant or his or her Attorney

CERTIFICATION UNDER OATH

(Name of Complainant), of full age, being duly sworn upon his/her oath according to law deposes and says:

1. I am the complainant in this matter.

2. I have read the complaint and aver that the facts contained therein are true to the best of my knowledge and belief and I am aware that the statute which created the School Ethics Commission authorizes the Commission to impose penalties for filing a frivolous complaint N.J.S.A. 18A:12-29e.

Date _____ _____
Signature of Complainant

Sworn and subscribed to before me this ____ day of _____, 19__.

_____
Signature

(b) No complaint will be processed by the Commission nor will the Commission issue a final ruling or advisory opinion on any matter pending in any court of law or administrative agency of this State.

6:3-9.17 Answer to complaint

(a) Upon receipt of the complaint from the Commission, the respondent shall have 20 days within which to file an original and two copies of a written statement under oath with the Commission. Upon written application by the respondent, the Commission or its designee may extend the time for filing such statement.

(b) The respondent's statement shall respond directly to each allegation set forth in the complaint.

(c) The respondent shall not generally deny the allegations but shall set forth substantive reasons why the allegations are false or unfounded.

(d) Failure to respond to the complaint within the 20 day period from receipt of the complaint shall result in a notice to the respondent directing a response within 10 days of receipt.

(e) Further failure to respond shall result in a second notice which shall inform the respondent that unless an answer is received within 10 days of receipt of the second notice, each allegation in the complaint shall be deemed admitted and the Commission shall make a determination as to whether probable cause exists or the complaint should be dismissed.

6:3-9.18 Commission review

(a) Upon receipt of respondent's statement or the expiration of the time for filing such response, the Commission shall determine whether probable cause exists to credit the allegation in the complaint.

(b) In order to carry out the Commission's responsibilities under the Act to determine whether probable cause exists the Commission and/or its staff shall conduct investigations, hold hearings, compel the attendance of witnesses, and the production of documents and to examine such witnesses under oath.

(c) Prior to the Commission's determination of probable cause the respondent will be notified of his or her right to address the Commission, be represented by counsel and present witnesses on his/her behalf.

(d) Should the Commission find that probable cause does not exist, the Commission shall dismiss the complaint and so notify the complainant and the school official named in the complaint.

(e) Dismissal by the Commission shall constitute final agency action.

(f) Should the Commission determine that probable cause does exist, it shall refer the matter to the Office of Administrative Law for a hearing to be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and shall so notify the complainant and the school official(s) named in the complaint.

6:3-9.19 Written decision

(a) Upon completion of the hearing before the OAL, the Commission shall determine by majority vote whether the conduct complained of constitutes a violation of the Act or whether the complaint should be dismissed. In rendering its decision the Commission shall be governed by the procedures and time constraints of the Administrative Procedure Act.

(b) The Commission's decision shall be in writing and it shall set forth its findings of fact and conclusions of law.

(c) If a violation is found, the Commission shall recommend to the Commissioner the reprimand, censure, suspension, or removal of the school official. The imposition of any of the foregoing sanctions shall require a vote of the majority of the full membership of the Commission.

1. The Commissioner's Resolution of Censure shall be adopted at the Commission's meeting next following the affirmance of the sanction by the Commissioner and shall be read at the next public meeting of the district board of education following its adoption by the Commission and posted in such places as the board posts its public notices.

(d) The Commissioner shall act upon the Commission's recommendation regarding the sanction.

(e) Any appeal of the Commission's determination regarding a violation of the Act or the Commissioner's decision regarding the sanction shall be to the State Board of Education in accordance with Title 18A of the New Jersey Statutes and the procedures set forth in N.J.A.C. 6:2.

(a)

STATE BOARD OF EDUCATION

Special Education

Adopted Amendments: N.J.A.C. 6:28-1.1, 1.3, 2.3, 2.6, 2.7, 3.2, 3.7, 4.1 through 4.4, 7.5, 8.4, 9.2, 10.1, 10.2, 11.4 and 11.9

Adopted Repeal and New Rule: N.J.A.C. 6:28-11.2

Proposed: April 5, 1993 as 25 N.J.R. 1318(a).

Adopted: July 7, 1993 by State Board of Education, Mary Lee Fitzgerald, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: July 12, 1993 as R.1993 d.393, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with portions not adopted (N.J.A.C. 6:28-4.1(e)2; 4.2(b); 4.4(a)1, 6xv, 7 and 8).**

Authority: N.J.S.A. 18A:4-15, 18A:7A-1 et seq., 18A:7B-1 et seq., 18A:7C-1 et seq., 18A:40-4, 18A:46-1 et seq., 18A:46A-1 et seq., 18A:48-8, 39:1-1, U.S.P.L. 93-112, Sec. 504, 101-476, 102-119 and 99-457.

Effective Date: August 2, 1993.

Expiration Date: April 10, 1994.

Summary of Public Comments and Agency Responses:

Twelve individuals spoke at the April 21, 1993 public testimony session provided by the State Board of Education; Brenda Considine, Association of Retarded Citizens of New Jersey, Barbara Lee, Essex County Day Training Center, Louise McIntosh, Parent of a child with disabilities, Richard Kane, Executive Director of the Council of Private Schools for Children with Special Needs, Carolann Garafola, Treasurer, North Jersey Special Education Association, Gerard Thiers, Executive Director of Association of Schools and Agencies for the Handicapped, Joan Kirbey, President, North Jersey Special Education Association, Tony Del Tufo, Learning Consultant, Minehill and North Haledon School Districts, Helen Steinberg, Parent of a child with disabiliiities, Thomas J. Beese, Director of Special Programs, Freehold Borough Public Schools, Gloria Strickland, Director, Somerset County Child Development Head Start.

Fifty letters with comments were received from:

William Waldman, Commissioner, Department of Human Services, Carolyn Lane, Education/Special Needs Coordinator, Montclair Child Development Center, Inc., Patricia Raynes and Arthur Raynes, Parents of a child with disabilities, Eleanor Shaffer, Chairperson, Special Education Committee, New Jersey School Boards Association (NJSBA), Rosarita A. Annaussek, Disability Service Coordinator, Burlington County Community Action Program, Burlington, Joseph Bubba, State Senator, District 34, Stacy Holmes, Superintendent, Little Ferry School District, Sarah W. Mitchell, Director, Public Advocate, Robin Zimenoff, Assistant Director of Advocacy Services, United Cerebral Palsy Association of New Jersey, Ernest Cole, Executive Director, Cerebral Palsy League of Union County, R. Thomas Jannarone, Jr., Superintendent of Schools, Asbury Park Public Schools, Thomas McM. Jones, Superintendent, Morris Plains School District, Harriet S. Thomas, Assistant Executive Director, NJASA, Robert E. Smith, Superintendent, Wood-Ridge Public Schools, Jean Paashaus, Summit, Elizabeth Kuhlman, Director, Head Start State Collaboration Project, Lillian Grant, Disability Service Coordinator, Head Start, Jersey City Child Development Center, Barbara Schwartz, Senior Coordinator, Resource Access Project, New York University, Hopatcong Head Start, Staff and Parents, Norwescap—Northwest New Jersey, Stanhope, Mr. and Mrs. M. Dobbins, Hillsdale, Dave Davies, Linden, Robert M. Kutik, Vice President, Haworth Board of Education, Roger W. Bayersdorfer, Superintendent, River Edge Public Schools, Thomas W. Roberts, Superintendent, Dumont Public Schools, Karen A. Melin, CST Chairperson, Closter Public Schools, Elaine A. Takahashi, Member, Haworth Board of Education, William Wood, President, Haworth Board of Education, Peggy Blumenthal, Member, Haworth Board of Education, Karen Doyle, Member, Haworth Board of Education, Kenneth G. Gorab, Superintendent, Carlstadt Public Schools, Myrna Miller, Case Manager, Tenafly Public Schools, Mary McPike, Case Manager, Tenafly Public Schools, Leda Lubin, Case Manager, Tenafly Public Schools, Anthony Staniski, Case Manager, Tenafly Public Schools, Pamela N. Seidenberg, Director of Special Services, Tenafly Public

Schools, Dolores W. Putt, CST Supervisor, Department of Special Services, Lodi School District, Fran Korman New Jersey Education Association (NJEA), Edward J. Sullivan, Superi tendent, Franklin Lakes Public Schools, Judy Ferguson, Superintenden Morris Regional High School District, J.J. Walsh, Superintendent, Up ier Pittsgrove Township School District, Richard V. Flamini, New Jer y Association of Pupil Services Administrators (NJAPSA), Regina Ba na, Member, Board of Trustees, NJAPSA and Director of Special Ser ices, Rutherford School District, George Wilhelm, Superintendent, Was ington Township Board of Education, M.J. Card, Principal and L. Hu er, Curriculum Coordinator, Union Beach Public Schools, Arnold Cc en, Director of Special Services, Tinton Falls Schools, Susan Vonsover Director, Pupil Personnel Services Township of Manalapan and Borou n of Englishtown, James Nash, Superintendent, Little Falls Township S hools, Dennis Daggett, Superintendent, Mount Olive Township, Patric n Hanratty, Director of Testing and Special Education, Mahwah Scho l District.

COMMENT: Thirty-nine individuals oppose the proposed amendments for preschool handicapped alternative pr grams due to concerns expressed over funding, fragmentation of servi es due to various locations, staffing and scheduling of services. Many expressed the need for serious study prior to adoption.

RESPONSE: Due to the concerns raised re garding preschool handicapped alternative programs, amendments on hat subject at N.J.A.C. 6:28-4.1(e)2, 4.4(a)1, 4.4(a)6, 7 and 8 will not b adopted at this time. The original language is restored with no cha ge in the text. Further study will be conducted and the Department ill develop a progress report and recommendations for separate rulen aking within two years.

COMMENT: Nineteen individuals supported proposed amendments for preschool handicapped programs stating tha this program option is necessary to give districts more flexibility in ma ing program decisions and to allow young children to receive speci education in natural settings in the least restrictive environment.

RESPONSE: The Department agrees that thi program option allows districts more flexibility in serving preschool han capped pupils, but will conduct further study and not adopt these am ndments at this time.

COMMENT: Thirteen individuals opposed t amendments for extended school year due to concerns that the n w definition would be too open to interpretation and would cause a s vere economic impact to their districts.

RESPONSE: Further study of the impact of tl extended school year rule is required. Therefore, these amendments vill not be adopted at this time. The original rule in N.J.A.C. 6:28-4.1(e and 7.5(c) is restored with no change in the text. The Department will nduct an impact study and make recommendations for future rulemak ng to the State Board within one year.

COMMENTS: Two individuals supported the roposed amendments for extended school year stating that the propos d change would make clear the district's responsibility in providing ext nded school year programs for children.

RESPONSE: The Department agrees, but wil not adopt the amendments at this time. Further study will be condu ed as indicated above and future rulemaking will be contemplated.

COMMENT: One commenter recommended revision to N.J.A.C. 6:28-4.1(h) to allow a pupil transferring into a ew district within 90 minutes commuting distance from the private sch ol the pupil is attending to continue attending the private school wit out hiatus. The commenter stated that if the pupil's commuting distan exceeded 90 minutes one way, the pupil would immediately be placed i a comparable private school for a period not to exceed 30 days while ie district reviews the pupil's classification and IEP.

RESPONSE: The Department disagrees. Plac ment of a pupil with an educational disability cannot be determined y commutation time.

COMMENT: Four commenters stated that th e is a need to define and clarify rehabilitation counseling and social work services. It was recommended that the Federal definitions be incl ded in the rules. They noted that there could be an interpretation by pa nts that such services would now become the total responsibility of th local school district. They stated that cost impact to increase personne would be prohibitive.

RESPONSE: The Department disagrees beca se it is not necessary to define these terms in the New Jersey rules b cause the definitions for rehabilitation counseling and social work se ices are those found in P.L. 99-457, Part H of the Individuals with Dis bilities Education Act (I.D.E.A.) as explained in the Summary of these roposed amendments found at 25 N.J.R. 1318(a). Also, in accordance with the current rule in N.J.A.C. 6:28-1.3, all words and terms are the same as the Federal definitions, unless otherwise defined.

COMMENT: One commenter supported addition of "social work services" and "rehabilitation counseling" to the definition of related services.

RESPONSE: The Department agrees.

COMMENT: Three individuals commented in general on the proposed amendments and opposed them due to inadequate funding and recommended that the State should provide funding.

RESPONSE: The preschool alternative program and extended school year amendments, which had the greatest potential to increase costs for districts, are recommended for withdrawal at this time.

COMMENT: Three individuals supported the proposed amendments for eligible for day training.

RESPONSE: The Department agrees.

COMMENT: One commenter recommended deleting N.J.A.C. 6:28-8.4(e)1 and 3 because these rules are inconsistent with providing programs for eligible for day training pupils in day training centers.

RESPONSE: The Department disagrees. The intent of the proposed amendments is to allow for pupils classified as eligible for day training to be served in the full range of program options. It may be appropriate for some of these pupils to be placed by their school district in a day training center. Therefore, the regulations which address the provision of programs in the day training centers should not be deleted.

COMMENT: One commenter urges the retention of the current definition of "pupil" because the proposed change is too sweeping.

RESPONSE: This amendment is necessary to clarify that all pupils are entitled to receive an educational program or services, even those who are receiving home schooling.

COMMENT: One commenter supported the code amendments and is especially pleased that the 220 day requirement for eligible for day training classes has been removed. This will give private schools flexibility in providing extended school year programs.

RESPONSE: The Department agrees.

Agency Note: On April 5, 1993, the Department of Education published a Notice of Proposed Amendments for N.J.A.C. 6:28-1.1, 1.3, 2.3, 2.6, 2.7, 3.2, 3.7, 4.1 through 4.4, 7.5, 8.4, 9.2, 10.1, 10.2, 11.4 and 11.9, and a Notice of Proposed Repeal and New Rule for N.J.A.C. 6:28-11.2. Comments were received until May 5, 1993. The comments submitted addressed the proposed amendments to N.J.A.C. 6:28-4.1(e)1, 2, 4.2(b), 4.4(a)1, 6xv, 7 and 8 regarding the preschool handicapped alternative program and extended school year, including recommendations that the proposed amendments be withdrawn and further study on the economic and services impact of these provisions prior to their future adoption.

Due to the concerns raised by the public regarding the proposed preschool handicapped alternative programs and extended school year programs the Department has determined not to adopt the proposed amendments to N.J.A.C. 6:28-4.1(e)1, 2, 4.2(b), 4.4(a)1, 6xv, 7 and 8 at this time. The changes upon adoption to N.J.A.C. 6:28-4.1(e), 6:28-4.1(e)3 and 6:28-7.5(c) are not substantive as local districts determine the appropriateness of providing an extended school year for pupils with disabilities whenever an individualized education program (IEP) is developed. Districts have always provided programs in accordance with the IEP.

Summary of Changes Upon Adoption:

At N.J.A.C. 6:28-4.1(e), the word "school" is not being adopted as proposed at 25 N.J.R. 1320, April 5, 1993. The existing word "academic" is being readopted, see N.J.A.C. 6:28-4.1(e).

At N.J.A.C. 6:28-4.1(e)1, the words "Special class programs" are not being adopted as proposed at 25 N.J.R. 1320, April 5, 1993. The existing word "Programs" is being readopted, see N.J.A.C. 6:28-4.1(e)1.

The proposed new N.J.A.C. 6:28-4.1(e)2 is not being adopted at this time as proposed at 25 N.J.R. 1320, April 5, 1993. The proposed new 6:28-4.1(e)2 is being deleted upon adoption and will be the subject of future rulemaking.

At N.J.A.C. 6:28-4.1(e), the recodification of 2 to 3 as proposed at 25 N.J.R. 1320, April 5, 1993 is not being adopted. The current existing codification will remain, see N.J.A.C. 6:28-4.1(e)2. At N.J.A.C. 6:28-4.1(e)2, the word "school" is not being adopted as proposed at 25 N.J.R. 1320, April 5, 1993. The existing word "academic" is being readopted, see N.J.A.C. 6:28-4.1(e)2. At N.J.A.C. 6:28-4.1(e)2, the words "provided in accordance with the pupil's individualized education program" is not being adopted as proposed at 25 N.J.R. 1320, April 5, 1993. The existing words "comparable to the special education program offered

during the regular academic year" is being readopted, see N.J.A.C. 6:28-4.1(e)2.

At the proposed new N.J.A.C. 6:28-4.1(e)4, the codification as proposed at 25 N.J.R. 1320, April 5, 1993 is not being adopted. The proposed N.J.A.C. 6:28-4.1(e)4 is being recodified and adopted as N.J.A.C. 6:28-4.1(e)3.

The deletion of N.J.A.C. 6:28-4.2(b), as proposed at 25 N.J.R. 1321, April 5, 1993 is not being adopted at this time. The existing N.J.A.C. 6:28-4.2(b) will remain until future rulemaking. At N.J.A.C. 6:28-4.2(b)3, the words "of Health" are being added to reflect that early intervention programs now fall under the administration of the Department of Health.

At N.J.A.C. 6:28-4.4(a)1, the addition of the words "with the exception of pupils receiving preschool handicapped alternative programs according to N.J.A.C. 6:28-4.4(a)6xv" is not being adopted at this time as proposed at 25 N.J.R. 1321, April 5, 1993. The existing text will remain until future rulemaking, see N.J.A.C. 6:28-4.4(a)1.

The proposed new N.J.A.C. 6:28-4.4(a)6xv, as proposed at 25 N.J.R. 1321, April 5, 1993 is being deleted and not adopted at this time. The proposed recodification of the existing 6xv and xvi as xvi and xvii is not being adopted. The existing codification and text will remain, see N.J.A.C. 6:28-4.4(a)6.

At N.J.A.C. 6:28-4.4(a)7, the words "and preschool handicapped alternative programs," are not being adopted at this time as proposed at 25 N.J.R. 1321, April 5, 1993.

At N.J.A.C. 6:28-4.4(a)7, the word "and" is being added upon adoption for clarity.

The new N.J.A.C. 6:28-4.4(a)8, as proposed at 25 N.J.R. 1321, April 5, 1993 is being deleted and not adopted at this time. The new N.J.A.C. 6:28-4.4(c) and recodification of existing (c) and (d) as (d) and (e) as proposed are being adopted as proposed at 25 N.J.R. 1321, April 5, 1993.

At N.J.A.C. 6:28-7.5(c), the word "school" is not being adopted as proposed at 25 N.J.R. 1321, April 5, 1993. The existing word "academic" is being readopted, see N.J.A.C. 6:28-7.5(c).

At N.J.A.C. 6:28-8.4 Provision of programs, a change in codification has been made upon adoption, to reflect the recodification of N.J.A.C. 6:28-8.4 to N.J.A.C. 6:28-8.3 as proposed February 1, 1993, at 25 N.J.R. 404, and became effective May 3, 1993 at 25 N.J.R. 1889(b).

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

6:28-1.1 General requirements

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

(d) Each district board of education is responsible for providing a system of free, appropriate special education and/or related services to its elementary and secondary school pupils which shall:

1.-2. (No change.)

3. Be located in approved facilities that are accessible to the disabled; and

4. (No change.)

(e) Each district board of education is responsible for providing a system of free, appropriate special education and related services to its preschool handicapped pupils which shall:

1.-2. (No change.)

3. Be located in approved facilities that are accessible to the disabled or in early intervention programs approved according to N.J.A.C. 6:28-10.1; and

4. (No change.)

(f)-(n) (No change.)

6:28-1.3 Definitions

Words and terms, unless otherwise stated in these definitions, when used in this chapter, shall be defined in the same manner as those words and terms used in the Individuals with Disabilities Education Act.

. . . .

"Pupil" means a person age three through 21 who is entitled to receive educational programs and services in accordance with Federal or State law or regulation.

. . . .

"Related services" for pupils with educational disabilities means counseling for pupils, counseling and/or training for parents relative to the education of a pupil, speech-language services, recreation, occupational therapy, physical therapy, rehabilitation counseling, school nursing services, social work services, transportation, as well as any other appropriate developmental corrective and supportive services required for a pupil to benefit from education as required by the pupil's individualized education program.

. . . .

6:28-2.3 Parental notice, consent, participation and meetings

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

(f) Notice shall be written in language understandable to the general public and shall include:

1.-2. (No change.)

3. A copy of the procedural safeguards statement published by the New Jersey Department of Education which contains a full explanation of the procedural safeguards available to parents and/or adult pupils. A parent or adult pupil may refuse additional copies of the statement. District boards of education shall maintain documentation that the statement was made available each time written notice was provided to a parent and/or adult pupil.

(g) (No change.)

(h) Meetings shall be conducted to determine eligibility and to develop, review and revise the basic plan of a pupil's individualized education program.

1. Each meeting shall include the following participants:

i.-iii. (No change.)

iv. At least one member of the child study team; and

v. Referring certified school personnel, the school principal or designee and other appropriate individuals if they choose to participate.

2.-6. (No change.)

(i)-(k) (No change.)

6:28-2.6 Mediation

(a) For pupils age three through 21, when disputes arise under this chapter, mediation shall be available through the district board of education, the Department of Education through its county office and/or the Department of Education through the Division of Special Education. Mediation shall be provided in accordance with the following:

1.-4. (No change.)

(b) (No change.)

6:28-2.7 Due process hearings

(a) A due process hearing may be requested in regard to the referral, classification, evaluation or educational placement of a pupil age three through 21 and/or the provision of a free, appropriate public education to that pupil. For pupils above the age of 21, any disputes regarding the provision of programs and services to these pupils shall be handled as a contested case before the Commissioner of Education pursuant to N.J.A.C. 6:24.

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

Recodify existing (e) through (j) as (d) through (i). (No change in text.)

6:28-3.2 Identification

(a) Each district board of education shall adopt written procedures for identifying those pupils ages three through 21 who reside within the local school district who may be educationally disabled and who are not receiving special education and/or related services as required by this chapter. Children below age three who may be disabled shall be identified, located and evaluated through programs operated by or through contracts under the responsibility of the Department of Health according to P.L. 1992, c.155.

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

6:28-3.7 Reevaluation

(a) A reevaluation and, if the pupil will remain classified, an individualized education program shall be completed within three years of the date of the previous classification. Reevaluation shall be conducted sooner if conditions warrant or if the pupil's parent(s) or teacher request the reevaluation.

1.-2. (No change.)

3. Reevaluation shall be conducted a cording to N.J.A.C. 6:28-3.4(c) and (h). Individual child study te m assessment shall be conducted according to N.J.A.C. 6:28-3.4(d l through 6.

4.-5. (No change.)

6:28-4.1 General requirements

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

(e) The length of the school day and the '[school]* ***academic*** year of programs for educationally handica]ed pupils shall be at least as long as that established for all pu ils.

1. *[Special class programs]* ***Programs*** or the preschool handicapped shall be in operation five days per v eek, one day of which may be used for parent training and at least f ur days of which shall provide a minimum total of 10 hours of p pil instruction.

[2. Each pupil in a preschool handicapp d alternative program according to N.J.A.C. 6:28-4.4(a)6xv shall rec ive a minimum of two hours of special education instruction per v eek.]

*[3.]***2.*** An extended *[school]* ***acaden c*** year program shall be *[provided in accordance with the pupil's ir lividualized education program]* ***comparable to the special educ tion program offered during the regular academic year*.**

*[4.]***3.*** Educational programs for pupils lassified as eligible for day training shall operate extended school ear programs.

(f)-(k) (No change.)

6:28-4.2 Program options

(a) Educational program options include he following:

1. Instruction in a regular class with all nec ssary and appropriate supports including, but not limited to, the llowing:

i.-iii. (No change.)

Recodify existing v through ix as iv throu h vii. (No change in text.)

2.-7. (No change.)

8. Individual instruction at home or in othe appropriate facilities, with the prior written approval of the Dep rtment of Education through its county office, only when it is not . ppropriate to provide a special education program for a pupil with a educational disability according to N.J.A.C. 6:28-4.5;

9. An accredited nonpublic school which ; not specifically approved for the education of pupils with educ tional disabilities according to N.J.A.C. 6:28-6.5; and

10. Instruction in other appropriate settings ıccording to N.J.A.C. 6:28-1.1(d) and (e).

(b) A district board of education shall p ovide a program for a preschool handicapped pupil in one of th following settings:

1. An approved public or private progran

2. An accredited nonpublic school; or

3. An early intervention program (which i: under contract with the Department of Health) in which the chi d has been enrolled for the balance of the school year in which the (ild turns age three.*

6:28-4.3 Program criteria: supplementary inst ıction, speech-language services and resource cente programs

(a) (No change.)

(b) Resource center programs shall offer ndividual and small group instruction and shall meet the followi g criteria:

1.-13. (No change.)

6:28-4.4 Program criteria: special class progra ıs, secondary, vocational and vocational rehabilitati n

(a) Special class programs shall meet the llowing criteria:

1. A pupil with an educational disability in a pecial class program shall be enrolled on a special class register *[ith the exception of pupils receiving preschool handicapped alterna ve programs according to N.J.A.C. 6:28-4.4(a)6xv]*;

2.-3. (No change.)

4. The age span in special class programs : ıall not exceed four years;

5. (No change.)

6. A special class program shall serve pupil who have the same classification. Class size shall not exceed the following:

i.-xiv. (No change.)

[xv. Preschool handicapped alternative programs—according to (a)8i through iv below (effective July 1, 1994);]

Existing xv. and xvi. (No change.)

7. With the exception of classes for autistic pupils*[,]* ***and*** eligible for day training pupils *[and preschool handicapped alternative programs]*, the above maximum class sizes may be increased no more than one-third with the addition of a classroom aide or a second classroom aide where one is already required by obtaining prior written approval from the Department of Education through its county office. No exceptions according to N.J.A.C. 6:28-4.6 shall be granted regarding class size for pupils classified as eligible for day training.

*[8. District boards of education which operate preschool handicapped alternative programs shall meet the following criteria:

i. For instructional purposes, group size shall not exceed five pupils;

ii. Programs shall be operated by a district board of education or through contracts with other district boards of education, educational services commissions or jointure commissions;

iii. Programs shall be provided in a home, licensed day care center, registered family day care home, Head Start Program, nonsectarian nonpublic school, licensed nursery school, early intervention program, under contract with the Department of Health in which a child has been enrolled for the balance of the school year in which the child turns age three, or in other appropriate instructional settings;

iv. The total number of pupils assigned to a teacher of the handicapped in the preschool handicapped alternative program shall not exceed 20; and

v. When the district board of education operates a preschool handicapped alternative program, the maximum number of pupils served shall be proportional to the time the certified teacher is employed to serve as the preschool handicapped alternative program teacher.]*

(b) (No change.)

(c) Secondary resource center programs shall be in schools in which any combination of grades six through 12 are contained and where the organizational structure is departmentalized for general education pupils.

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

6:28-7.5 Provision of programs

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

(c) With prior written approval of the Department of Education, a school described in N.J.A.C. 6:28-7.1(a) may operate an extended *[school]* ***academic*** year program.

(d) (No change.)

6:28-*[8.4]***8.3*** Provision of programs

(a) A residential State Facility may recommend placement of a pupil with an educational disability in a local school district. Documentation of attempts to place the pupil in the least restrictive environment according to N.J.A.C. 6:28-2.10 shall be stated in the pupil's individualized educational program. Tuition shall be paid by the State facility to the district board of education where the pupil is placed.

(b) All personnel providing special education programs according to N.J.A.C. 6:28-4.3 or 4.1, related services according to N.J.A.C. 6:28-3.8 or child study team services according to N.J.A.C. 6:28-3.1(a) shall hold the appropriate educational certificate for the position in which they function.

*[(e)]***(c)*** Day training programs operated by the Department of Human Services shall be provided in the following manner:

1. The Department of Human Services shall provide educational programs and related services for pupils classified as eligible for day training in State-operated or contracted facilities;

2. A day training program is responsible for implementing the individualized education program which shall be developed by the district board of education;

3. An educational program for pupils classified as eligible for day training in a State residential facility shall be commensurate with those in a day training center;

4. For pupils placed in State facilities, representative(s) of the program and the district board of education shall participate in any meeting(s) according to N.J.A.C. 6:28-2.3(h).

*[(f)]**(d)* When a pupil in a residential State facility or day training center is in need of home instruction according to N.J.A.C. 6:28-4.5, the State facility or day training center shall implement the program.

6:28-9.2 Complaint investigation

(a) The Director of the Division of Special Education or his or her designee(s) shall be responsible for reviewing, investigating and taking action on any signed written complaint of substance regarding the provision of special education and/or related services covered under this chapter.

1. The Division of Special Education in conjunction with the county office of education, shall complete an investigation within 60 calendar days after a written complaint is received for pupils age three and above.

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

6:28-10.1 Early intervention programs serving children between birth and age three

Early intervention programs shall be administered by the Department of Health as the lead agency in conjunction with the Departments of Human Services and Education in accordance with P.L. 1992, c.155.

6:28-10.2 General requirements when district boards of education contract with early intervention programs under contract with the Department of Health for pupils age three

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

6:28-11.2 Pupil assistance committees

All pilot district boards of education shall establish pupil assistance committees in accordance with N.J.A.C. 6:26 by July 1993.

6:28-11.4 Identification

(a) Each pilot district board of education shall adopt written procedures for identifying those pupils ages three through 21 who reside within the local school district, may be educationally disabled and are not receiving special education and/or related services as required by this chapter. Children below the age of three shall be identified, located and evaluated through programs operated by or through contract with the Department of Health according to P.L. 1992, c.155.

1.-2. (No change.)

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

6:28-11.9 Individualized education program

(a) (No change.)

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

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

DIVISION OF FISH, GAME AND WILDLIFE FISH AND GAME COUNCIL

1993-1994 Game Code

Adopted Amendments: N.J.A.C. 7:25-5

Proposed: May 17, 1993 at 25 N.J.R. 1930(a).

Adopted: July 9, 1993 by the Fish and Game Council, Cole Gibbs, Chairman.

Filed: July 12, 1993 as R.1993 d.390, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-29 et seq.

DEPE Docket Number: 032-93-04.

Effective Date: August 2, 1993.

Expiration Date: February 15, 1996.

On May 17, 1993, the Fish and Game Council (Council) proposed various amendments to N.J.A.C. 7:25-5. These amendments pertained to general hunting season dates, turkey hunting methods, hunting areas and permit quotas, beaver and otter trapping, hunting permits and hunting areas for an early Canada goose season, muzzleloader use, and expanded muzzleloader rifle season for squirrels, bonus deer tags, adjustments in deer season lengths, bag limits and permit quotas as well as modifications to deer management zones and turkey hunting areas. Secondary notice was achieved by mailing press releases to 200 newspapers, posting copies of the rule proposal including summaries of the amendments and notice of the public hearing in Division field offices and mailing copies of summaries of the proposed amendments to 14 interested organizations and delivering notices of the public hearing to the Atlantic City Press and the Newark Star Ledger. Eight written comments were received by the end of the comment period. A public hearing was held by and before the Fish and Game Council (Council) on June 8, 1993. Seven commenters presented oral comments. Comments were received from Nina Austenberg of the Humane Society of the United States, Rita Cileo and Ben Crimaudo of the New Jersey Animal Rights Alliance, Jim DeStephano of the New Jersey Trapper Association, Steve Pastor of the New Jersey Fur Harvesters and Coastal Fur Takers, Ray Eriksen of the New Jersey Chapter of the Wild Turkey Federation, Steve George and Helen Heinrich of the New Jersey Farm Bureau, Evie Kramer of Deer, Ecology, Environment and Resources, Joseph J. Cinotti and Joseph R. Cinotti. The public hearing record may be inspected, or a copy obtained upon payment of the Department's nominal copying charges, by contacting Robert Santaloci, Esq., Department of Environmental Protection and Energy, Office of Legal Affairs, 401 East State Street, CN 402, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:

General Comments

COMMENT: Rita Cileo, Director of the New Jersey Animal Rights Alliance, Mercer County, and Ben Crimaudo, a coordinator for the same organization, expressed opposition to hunting in general. Mr. Crimaudo also expressed opposition to all the proposed amendments and to hunting on State parks, specifically Monmouth Battlefield State Park. Rita Cileo also expressed opposition to hunting at Monmouth Battlefield State Park and presented an oral and written statement primarily related to the Monmouth Battlefield hunt in which she alleged that the Division is primarily interested in collecting fees and raising revenues from the sale of special permits and hunting licenses and that the Division's hunting policy at Monmouth Battlefield State Park will serve to increase birth rates of remaining park deer, leading to an annual recreational hunt. Mr. Crimaudo and Ms. Cileo also submitted a document containing a list of 31 requests for a wide variety of information requesting that it be included in the record. The documents requested are primarily concerned with the Monmouth Battlefield State Park deer hunting program such as records, data, reports, studies, costs, etc. and various procedures of the Division.

Nina Austenberg, Director of the Humane Society of the United States (Mid-Atlantic Region), in a letter opposed all of the proposed amendments including rules which extend the hunting season and increase bag limits and indicated the need for immuno-contraception to control deer populations. Evie Kramer, President of Deer Ecology, Environment and Resources, Inc. was opposed to the proposed Game Code in its entirety, opposed to hunting at Great Swamp National Wildlife Refuge and all other refuges, parks and reservations. Ms. Kramer was also opposed to the hunting of Canada geese, the special September Canada goose season and all bow hunting.

RESPONSE: The Council is legally mandated by N.J.S.A. 13:1B-29 et seq. to manage wildlife throughout the State of New Jersey, including public lands, as a renewable resource and to maximize the benefits derived from this resource, including the taking of game species, while minimizing negative impacts. Annual promulgation of amendments to the Game Code by the Council is essential to meet its responsibilities by adjusting seasons, bag limits and methods of taking according to the best scientific information available. The Council recognizes that comments received in opposition to hunting, including hunting in State parks, represent the philosophy of people opposed to killing animals, including recreational hunting and hunting as a management tool.

The long term goal of the deer management program at Monmouth Battlefield State Park is to reduce the deer population to a total of 70 to 80 animals over a five year period and to maintain the deer population at this level in order to reduce the number of deer-auto accidents and deer damage to commercial crops in and near the Park. The stabilization of the Monmouth Battlefield deer population at between 70 and 80 will minimize the negative impacts of deer, while continuing to provide positive benefits including observation, photography and limited hunting. Maintenance of the deer population at this level will also limit the deer population impact on vegetation within the Park. The proposed 1994 hunt at Monmouth Battlefield State Park represents no change from the programs of the previous three years. Three days of permit shotgun hunting with a daily permit quota of 4 and bag limit of one deer of either-sex and any age per permit will continue to provide a safe and effective means of deer population control while minimizing impact on other uses of Monmouth Battlefield State Park. Annual hunt plans and other documents prepared by the Division of Fish, Game and Wildlife provide the scope, purpose, rationale and results of the deer hunting program at Monmouth Battlefield State Park. They are available to the public upon request.

The requests for specific data and information from the New Jersey Animal Rights Alliance will be addressed by the Division in a separate manner, independent of the Code amendment process pursuant to New Jersey's Right to Know Law.

The Council further notes that license and permit fees support a variety of wildlife research and management programs which benefit all the citizens of New Jersey. User fees continue to be the primary funding source for wildlife conservation in New Jersey and elsewhere in the United States. With regard to Monmouth Battlefield State Park, the administrative costs have exceeded the revenue associated with the permit fees collected. Population control, not fees is the primary purpose of the hunting program at Monmouth Battlefield State Park.

The reduction of a deer population via hunting will result in an increased birth rate in the remaining females on in those populations which have exceeded the biological carrying capacity of the habitat and are suffering from malnutrition/starvation as a result of severe over browsing of their primary food plants. This is not the case with the deer population inhabiting Monmouth Battlefield State Park which has not exceeded the biological carrying capacity of the habitat and is in excellent physical condition. It has, however, exceeded the cultural carrying capacity of the habitat, defined as the maximum number of deer that can coexist compatibly with the local human population. Excessive deer/vehicle collisions and damage to agricultural and ornamental plantings are indicators that this level has been exceeded at Monmouth Battlefield State Park.

Immunocontraception and related chemical fertility control materials are still in the developmental stage and no viable system of chemical fertility control currently exists which can be successfully applied to a wild deer population. Though the Division of Fish, Game and Wildlife continues to cooperate in research efforts in this area, such as the work currently being conducted at Rutgers University in New Jersey and USDA Wildlife Research facility in Denver, a number of problems remain to be addressed before chemical fertility methods can be considered for use in the control of wild deer populations.

COMMENT: Steve Pastor, president of the New Jersey Fur Harvesters and representative of the Coastal Fur Takers, stated at the public hearing that the two organizations support the proposed changes in the Game Code. Jim DeStephano, Director of the New Jersey Trappers Association, thanked the Council for the earlier beaver otter trapping season.

RESPONSE: The Council and Division acknowledge the support of Mr. Pastor and the two organizations and Mr. DeStephano and the New Jersey Trappers Association.

COMMENT: Steve George, President of the New Jersey Farm Bureau, and Helen Heinrich of the New Jersey Farm Bureau presented various verbal and written comments at the public hearing related to the issue of deer damage to agricultural crops including such items as damage reporting, research programs, crop damage estimates, legislation, fencing, education and reparations for damage.

RESPONSE: The above comments from the Farm Bureau not specific or relevant to the proposed amendments will be addressed in a separate manner, independent of the Code amendment process, including subsequent meetings between the Farm Bureau and Division and Council representatives.

COMMENT: Joseph R. Cinotti, independent sportsman, provided suggestions for establishing/increasing pheasant and quail populations using wild birds and/or a controlled hunting program.

RESPONSE: The Council and Division appreciates the suggestions offered by Mr. Cinotti and will take them into consideration. The Division has released wild trapped quail in an effort to establish quail populations in North Jersey. At the present time, the Division has no plans to continue this program but is reviewing the feasibility of a limited wild pheasant release program.

N.J.A.C. 7:25-5.7

COMMENT: Ray Eriksen, President of the New Jersey Chapter of the National Wild Turkey Federation, indicated that the Chapter Board of Directors approved of the proposed amendments but differed with the proposed regulation change allowing the use of artificial decoys for turkey hunting. The board members cited safety concerns, impacts on hunter success rates and esthetics as reasons for opposing the regulation change. Concern was also expressed about increases in turkey hunting permit quotas. The State chapter accepted the increases for the 1994 spring season, but does not wish to see further increases. Joseph J. Cinotti and Joseph R. Cinotti, independent sportsmen, supported increased turkey hunting permit quotas and suggested that the Division consider creating a private land turkey hunting permit to increase recreational opportunity and permit availability.

RESPONSE: The Council and the Division appreciates the support of the New Jersey Chapter of the National Wild Turkey Federation and its members. The popularity of using artificial decoys for turkey hunting has increased in recent years. Data from 47 states on spring turkey hunting accidents for the years of 1985-1992 does not show decoys to be a major contributing factor to accidents. Only one of 330 hunting accidents involved the use of a decoy. Five states currently prohibit the use of decoys. No state in which decoys are legal reports a significant impact on hunter success. Based on available information, there appears to be no valid reason to continue the prohibition of decoy use in turkey hunting. Turkey hunting permit quotas were increased in 10 of 16 Turkey Hunting Areas. Permit quota changes were based upon a more accurate estimate of the square miles of turkey habitat in the State. These changes will increase the availability of turkey hunting permits. The Division has explored the feasibility of establishing a private land turkey hunting permit. Such a permit might increase permit availability in some areas but would require major changes to the permit selection program now in use. The Council and the Division will continue to monitor demand for turkey hunting permits and assess permit availability for the next few years before determining whether changes to the existing permit program are necessary.

N.J.A.C. 7:25-5.9 and 5.10

COMMENT: Joseph J. Cinotti, independent sportsman, commented on the earlier opening of the beaver and otter trapping season (January 16-February 12, 1994), stating that February conditions are ideal for beaver and otter trapping and the Division is providing the earlier season because of a few semi-organized groups who want easier trapping. He also commented that the earlier trapping season will interfere with the climax of the Canada goose season and confrontations are inevitable.

RESPONSE: The reason for an earlier beaver and otter trapping season of January 16 through February 12, 1994 is that pelt primeness deteriorates in beaver and otter as spring approaches. Providing an earlier season will help eliminate loss of quality in beaver pelts caused by biting due to the approach of the breeding season and loss of quality in otter pelts by decreasing singeing. This will maximize the value of the harvested resource. Providing easier trapping conditions was not the purpose of the proposed change and such may not be the case since winter weather is so variable in New Jersey. Since the Canada goose season is open for over 70 days in New Jersey during the September-January period during which time hundreds of thousands of people participate in other outdoor activities such as fishing, boating, deer hunting, small game hunting and other trapping seasons, there should be little or no concern that less than 100 beaver/otter trappers will interfere with the late part of the Canada goose season.

N.J.A.C. 7:25-5.13

COMMENT: Joseph J. Cinotti, independent sportsman, commented by letter that he was opposed to hunting Canada geese in September stating that a substantial number of migratory geese will be killed in the process. He suggested a February/March season when resident geese will be more concentrated in huntable areas and more accessible to goose

hunters. Evie Kramer, President of D.E.E.R., opposed the Canada goose season entirely. Steve George, President of the New Jersey Farm Bureau, commented that he supports an early goose season.

RESPONSE: The Game Code does not establish waterfowl hunting seasons including a special September Canada goose season. Migratory bird hunting seasons are established by Federal regulations (U.S. Fish and Wildlife Service). The proposed amendment does, however, require hunters to acquire a special permit in order to participate in an early season if one is approved and established by the U.S. Fish and Wildlife Service and it also defines the hunting area for an early season. For its part, the Division and Council had to determine prior to Fish and Wildlife Service consideration and approval that no more than 10 percent of the geese taken during the early season would be migrants. Division biologists determined through various studies that less than an estimated two percent of the geese harvested during the special season would be migrant birds. The reason being that very few migrant geese will be in the State during the hunt period. The suggestion for late season (Feb.-March) has been previously considered by the Council. However, the Council and the Division must first determine that a late season will also not adversely impact on migrant geese. At the present time, this data is not available for review by the Council. An early special season will help address the nuisance Canada goose situation involving resident birds which currently exists in New Jersey.

The Council appreciates the support of the Farm Bureau on this matter.

N.J.A.C. 7:25-5.25 through 5.30

COMMENT: Steve George and Helen Heinrich representing the New Jersey Farm Bureau expressed support for those proposed amendments which encourage the taking of more does, the fall bow bonus tag, and the increase in the number of permit deer hunting days in some zones. They also indicated that Zone 33 should have the same provisions as Zone 26 to help farmers in Atlantic County, and that there should be more antlerless days during the shotgun season to encourage hunters to take does.

RESPONSE: The Council appreciates the support expressed by the Farm Bureau concerning various proposed amendments. Shotgun permit season, permit quotas, deer quotas, daily bag limits and season lengths are determined based on zone management objectives, hunter success rates and demand for permits. The Zone 33 permit shotgun season has been three days in length and has had a two deer bag limit since 1990. Both the season length and bag limit will be the same in 1993. The Zone 26 permit shotgun season was one day and the bag limit was one deer from 1990 through 1992. In 1993, the Zone 26 permit shotgun season length was increased to three days and the bag limit was increased to two deer. From 1990 through 1992, Zone 33 had a longer season and higher bag than Zone 26. In 1993, the season length and bag limits for Zone 26 and 33 will be the same; permit and deer quotas for both zones have been increased. For the 1993-94 shotgun permit season: a total of 12 season length options and five bag limit options were developed; the season will be held in 61 of 65 zones; season length was increased for 26 zones; bag limits were increased for 16 zones; and, deer harvest quotas were increased for 42 zones. The 1993-94 shotgun permit season, permit quotas, deer quotas, season lengths and bag limits are consistent with the zone management objectives and remain an integral part of the either-sex seasons structure necessary for achieving antlerless harvest objectives on a zone basis.

Summary of Agency-Initiated Change:

In the 1993 Shotgun Permit Season Permit Quotas found under N.J.A.C. 7:25-5.29(k), a printing error listed Deer Management Zone 26 as a second Zone 25. The incorrect Zone 25 was changed to Zone 26. The season dates, anticipated harvest and permit quotas for Zone 26 were correctly provided in the proposal.

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

SUBCHAPTER 5. 1993-94 GAME CODE

7:25-5.1 General provisions

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

(c) This Code, when adopted and when effective, shall supersede the provisions of 1992-93 Game Code.

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

1.-5. (No change.)

6. "New Jersey Second Deer Permit and Transportation Tag" means the paper deer permit and transportation tag issued by mandatory deer check stations after registration of a deer taken on a regular license or special season permit. The "New Jersey Second Deer Permit and Transportation Tag" will allow the hunter to continue hunting and take one additional deer subject to applicable sections of this Code. The transportation tag portion is completed and affixed to a deer immediately upon killing by the hunter.

7. "New Jersey Bonus Deer Permit and Transportation Tag" means the paper deer permit and transportation tag issued by mandatory deer check stations after registration of an antlerless deer taken pursuant to N.J.A.C. 7:25-5.25(b)1. The "New Jersey Bonus Deer Permit and Transportation Tag" will allow the hunter to continue hunting and take one additional deer subject to applicable provisions of N.J.A.C. 7:25-5.25(b)1. It is not valid on the day of issuance. The transportation tag portion is completed and affixed to a deer immediately upon killing by the hunter.

(e) (No change.)

7:25-5.2 Pheasant—Chinese ringneck (Phasianus colchicus torguatus), English or blackneck (P. c. colchicus), Mongolian (P. mongolicus), Japanese green (Phasianus versicolor); including mutants and crosses of above

(a) The duration for the male pheasant season is November 13, to December 4, 1993 inclusive, and December 13, 1993 through January 8, 1994 excluding December 15, 16 and 17, 1993 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The duration for the male pheasant season for properly licensed persons engaged in falconry is September 1 to December 4, 1993 and December 13, 1993 through March 31, 1994, excluding November 12, 1993 and December 15, 16 and 17, 1993 and January 14, 15, 21 and 22, 1994 in those management zones in which a shotgun deer permit season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) The duration of the season for pheasants of either sex in the area described as Warren County north of Route 80, Morris County north of Route 80, Ocean County south of Route 70 and the counties of Sussex, Passaic, Bergen, Hudson, Essex, Camden, Atlantic and Cape May and on all wildlife management areas is November 13 to December 4, 1993 inclusive, and December 13, 1993 through February 14, 1994, excluding December 15, 16 and 17, 1993 and January 14, 15, 21 and 22, 1994 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(e) The hours for hunting pheasants on November 13, 1993 are 8:00 A.M. to ½ hour after sunset. All other days on which the hunting for pheasants is legal, the hours are sunrise to ½ hour after sunset.

(f) (No change.)

(g) The season for properly licensed semi-wild preserves is November 13, 1993 to March 15, 1994 inclusive.

(h) (No change.)

7:25-5.3 Cottontail rabbit (Sylvilagus floridanus), black-tailed jack rabbit (Lepus californicus), white-tailed jack rabbit (Lepus townsendii), European hare (Lepus europeus), chukar partridge (Alectoris graeca), and quail (Colinus virginianus)

(a) The duration of the season for the hunting of cottontail rabbit, black-tailed jack rabbit, white-tailed jack rabbit, European hare, chukar partridge and quail is November 13 through December 4, 1993, inclusive, and December 13, 1993 to February 14, 1994, excluding December 15, 16 and 17, 1993 and January 14, 15, 21, and 22, 1994 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The duration of the season for the h ıting of the animals enumerated by (a) above for properly license l persons engaged in falconry is September 1 to December 4, 19 i, inclusive, and December 13, 1993 through March 1994, exclud ıg November 12 and December 15, 16 and 17, 1993 and January 1 15, 21 and 22, 1994 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any ex a permit deer season day(s) if declared open.

(c) (No change.)

(d) The hunting hours for the animals enur erated in this section are as follows: November 13, 1993, 8:00 A.M. t ½ hour after sunset. On all other days for which hunting for thes animals is legal, the hours are sunrise to ½ hour after sunset.

(e) The quail and chukar partridge season or properly licensed semi-wild preserves is November 13, 1993 t March 15, 1994 inclusive.

(f) (No change.)

7:25-5.4 Ruffed grouse (Bonasa umbellus)

(a) The duration of the season for the unting of grouse is October 9 through December 4, 1993, inclusiv , and December 13, 1993 to February 14, 1994, excluding Decembe 15, 16 and 17, 1993 and January 14, 15, 21 and 22, 1994 in those de r management zones in which a shotgun permit deer season is autl prized and excluding any extra deer permit season day(s) that is eclared open.

(b) (No change.)

(c) The hunting hours for ruffed grouse a sunrise to ½ hour after sunset, with the exception of November 13, 1993 when legal hunting hours are 8:00 A.M. to ½ hour afte sunset.

(d) (No change.)

7:25-5.5 Eastern gray squirrel (Sciuris carol ıensis)

(a) The duration of the season for the h nting of squirrels is October 9 through December 4, 1993, inclusiv , and December 13, 1993 to February 14, 1994, excluding Decembe 15, 16 and 17, 1993 and January 14, 15, 21 and 22, 1994 in those de r management zones in which a shotgun permit deer season is autho zed and also excluding any extra permit season day(s) if declare l open.

(b) The duration of the season for the hu ting of squirrels for properly licensed persons engaged in falcon is September 1 to December 14, 1993, inclusive, and Decemb r 13, 1993 through March 31, 1994, excluding December 15, 1 and 17, 1993 and January 14, 15, 21 and 22, 1994 in those dee management zones in which a shotgun permit deer season is autho zed and also excluding any extra permit deer season day(s) if d clared open.

(c) (No change.)

(d) Hunting hours for squirrels are sunrise t ½ hour after sunset, with the exception of November 13, 1993 whe legal hunting hours are 8:00 A.M. to ½ hour after sunset.

(e) (No change.)

7:25-5.7 Wild turkey (Meleagris gallapavo)

(a) The duration of the Spring Wild Turl ey Gobbler hunting season includes five separate hunting periods o four, five or 10 days each. The hunting periods for all hunting ar as shall be:

1. Monday, April 25, 1994—Friday, April 9, 1994
2. Monday, May 2, 1994—Friday, May 6, 994
3. Monday, May 9, 1994—Friday, May 13, 1994
4. Monday, May 16, 1994—Friday, May 20, 1994; Monday, May 23, 1994—Friday, May 27, 1994
5. Saturday, April 30, 1994; Saturday, May 7, 1994; Saturday, May 14, 1994 and Saturday, May 21, 1994

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

(e) Hunting methods shall be restricted to calling or stand-hunting. No person shall stalk or attempt to approach a wild turkey for the purpose of taking or attempting to take the bird. All persons must have a turkey calling device in their possession while turkey hunting. No person shall use an electronic calling device at any time during the open season. Persons may not drive or chase wild turkeys for the purpose of putting them in range of hunters. The use of dogs is prohibited. No live decoys may be used. Fluorescent hunters orange is not required on outer clothing for turkey hunting. No shot size larger than number four fine shot or smaller than number seven and one-half fine shot may be used for turkey hunting. No shotgun larger than 10 gauge or smaller than 20 gauge may be used for turkey hunting. A person shall not have in possession or control, a firearm or other weapon within 300 feet of a baited area. A baited area is defined as the collection, deposit, concentration or unnatural gathering of feed including, but not limited to, corn, wheat, oats or other substance that may constitute a lure or enticement to turkeys.

(f)-(g) (No change.)

(h) Wild Turkey Hunting Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, address, 1994 firearm or archery hunting license number, turkey hunting areas applied for, hunting periods applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of February 1-15, 1994, inclusive. Applications received after February 15 will not be considered for the initial drawing. Selection of permits will be by random drawing.

i. If a fall turkey hunting season is authorized for 1994, application shall be made in conjunction with the spring season application procedures in a form as prescribed by the Division.

4.-6. (No change.)

(i) Special Farmer Spring Turkey Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, address and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of February 1-15, 1994. There is no fee required and all qualified applicants will receive a Special Farmer Spring Turkey Permit delivered by mail.

4. (No change.)

(j) (No change.)

(k) Turkey Hunting Area Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1994 Spring Turkey Hunting Season Permit Quotas are as follows:

1994 SPRING TURKEY HUNTING SEASON PERMIT QUOTAS

Turkey Hunting Area Number	Weekly Permit Quota*	Season Total	Portions of Counties Involved
1	120	600	Sussex
2	140	700	Sussex, Warren
3	80	400	Sussex, Warren
4	120	600	Sussex, Warren Morris
5	120	600	Sussex
6	200	1,000	Sussex, Passaic, Bergen
7	200	1,000	Sussex, Morris, Passaic
8	120	600	Warren, Hunterdon
9	80	400	Warren, Hunterdon, Morris
10	60	300	Essex, Middlesex, Morris, Somerset, Union
11	80	400	Middlesex, Mercer, Hunterdon, Somerset
14	70	350	Burlington, Ocean, Mercer, Monmouth
15	55	275	Burlington, Camden, Atlantic
16	70	350	Burlington, Atlantic, Ocean, Cape May, Cumberland
20	130	650	Cumberland, Salem
21	50	250	Atlantic, Cumberland, Salem
22	0	0	Atlantic, Cape May, Cumberland
Total	1,695	8,475	

*Applied to each of the five hunting periods (A, B, C, D, E) in all areas:

A. Monday, April 25, 1994—Friday, April 29, 1994
B. Monday, May 2, 1994—Friday, May 6, 1994
C. Monday, May 9, 1994—Friday, May 13, 1994
D. Monday, May 16, 1994—Friday, May 20, 1994
Monday, May 23, 1994—Friday, May 27, 1994
E. Saturday, April 30, 1994; Saturday, May 7, 1994; Saturday, May 14, 1994 and Saturday, May 21, 1994

(l) (No change.)

(m) Turkey Hunting Areas are as follows:

1.-11. (No change.)

12. Turkey Hunting Area No. 14: That portion of Burlington, Mercer, Monmouth and Ocean Counties lying within a continuous line beginning at the intersection of Route 1 and the Delaware River; then east along Route 1 to its intersection with Route 206; then south along Route 206 to its intersection with Route 524; then east along Route 524 to its intersection with Route 195; then east along Route 195 to its intersection with Route 38; then east along Route 38 to Belmar and the Atlantic Ocean; then south along the Atlantic Ocean to Ship Bottom; then north and west along Route 72 to its intersection with Route 70; then west along Route 70 to its intersection with Route 38 at Cherry Hill; then west along Route 38 to its intersection with Route 30; then west along Route 30 to the Delaware River; then north along the east bank of the Delaware River to the point of beginning.

13. (No change in text.)

14. Turkey Hunting Area No. 16: That portion of Burlington and Atlantic Counties lying within a continuous line beginning at the intersection of Routes 206 and 70 at Red Lion; then east along Route 70 to its intersection with Route 72; then southeast along Route 72 to Ship Bottom and the Atlantic Ocean; then south along the Atlantic Ocean to Sea Isle Boulevard (Route 625) in Sea Isle City; then west along Sea Isle Boulevard to its intersection with Route 9; then north along Route 9 to its intersection with Route 50; then north along Route 50 to its intersection with Route 557; then north and west along Route 557 to its intersection with Route 40; then west along Route 40 to its intersection with Route 54; then north along Route 54 to its intersection with Route 206; then north along Route 206 to the point of beginning.

Recodify existing 16.-18. as 15.-17. (No change in text.)

7:25-5.8 Mink (Mustela vison), muskrat (Ondatra zibethicus) and nutria (Myocaster coypus) trapping only

(a) (No change.)

(b) The duration of the mink, muskrat and nutria trapping season is as follows:

1. Northern Zone: 6:00 A.M. on November 15, 1993 through March 15, 1994, inclusive, except on State Fish and Wildlife Management Areas.

2. Southern Zone: 6:00 A.M. on December 1, 1993 through March 15, 1994, inclusive, except on State Fish and Wildlife Management Areas.

3. (No change.)

4. On State Fish and Wildlife Management Areas: 6:00 A.M. on January 1 through March 15, 1994, inclusive.

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

7:25-5.9 Beaver (Castor canadensis) trapping

(a) (No change.)

(b) The duration of the trapping season for beaver shall be January 16 through February 12, 1994, inclusive.

(c) Special Permit: A special permit obtained from the Division of Fish, Game and Wildlife shall be required to trap beaver. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders.) Applications shall be received in the Trenton office during the period November 15, 1993—December 15, 1993. Applicants may apply for only one beaver trapping permit and shall provide their 1993 trapping license number. Permits will be alloted on a zone basis as follows: Zone 1—8, Zone 2—7, Zone 3—2, Zone 4—4, Zone 5—3, Zone 6—16, Zone 7—3, Zone 8—1, Zone 9—3, Zone 10—5, Zone 11—3, Zone 12—3, Zone 13—0, Zone 14—1, Zone 15—0, Zone 16—3, Zone 17—3, Zone 18—2. Total 67. Successful applicants must trap with a valid, current trapping license.

(d) (No change.)

(e) The season limit for beaver trapping is three beaver per special permit and five beaver per special site specific permit.

(f) A "beaver transportation tag" provided by the Division shall be affixed to each beaver taken immediately upon removal from trap, and all beaver shall be taken to a designated beaver checking station at the times and dates specified on the beaver permit and, in any case, no later than February 19, 1994.

(g)-(i) (No change.)

7:25-5.10 River otter (Lutra canandensis) trapping

(a) (No change.)

(b) The duration of the trapping season for otter shall be January 16 through February 12, 1994, inclusive.

(c) Special Permit: A special permit obtained from the Division of Fish, Game and Wildlife shall be required to trap otter. (If the number of applications received in the Trenton office exceeds the

quotas listed, a random drawing will be hel to determine permit holders). Beaver permit holders will be give i first opportunity for otter permits in their respective zones. Applic tions shall be received in the Trenton office during the period No ember 15, 1993—December 15, 1993. Only one application per pe son may be submitted for trapping otter and applicants shall provi e their 1993 trapping license number. Permits will be allotted on a zone basis as follows: Zone 1—7, Zone 2—7, Zone 3—2, Zone 4 -3, Zone 5—2, Zone 6—9, Zone 7—3, Zone 8—6, Zone 9—3, Z ne 10—4, Zone 11—5, Zone 12—2, Zone 13—14, Zone 14—7, Z ie 15—12, Zone 16—4, Zone 17—2, Zone 18—5. Total 97. Succ ssful applicants must trap with a valid, current trapping license.

(d) (No change.)

(e) The "otter transportation tag" provide by the Division must be affixed to each otter taken immediately u on removal from the trap. All otter pelts and carcasses shall be t ken to a beaver-otter check station at dates specified on the otter p rmit and, in any case, no later than February 19, 1994, where a p lt tag will be affixed and the carcass surrendered.

(f)-(i) (No change.)

7:25-5.11 Raccoon (Procyon lotor), red fox (ulpes vulpes), gray fox (Urocyon cinereoargenteus), V ginia opossum (Didelphis virginiana), striped skur (Mephitis mephitis), long-tailed weasel (Mustela frenata , short-tailed weasel (Mustela erminea), and coyote (Ca is latrans) trapping only.

(a) (No change.)

(b) The duration of the regular raccoon, re fox, gray fox, Virginia opossum, striped skunk, long-tailed weasel, s ort-tailed weasel and coyote trapping season is 6:00 A.M. on Noven ber 15, 1993 to March 15, 1994, inclusive, except on State Fish and Wildlife Management Areas.

(c) The duration for trapping on State Fish and Wildlife Management Areas is 6:00 A.M. on January 1, 19 to March 15, 1994, inclusive.

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

7:25-5.13 Migratory birds

(a) Should any open season on migratory game birds including waterfowl, be set by Federal regulation which ould include the date of November 13, 1993, the starting time on ach date will be 8:00 A.M. to coincide with the opening of the sma game season on that date. However, this shall not preclude the hun ng of migratory game birds, including waterfowl, on the tidal ma hes of the State as regularly prescribed throughout the season b Federal regulations.

(b) (No change.)

(c) A person shall not take, attempt to t ce, hunt for or have in possession, any migratory game birds inclu ing waterfowl, except at the time and in the manner prescribed in the Code of Federal Regulations by the U.S. Department of the I terior, U.S. Fish and Wildlife Service, for the 1993-94 hunting se son. The species of migratory game birds, including waterfowl, t at may be taken or possessed and unless otherwise provided the daily bag limits shall be the same as those prescribed by the U.S Department of the Interior, U.S. Fish and Wildlife Service for the 1993-94 hunting season.

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

(h) Hunting hours for waterfowl shall be hose hours that are prescribed by the Department of the Interic , United States Fish and Wildlife Service for the 1993-94 huntin season.

(i) A special canvasback permit shall be r quired to hunt canvasback ducks, and a special swan permit sha be required to hunt swans, if the appropriate prescribed special se son is established by Federal regulations. If a special season for canvasback ducks is established by Federal regulations, the speci canvasback hunting area shall be that portion of the State south c Routes 287 and 440 (Perth Amboy), east of the Garden State F rkway and north of Route 36 (Long Branch) and that portion of th State south of Route 88 (Bay Head), east of the Garden State Parkw y and north of Route 72 (Ship Bottom). If a special season for s an is established by Federal regulations, the special swan hunti g area shall be the counties of Burlington, Cumberland and Salem. A special September Canada goose hunting season permit shall be required to hunt Canada geese, if the appropriate prescribed special season is established by Federal regulations. If a special September Canada goose hunting season is established by Federal regulations, the special September Canada goose hunting area shall be that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Parkway to its intersection with Route 70; then west on Route 70 to its intersection with Route 206; then south on Route 206 to its intersection with Route 54; then south on Route 54 to its intersection with Route 40; then west on Route 40 to its intersection with the New Jersey Turnpike; then south on the Turnpike to the Delaware State boundary line; then north on the Delaware State boundary to its intersection with the Pennsylvania State boundary; then north on the Pennsylvania boundary in the Delaware River to its intersection with the New York State boundary.

(j)-(l) (No change.)

(m) A person shall not take or attempt to take migratory game birds:

1.-10. (No change.)

11. Before 8:00 A.M. on November 13, 1993. However this shall not preclude the hunting of migratory game birds on tidal waters or tidal marshes of the State.

12.-13. (No change.)

14. Except at the time and manner prescribed by the State or Federal regulation, or by the 1993-94 Game Code.

15.-19. (No change.)

(n) Seasons and bag limits are as follows:

1. Mourning dove (Zenaida macroura) are protected. There will be no open season on these birds during 1993-94.

2. Rail and gallinule season and bag limits are as follows:

i. The duration of the season for hunting clapper rail (Rallus longirostris), Virginia rail (Rallus limicola), sora rail (Porzana carolina) and common gallinule or moorhen (Gallinula chloropus) is September 1 through November 9, 1993 inclusive.

ii. (No change.)

(o) Woodcock zones and hunting hours are as follows:

1.-2. (No change.)

3. Hunting hours for Woodcock are sunrise to sunset except on November 13, when the hunting hours are 8:00 A.M. to sunset.

(p)-(s) (No change.)

7:25-5.15 Crow (Corvus spp.)

(a) Duration for the season for hunting the crow shall be Monday, Thursday, Friday and Saturday from August 9, 1993 through March 19, 1994, inclusive, excluding December 6-11 and December 15, 16 and 17, 1993 and January 14, 15, 21 and 22, 1994 in those deer management zones in which a shotgun permit deer season is authorized.

(b) (No change.)

(c) The hours for hunting crows shall be sunrise to ½ hour after sunset, except on November 13, 1993 when the hours are 8:00 A.M. to ½ hour after sunset.

(d) (No change.)

7:25-5.17 Raccoon (Procyon lotor) and Virginia opossum (Didelphis virginiana) hunting

(a) The duration for the season of hunting raccoons and Virginia opossum is one hour after sunset on October 1, 1993 to one hour before sunrise on March 1, 1994. The hours for hunting are one hour after sunset to one hour before sunrise.

(b) (No change.)

(c) A person shall not hunt for raccoon or opossum with dogs and firearms or weapons of any kind on December 6-11 and on December 15, 16 and 17, 1993 and January 14, 15, 21, and 22, 1994 in those deer management zones for which a shotgun permit deer season is authorized and including any extra permit deer season day(s).

(d) A person shall not train a raccoon or opossum dog other than during the period of September 1 to October 1, 1993 and from March 1 to May 1, 1994. The training hours are one hour after sunset to one hour before sunrise.

(e) (No change.)

7:25-5.18 Woodchuck (Marmota monax) hunting

(a) Duration for the hunting of woodchucks with a rifle in this State is March 12 through September 30, 1994. Licensed hunters may also take woodchuck with shotgun or long bow and arrow or by means of falconry during the regular woodchuck rifle season and during the upland game season established in N.J.A.C. 7:25-5.3.

(b)-(f) (No change.)

7:25-5.19 Red fox (Vulpes vulpes) and gray fox (Urocyon cinereoargenteus) hunting

(a) The duration of the red fox and gray fox hunting season is as follows:

1. Bow and Arrow Only—October 2 through November 12, 1993.

2. Firearm or Bow and Arrow—November 13, 1993 through February 19, 1994, excluding December 6-11, 15, 16 and 17, 1993 and January 14, 15, 21 and 22, 1994 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The use of dogs shall not be allowed for fox hunting during the Statewide bow and arrow only season of October 2—November 12, 1993. There shall be no fox hunting during the firearm deer season, except that a person hunting deer during deer season may kill fox if the fox is encountered before said person kills a deer. However, after a person has killed a deer he must cease all hunting immediately.

(c) The hours for hunting fox are 8:00 A.M. to ½ hour after sunset on November 13, 1993 and on other days from sunrise to ½ hour after sunset.

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

7:25-5.20 Dogs

(a) A person shall not exercise or train dogs on State Fish and Wildlife Management Areas May to August 31, inclusive, except on portions or various wildlife management areas designated as dog training areas, and there shall be no exercising or training of dogs on any Wildlife Management Area on November 12, 1993.

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

7:25-5.23 Firearms and missiles, etc.

(a) Except when legally engaged in deer hunting during the prescribed firearm deer seasons no person shall have in his or her possession in the woods, fields, marshlands or on the water any shell or cartridge with missiles of any kind larger than No. 4 fine shot. This shall not preclude a properly licensed person from hunting woodchuck with a rifle during the woodchuck season. Also excepted is the use of a muzzleloading rifle, .36 caliber or smaller, loaded with a single projectile during the prescribed portion of the squirrel season in designated areas. Waterfowl hunters may possess and use shotgun shells loaded with T (.200 inch) steel fine shot or smaller and properly licensed persons hunting for raccoon or opossum with hounds or engaged in trapping for furbearing animals may possess and use a .22 caliber rifle and raccoon, or opossum or legally trapped furbearing animals other than muskrat.

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

(e) Within the areas described as portions of Passaic, Mercer, Hunterdon, Warren and Sussex Counties lying within a continuous line beginning at the intersection of Rt. 513 and the New York State line; then south along Rt. 513 to its intersection with the Morris-Passaic County line; then west along the Morris-Passiac County line to the Sussex County line; then south along the Morris-Sussex County line to the Warren County line; then southwest along the Morris-Warren County line to the Hunterdon County line; then southeast along the Morris-Hunterdon County line to the Somerset County line; then south along the Somerset-Hunterdon County line to its intersection with the Mercer County line; then west and south along the Hunterdon Mercer County line to its intersection with Rt. 31; then south along Rt. 31 to its intersection with Rt. 546; then west along Rt. 546 to the Delaware River; then north along the east bank of the Delaware River to the New York State line; then east along the New York State line to the point of beginning at Lakeside; and in that portion of Salem, Gloucester, Camden, Burlington, Mercer, Monmouth, Ocean, Atlantic, Cape May and Cumberland counties lying within a continuous line beginning at the intersection of Rt. 295 and the Delaware River; then east along Rt. 295 to its intersection with the New Jersey Turnpike; then east along the New Jersey Turnpike to its intersection with Rt. 40; then east along Rt. 40 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Rt. 536; then east along 536 to its intersection with Rt. 206; then north along Rt. 206 to it intersection with the New Jersey Turnpike; then northeast along the New Jersey Turnpike to its intersection with Rt. 571; then southeast along Rt. 571 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with Rt. 9 at Somers Point; then south along Rt. 9 to its intersection with Rt. 83; then west along Rt. 83 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Dennis Creek; then south along the west bank of Dennis Creek to its intersection with Delaware Bay; then northwest along the east shore of Delaware Bay and the Delaware River to the point of beginning; persons holding a valid and proper rifle permit in addition to their current firearm hunting license may hunt for squirrels between October 9-November 12, 1993 and January 24-February 14, 1994 using a .36 caliber or smaller muzzleloading rifle loaded with a single projectile.

(f) Except as specifically provided below for waterfowl hunters, semi-wild and commercial preserves, muzzleloader deer hunters and trappers, from December 6-11, 1993 inclusive, it shall be illegal to use any firearm of any kind other than a shotgun. Nothing herein contained shall prohibit the use of a shotgun not smaller than 20 gauge nor larger than 10 gauge with a rifled bore for deer hunting only. Persons hunting deer shall use a shotgun not smaller than 20 gauge or larger than 10 gauge with the lead or lead alloy rifled slug or slug shotgun shell only or a shotgun not smaller than 12 gauge nor larger than 10 gauge with the buckshot shell. It shall be illegal to have in possession any firearm missile except the 20, 16, 12 or 10 gauge lead or lead alloy rifled slug or hollow base slug shotgun shell or the 12 or 10 gauge buckshot shell. (This does not preclude a person legally engaged in hunting on semi-wild or commercial preserves for the species under license or a person legally engaged in hunting woodcock from being possessed solely of shotgun(s) and nothing larger than No. 4 fine shot, nor a person engaged in hunting waterfowl only from being possessed solely of shotgun and nothing larger than T (.200 inch) steel shot during the shotgun deer seasons). A legally licensed trapper possessing a valid rifle permit may possess and use a .22 rifle and short rimfire cartridge only while tending his or her trap line.

1. Persons who are properly licensed may hunt for deer with a muzzleloader rifle during the 1993 six day firearm deer season and the permit muzzleloader rifle deer season.

2. Muzzleloader rifles used for hunting deer are restricted to single-shot single barreled weapons with flintlock or percussion actions, shall not be less than .44 caliber and shall fire a single missile or projectile. Except as provided in (p) below, only open iron sights and peep sights shall be attached or affixed to the muzzleloader rifle while engaged in hunting for deer. Only one muzzleloader rifle may be possessed while hunting. Double barrel and other types of muzzleloader rifles capable of firing more than one shot without reloading or holding more than one charge are prohibited. Persons who are properly licensed may hunt for deer with a single-shot, single barreled, flintlock or precussion action, smoothbore muzzleloader during the permit muzzleloader rifle season. Single shot, smoothbore muzzleloaders used during the permit muzzleloader season shall fire a single missile or projectile and shall not be smaller than 20 gauge or larger than 10 gauge. Double barrel and other types of smoothbore muzzleloaders capable of firing more than one shot without reloading or holding more than one charge are prohibited during the permit muzzleloader season. Persons who are properly licensed may hunt deer with single or double barrel, smoothbore muzzleloader during the six day firearm and permit shotgun deer

seasons. Smoothbore muzzleloaders used fc deer hunting during the six day firearm and permit shotgun dee seasons shall not be smaller than 20 gauge or larger than 10 gaug and shall fire a single missile or projectile, or buckshot no smaller than No. 4 (.24 inch) or larger than 000 (.36 inch). Except as pro ded in (p) below, no telescopic sights shall be attached or affix l to the smoothbore muzzleloader while engaged in hunting or deer. Only one muzzleloader rifle or smoothbore muzzleloa er may be possessed while deer hunting.

3.-5. (No change.)

(g)-(o) (No change.)

(p) The Division may issue a Special Mu dleloader Rifle Scope permit to certain visually handicapped individ als which would allow these individuals as specified below in this s bsection to hunt with a muzzleloader rifle during the prescri ed seasons. Special Muzzleloader Rifle Scope Permit application will require certification by a Doctor of Ophthalmology or Opton etry, licensed to practice in New Jersey and be subject to Division view and ratification. For the purposes of this permit, a visually h ndicapped individual is defined as one who is incapable of achiev ig proper sight alignment/sight picture using a muzzleloader rifl equipped with open sights or peep sights due to a permanent sion disability which cannot be adequately addressed through the u e of corrective lenses. The rifle scopes permitted under a Special Mu zlelaoder Rifle Scope Permit shall be non-magnifying or fixed po er of not more than 1.5x.

(q) (No change.)

7:25-5.24 Bow and arrow, general provisio ;

(a) (No change.)

(b) No person shall use a bow and arrov for hunting, on December 15, 16 and 17, 1993 and January 14 15, 21 and 22, 1994 in those deer management zones in which a permit shotgun deer season is authorized, on any additional Perm Deer Season Day(s) if declared open, during the six-Day Firearm Deer Season, or between ½ hour after sunset and sunrise durin other seasons. Deer shall not be hunted for or taken on Sunday exc pt on wholly enclosed preserves that are properly licensed for the propagation thereof.

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

7:25-5.25 White-tailed deer (Odocoileus virgi ianus) fall bow season (either sex)

(a) Deer of either sex and any age may e taken by bow and arrow exclusively from October 2—Novembe 12, 1993, inclusive; except in Zones 4, 18, 21 and 55 only deer wit antlers at least three inches long may be taken from October 2 to 2 , 1993; and in Zones 7, 8, 10, 11, 12 and 41 where only deer witl ut antlers and deer with antlers which are less than three inches lc g may be taken from October 2 to 8, 1993. Legal hunting hours sl ll be ½ hour before sunrise to ½ hour after sunset.

(b) Bag Limit: Two deer of either sex, excep as noted in (a) above and (b)1 below. Only one deer may be taken in a given day. Deer shall be tagged immediately with completely fi ed in "transportation tag" and shall be transported to a deer check ig station bfore 8:00 P.M. E.S.T. on the day killed. Upon comple on of registration of first deer, one valid and proper "New Jersey Second Deer Permit and Transportation Tag" (second tag) will be i sued which will allow this person to continue hunting and take o additional deer of either sex during the current fall bow deer se son. The second tag shall not be valid on the day of issuance and a registration requirements apply.

1. In deer management Zones 7, 8, 9, 10, , 12, 13, 39, 40, and 41, one additional deer may be taken by any pr perly licensed hunter who harvests an antlerless deer first in these zones, exclusively. A "New Jersey Bonus Deer Permit and Transpo tation Tag" will only be issued for the purpose of this provision a deer check stations located in or within 15 miles of these zones. T e New Jersey Bonus Deer Permit and Transportation Tag will be ssued in addition to the New Jersey Second Deer Permit and Tra sportation Tag, and may only be used for taking a deer within 2 ones 7, 8, 9, 10, 11, 12, 13, 39, 40 and 41. The transportation p rtion of this tag is completed and affixed to the deer immediate upon killing by the hunter. All other deer registration requirements apply. A deer of either sex and any age may be taken with a bonus deer permit, except from October 2 through 8 in Zones 7, 8, 10, 11, 12 and 41, when only antlerless deer may be taken. This bonus deer tag shall not be valid on the day of issuance and is not transferable. Persons possessing both a bonus tag and second tag may not take more than one deer per day.

2. (No change in text.)

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

7:25-5.26 White-tailed deer winter bow season (either-sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from January 3-26, 1994 inclusive, excluding January 14, 15, 21 and 22, 1994 in those management zones in which a shotgun permit season is authorized. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

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

7:25-5.27 White-tailed deer six day firearm season

(a) Duration for this season will be December 6-11, 1993 inclusive with shotgun or muzzleloader rifle, exclusively.

(b) Bag Limit: Two deer, with antler at least three inches long; except in those areas designated as "hunters choice" indicated in (d) below, where the bag limit is two deer of either sex. Only one deer may be taken in a given day per person on a regular firearm hunting license. Persons awarded Zone 9 or Zone 13 shotgun permits may also take one deer of either sex and any age, per permit, on December 6 and 11, 1993 subject to the provisions of N.J.A.C. 7:25-5.29. Deer shall be tagged immediately with the "transportation tag" appropriate for the season, completely filled in and shall be transported to a checking station before 7:00 P.M. E.S.T. on the day killed. Upon completion of the registration of the first deer, one valid and proper "New Jersey Second Deer Permit and Transportation Tag" (second tag) will be issued which will allow that person to continue hunting and take one additional deer with antler at least three inches long or one additional deer of either sex in the "hunters choice" area, exclusively, during the current, six-day firearm season. The second tag shall not be valid on the day of issuance and all registration requirements apply. Any legally killed deer which is recovered too late to be brought to a check station by closing time shall be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. This deer must be brought to a checking station on the next open day to receive a legal "possession tag." If the season has concluded, this deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag."

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

(e) Hunting Hours: December 6-11, 1993, inclusive, 7:00 A.M. E.S.T. to 5:00 P.M. E.S.T. with shotgun or muzzleloader rifle.

(f) No person shall take, attempt to take, hunt or attempt to hunt, kill or attempt to kill, shoot at or attempt to shoot at, in any one day or in any one year more than the number of deer permitted by this Code.

(g) (No change.)

7:25-5.28 White-tailed deer muzzleloader rifle permit season (either sex)

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

(d) Duration of the muzzleloader rifle permit season is December 13, 14, 18, 20, 21-24, 27-31, 1993 and January 1, 1994 in Zones 1-36, 41-51, 55, 57, 58, 61, 63 and 65; November 13-20, 1993 (first segment) and December 13-17, 20-24, 27-31, 1993 (second segment) in Zones 37 and 52; December 13-18, 20-25, 27-31, 1993 and January 1, 1994 in Zone 39; November 27-December 4, 1993 (first segment) and December 13-18, 20-24, 27-31, 1993 and January 1, 1994 (second segment) in Zone 53; December 13-18, 20-24, 27-31, 1993 in Zone 54 or any other time as determined by the Director. Legal hunting hours shall be sunrise to ½ hour after sunset E.S.T.

(e)-(g) (No change.)

(h) Muzzleloader Rifle Permit Season Permits shall be applied for as follows:

1. Only holders of valid and current firearm hunting licenses may apply by detaching from their hunting license the stub marked

"Special Deer Season 1993" signing as provided on the back, and sending the stub, together with the permit fee and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2.-3. (No change.)

4. The application form shall be filled in to include: Name, address, current firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August 15—September 10, 1993 inclusive. Applications postmarked after the September 10 will not be considered for the initial drawing. Selection of permittees will be made by random selection.

5.-7. (No change.)

(i) Farmer Muzzleloader Rifle Permit Season Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office during the period of August 1 to 15. There is no fee required, and all qualified applicants will receive a farmer muzzleloader rifle permit season permit, delivered by mail.

4.-5. (No change.)

(j) (No change.)

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1993 Muzzleloader Rifle Deer Season Permit Quotas (either sex) are as follows:

1993 MUZZLELOADER RIFLE PERMIT SEASON PERMIT QUOTAS

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest 1993	Permit Quota 1993	Portions of Counties Involved
1	1	242	535	Sussex
2	1	198	650	Sussex
3	1	171	840	Sussex, Passaic, Bergen
4	1	164	410	Sussex, Warren
5	1	411	1515	Sussex, Warren
6	1	196	850	Sussex, Morris, Passaic, Essex
7	1	177	725	Warren, Hunterdon
8	1	398	1950	Warren, Hunterdon, Morris, Somerset
9	1	104	450	Morris, Somerset
10	1	259	1035	Warren, Hunterdon
11	1	122	500	Hunterdon
12	1	275	1100	Mercer, Hunterdon, Somerset
13	1	37	245	Morris, Somerset
14	1	156	792	Mercer, Somerset, Middlesex, Burlington
15	1	124	461	Mercer, Monmouth, Middlesex
16	1	140	489	Ocean, Monmouth
17	1	74	286	Ocean, Monmouth, Burlington
18	1	50	275	Ocean
19	1	84	438	Camden, Burlington
20	1	72	400	Burlington
21	1	153	550	Burlington, Ocean
22	1	32	180	Burlington, Ocean
23	1	175	950	Burlington, Camden, Atlantic
24	1	152	480	Burlington, Ocean
25	1	139	600	Gloucester, Camden, Atlantic, Salem
26	1	255	950	Atlantic
27	1	161	650	Salem, Cumberland
28	1	139	550	Salem, Cumberland, Gloucester
29	1	116	450	Salem, Cumberland
30	1	41	182	Cumberland
31	1	13	80	Cumberland
32	1	10	68	Cumberland
33	1	65	198	Cape May, Atlantic
34	1	132	595	Cape May, Cumberland
35	1	175	716	Gloucester, Salem
36	1	6	60	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	2	121	335	Burlington (Fort Dix Military Reservation)
38		0	0	Morris (Great Swamp National Wildlife Refuge)
39	3	17	25	Monmouth (Earle Naval Weapons Station)
40		0	0	Monmouth (Earle Naval Weapons Station—Waterfront)
41	1	87	380	Mercer, Hunterdon
42	1	9	65	Atlantic
43	1	54	245	Cumberland
44	1	14	75	Cumberland

45	1	83	305	Cumberland, Atlantic, Cape May
46	1	71	250	Atlantic
47	1	50	150	Atlantic, Cumberland, Gloucester
48	1	41	288	Burlington
49	1	3	23	Burlington, Camden, Gloucester
50	1	36	214	Middlesex, Monmouth
51	1	40	224	Monmouth, Ocean
52	2	56	140	Ocean (Fort Dix Military Reservation)
53	4	13	40	Ocean (Lakehurst Naval Engineering Center)
54	5	4	6	Morris (Picatinny Arsenal-ARRAD Com)
55	1	18	75	Gloucester
56		0	0	Atlantic (Forsythe National Wildlife Refuge)
57	1	2	40	Atlantic (Forsythe National Wildlife Refuge)
58	1	8	50	Burlington, Ocean (Forsythe National Wildlife Refuge)
59		0	0	Salem (Supawna National Wildlife Refuge)
60		0	0	Hunterdon (Round Valley Recreation Area)
61	1	23	105	Atlantic (Atlantic County Parks)
62		0	0	Monmouth (Fort Monmouth)
63	1	50	225	Salem
64		0	0	Monmouth (Monmouth Battleground State Park)
65	1	19	120	Gloucester
Total		6,037	24,585	

(l) The Season Dates Code referred in th table in (k) above is as follows:

1. Indicates the season dates will be Dece ıber 13, 14, 18, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 1993 and Ja uary 1, 1994.

2. Indicates the season dates will be Nove ıber 13-20, 1993 (first segment); and, December 13-17, 20-24, 27- 1, 1993 (second segment).

3. Indicates the season dates will be Decem ıer 13-18, 20-25, 27-31, 1993 and January 1, 1994.

4. Indicates the season dates will be Nove ıber 27—December 4, 1993 (first segment) and December 13-18,)-24, 27-31, 1993 and January 1, 1994 (second segment).

5. Indicates the season dates will be Decem ıer 13-18, 20-24, 27-31, 1993.

(m) (No change.)

(n) Muzzleloader rifle permit season perı its not applied for by September 10, 1993 will be reallocated to sl ɔtgun and bow permit season applicants.

7:25-5.29 White-tailed deer shotgun permit : :ason (either sex)

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

(c) The season bag limit per permit shall ɔe one deer of either sex and any age with a shotgun permit seas n permit in Zones 1, 3, 4, 18, 20, 21, 23, 24, 31, 32, 37, 43, 45, 2, 53, 54, 55, 64 and 65; two deer of either sex and any age with a ;hotgun permit season permit in Zones 2, 5-8, 14-17, 19, 22, 25, 30 33, 34, 35, 42, 44, 46, 48 and 51; three deer of either-sex and any ag with a shotgun permit season permit in Zones 9-13, 36, 39, 41, 47, 49, 50, 56, 59, 60, 61, and 63; six deer of either sex and any age i Zone 57 and 58; and 10 deer of either sex and any age in Zone 3. Only one deer may be taken in a given day per permit except ı Zone 38 where the limit is two deer in a given day per permit. ersons awarded Zone 9 and 13 shotgun permits may also take a d er with antler at least three inches long on December 6-11, 1993 ıith a regular firearm license, subject to the provisions of N.J.A.C. :25-5.27. It is unlawful to attempt to take or hunt for more thar the number of deer permitted.

(d) Duration of the permit shotgun deer eason is from sunrise to ½ hour after sunset E.S.T. on the follo ing dates:

1. December 15, 1993 in Zones 1, 3, 4, 8, 20, 21, 23, 24, 31, 32, 43, 45, 55 and 65.

2. December 15, 16 and 17, 1993 and, Jan ary 14, 15, 21 and 22, 1994 in Zones 2, 5, 7, 8, 10, 11, 12, 14, 15, 17, 25, 27, 28, 29, 35, 36, 41, 47, 48, 49, 50 and 63.

3. December 15, 16 and 17, 1993 in Zone 6, 16, 19, 22, 26, 30, 33, 34, 42, 44, 46, 51, 56, 60 and 61.

4. December 6, 11, 15, 16 and 17, 1993, and January 14, 15, 21 and 22, 1994 in Zones 9 and 13.

5. December 18, 1993 in Zones 37 and 54.

6. December 2, 3, 4, 9 and 10, 1993 in Zone 38.

7. December 18, 1993, and January 15 and 29, 1994 in Zone 39.

8. December 18, 1993 and January 15, 1994 in Zone 52.

9. January 8, 1994 in Zone 53.

10. December 6, 7, 8, 15, 16 and 17, 1993 in Zones 57 and 58.

11. December 6, 7 and 8, 1993 (first segment), December 15, 16 and 17, 1993 (second segment), and January 14, 15 and 22, 1994 (third segment) in Zone 59.

12. January 14, 1994 (first segment), January 15, 1994 (second segment), and January 22, 1994 (third segment) in Zone 64.

13. (No change.)

(e)-(g) (No change.)

(h) Shotgun Permit Season Permits shall be applied for as follows:

1. Only holders of valid and current firearm hunting licenses including juvenile firearm license holders may apply by detaching from their hunting license the stub marked "Special Deer Season 1993," signing as provided on the back, and sending the stub, together with the permit applied for and an application form properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2. (No change.)

3. The application form shall be filled in to include: Name, address, current firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August 15—September 10. Applications postmarked after September 10 will not be considered for the initial drawing. Selection of permittees will be made by random selection.

4.-6. (No change.)

(i) Farmer Shotgun Permit Season Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office during the period of August 1 to 15. There is no fee required, and all qualified applicants will receive a farmer shotgun permit season permit, delivered by mail.

4. (No change.)

(j) (No change.)

(k) The Deer Management Zone Map on file at the Office of Administrative Law and is available from that agency or the Division.

The 1993 Shotgun Permit Season Permit Quotas (Either Sex) are as follows:

1993 SHOTGUN PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest 1993	Permit Quota 1993	Portions of Counties Involved
1	1	178	746	Sussex
2	2	789	1682	Sussex
3	1	68	582	Sussex, Passaic, Bergen
4	1	66	405	Sussex, Warren
5	2	2498	4842	Sussex, Warren
6	3	335	1310	Sussex, Morris, Passaic, Essex
7	2	988	1964	Warren, Hunterdon
8	2	2315	4843	Warren, Hunterdon, Morris, Somerset
9	4	866	1496	Morris, Somerset
10	2	1436	2377	Warren, Hunterdon
11	2	714	1376	Hunterdon
12	2	1547	2373	Mercer, Hunterdon, Somerset
13	4	439	983	Morris, Somerset
14	2	744	1979	Mercer, Somerset, Middlesex, Burlington
15	2	428	1014	Mercer, Monmouth, Middlesex
16	3	120	497	Ocean, Monmouth
17	2	375	719	Ocean, Monmouth, Burlington
18	1	13	138	Ocean
19	3	180	604	Camden, Burlington
20	1	26	200	Burlington
21	1	22	225	Burlington, Ocean
22	3	52	210	Burlington, Ocean
23	1	37	367	Burlington, Camden, Atlantic
24	1	19	131	Burlington, Ocean
25	2	374	1031	Gloucester, Camden, Atlantic, Salem
*[25]*26*	3	79	255	Atlantic
27	2	375	935	Salem, Cumberland
28	2	148	370	Salem, Cumberland, Gloucester
29	2	349	723	Salem, Cumberland
30	3	46	149	Cumberland
31		0	0	Cumberland
32	1	2	38	Cumberland
33	3	87	281	Cape May, Atlantic
34	3	68	184	Cape May, Cumberland
35	2	454	1085	Gloucester, Salem
36	2	82	120	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	5	16	100	Burlington (Fort Dix Military Reservation)
38	6	242	600	Morris (Great Swamp National Wildlife Refuge)
39	7	76	93	Monmouth (Earle Naval Weapons Station)
40		0	0	Monmouth (Earle Naval Weapons Stations—Waterfront)
41	2	504	818	Mercer, Hunterdon
42	3	13	61	Atlantic
43	1	22	140	Cumberland
44	3	14	37	Cumberland
45		0	0	Cumberland, Atlantic, Cape May
46	3	32	102	Atlantic
47	2	59	179	Atlantic, Cumberland, Gloucester
48	2	290	690	Burlington
49	2	31	51	Burlington, Camden, Gloucester
50	2	315	512	Middlesex, Monmouth
51	3	53	315	Monmouth, Ocean
52	8	26	49	Ocean (Fort Dix Military Reservation)
53	9	13	42	Ocean (Lakehurst Naval Engineering Center)
54	5	5	30	Morris (Picatinny Arsenal—ARRAD Com)
55	1	4	36	Gloucester
56	3	28	20	Atlantic (Forsythe National Wildlife Refuge)
57	10	18	40	Atlantic (Forsythe National Wildlife Refuge)
58	10	23	50	Burlington, Ocean (Forsythe National Wildlife Refuge)

59	11	49	75
60	3	27	120
61	3	42	108
62		0	0
63	2	210	349
64	12	78	135
65	1	10	60
Total		18,519	41,046

Salem (Supawna National Wildlife Refuge)
Hunterdon (Round Valley Recreation Area)
Atlantic (Atlantic County Parks)
Monmouth (Fort Monmouth)
Salem
Monmouth (Monmouth Battleground State Park)
Gloucester, Camden

(l) Shotgun permit season permits not ap lied for by September 10, 1993 may be reallocated to muzzleloac r rifle, permit season applicants.

(m) The Season Dates Code referred to i the table in (k) above is as follows:

1. Indicates one day shotgun permit seaso —December 15, 1993.
2. Indicates seven-day shotgun permit se: on—December 15, 16 and 17, 1993 and January 14, 15, 21 and 2, 1994.
3. Indicates three-day shotgun permit se son December 15, 16 and 17, 1993.
4. Indicates a nine-day shotgun permit s: ason December 6, 11, 15, 16 and 17, 1993 and January 14, 15, 2 and 22, 1994.
5. Indicates a one-day shotgun permit sea: n December 18, 1993.
6. Indicates a five-day shotgun permit se: ion December 2, 3, 4, 9 and 10, 1993.
7. Indicates a three-day shotgun permit se: on December 18, 1993 and January 15 and 29, 1994.
8. Indicates a two-day shotgun permit sea on December 18, 1993 and January 15, 1994.
9. Indicates a one-day shotgun permit s: ason January 8, 1994.
10. Indicates a six-day shotgun permit se: ion December 6, 7, 8, 15, 16 and 17, 1993.
11. Indicates three, three-day shotgun pe: nit season segments—December 6, 7 and 8, 1993 (first segment); December 15, 16 and 17, 1993 (second segment); and, January 14, 15 and 22, 1994 (third segment).
12. Indicates three one-day shotgun per it season segments—January 14, 1994 (first segment); January 15, 994 (second segment); and, January 22, 1994 (third segment).

(n)-(o) (No change.)

(p) Deer Management zones are locatec as follows:

1. Zone No. 1: That portion of Sussex County lying within a continuous line beginning at the intersectic of Rts. 206 and 519 at Branchville; then northwest along Route 206 to its intersection with Rt. 560; then west along Rt. 560 to i intersection with the Delaware River at Dingman's Ferry; then no th along the east bank of the Delaware River to the New York Sta e line; then east along the New York State line to Rt. 519, then outh along Rt. 519 to the point of beginning at Branchville. The islands of Namanock, Minisink and Mashipacong lying in the Dela are River are included in this zone.

2.-3. (No change.)

4. Zone No. 4: That portion of Sussex and Warren Counties lying within a continuous line beginning at the int rsection of Route 560 (Tuttles Corner-Dingman's Road) and th Delaware River at Dingman's Ferry; then southeast along Rout 560 to its intersection with Route 206; then southeast along Route 206 to its intersection with the base of the Kittatinny Ridge at Culve s Inlet; then southwest along the base of the Kittatinny Ridge to ne Delaware River at the Delaware Water Gap north and west of C arry Road; then north along the east bank of the Delaware River tc the point of beginning at Dingman's Ferry. Depew, Tocks, Poxonc and Labar Islands in the Delaware River are included in this z ne.

5. Zone No. 5: That portion of Warren an Sussex Counties lying within a continuous line beginning at the i ersection of the base of the Kittatinny Ridge and Rt. 206 at Culve s Inlet; then southeast along Rt. 206 to its intersection with Rt. 5) at Branchville; then south along Rt. 519 to its intersection with F . 206 at Newton; then south along Rt. 206 to its intersection with R 517 at Andover; then south along Rt. 517 to its intersection with I t. 46 at Hackettstown; then west along Rt. 46 to its intersection w h the Delaware River at Manuakachunk; then north along the east bank of the Delaware River to its intersection with the Zone 4 boundary at the Delaware Water Gap north and west of Quarry Road; then northeast along the base of the Kittatinny Ridge to its intersection with Rt. 206, the point of beginning.

6.-10. (No change.)

11. Zone No. 11: That portion of Hunterdon County lying within a continuous line beginning at the intersection of Rts. 12 and 31 and 202 at Flemington; then southwest along Rt. 202 to the Delware River; then northwest along the east bank of the Delaware River to its intersection with Rt. 12 at Frenchtown; then east along Rt. 12 to the point of beginning at Flemington. Shyhawks, Treasure, Rush, Bull and Eagle Islands lying in the Delaware River are in this zone.

12. (No change.)

13. Zone No. 13: That portion of Morris, Somerset and Union Counties lying within a continuous line beginning at the intersection of Rts. 22 and 206 at Somerville; then north on Rt. 206 to its intersection with Rt. 202 at Bedminster, then northeast along Rt. 202 to its intersection with Rt. 24 at Morristown; then southeast along Rt. 24 to its intersection with Rt. 82; then southwest along Rt. 82 to its intersection with Rt. 22; then southwest along Rt. 22 to the point of beginning at Somerville.

14.-16. (No change.)

17. Zone No. 17: That portion of Mercer, Monmouth, Burlington and Ocean Counties lying within a continuous line beginning at the intersection of the New Jersey Turnpike and the Mercer County line near Yardville; then north along the Turnpike to its intersection with Interstate 195; then east along Interstate 195 to its intersection with Rt. 537 near Holmeson; then southwest along Rt. 537 to its intersection with Rt. 539; then southeast along Rt. 539 to the border of Fort Dix Military Reservation; then westward along the Fort Dix Military Reservation boundary to Rt. 545 near Wrightstown; then northwest along Rt. 545 to its intersection with the New Jersey Turnpike; then north along the New Jersey Turnpike to its intersection with the Mercer County line near Yardville, the point of beginning.

18. Zone No. 18: That portion of Ocean County lying within a continous line beginning at the intersection of Rt. 530 and the Garden State Parkway at South Toms River; then west along Rt. 530 to its intersection with Rt. 70; then west along Rt. 70 to the border of Fort Dix Military Reservation; then northward along the Fort Dix Military Reservation boundary to the northernmost intersection of the Fort Dix Military Reservation border and Rt. 539; then northwest along Rt. 539 to its intersection with Rt. 537 near Hornerstown; then northeast along Rt. 537 to its intersection with Rt. 571 near Holmeson; then southeast along Rt. 571 to the Garden State Parkway; then south along the Garden State Parkway to the point of beginning near South Toms River.

19.-20. (No change.)

21. Zone No. 21: That portion of Ocean and Burlington Counties lying within a continuous line beginning at the intersection of Rt. 530 and the Garden State Parkway at South Toms River; then south along the Parkway to its intersection with Rt. 72; then northwest along Rt. 72 to its intersection with Rt. 70; then northeast along Rt. 70 to its intersection with Rt. 539 and Rt. 530 near Whiting; then east along Rt. 530 to its intersection with the Garden State Parkway at South Toms River, the point of beginning.

22. Zone No. 22: That portion of Ocean and Burlington Counties lying within a continuous line beginning at the intersection of the Garden State Parkway and Rt. 37 near Toms River; then south along

the Garden State Parkway to its intersection with the Mullica River and Atlantic County line; then east to the Atlantic Ocean; then north along the Atlantic Ocean to Rt. 37 in Seaside Heights Boro; then west along Rt. 37 to its intersection with the Garden State Parkway near Toms River, the point of beginning. The Edwin B. Forsythe National Wildlife Refuge (Zone 58) is excluded from Zone 22.

23.-24. (No change.)

25. Zone No. 25: That portion of Salem, Gloucester, Atlantic and Camden Counties lying within a continuous line beginning at the intersection of Rts. 54 and 40 near Buena; then west on Rt. 40 to its intersection with Rt. 553; then north on Rt. 553 to its intersection with Rt. 610 (Aura Road); then southeast on Rt. 610 to its intersection with Rt. 655 (Fries Mill Road then north on Rt. 655 to its intersection with Rt. 322; then west on Rt. 322 to its intersection with Rt. 47 at Glassboro; then north on Rt. 47 to its intersection with County Road 635 (Hurfville-Grenloch Road); then eastward on County Road 635 to its intersection with County Road Rt. 707 (Woodbury-Turnersville Road); then southeast along Gloucester County road Rt. 707 (which becomes Camden County Road Rt. 705) to its intersection with County Road 688 (Turnerville-Hickstown Road); then eastward along County Road 688 to its intersection with County Road 689 (Berlin-Crosskeys Road); then northeast along County Road 689 to its intersection with Rt. 73 at Berlin; then south on Rt. 73 to its intersection with Rt. 30; then southeast along Rt. 30 to its intersection with Blue Anchor Brook, just past Cedar Avenue, south of Ancora; then eastward along Blue Anchor Brook until it becomes Albertson Brook at Fleming Pike; then eastward along Albertson Brook to its intersection with Rt. 206 (about four miles north of Hammonton); then south on Rt. 206 to its intersection with Great Swamp Branch (just past the intersection of Rt. 206 and Middle Road); then eastward along Great Swamp Branch to its intersection with Nescochague Creek; then eastward along Nescochague Creek to Nescochague Lake, at Pleasant Mills; then westward along the north and western shore of Nescochague Lake to its intersection with Hammonton Creek; then westward along Hammonton Creek to its intersection with Rt. 30 (White Horse Pike), near Hammonton; then southeast on Rt. 30 to its intersection with Rt. 559 (Weymouth Road); then southward on Rt. 559 to its intersection with the Atlantic City Expressway; then west along the Atlantic City Expressway to its intersection with Eighth Street; then south along Eighth Street to its intersection with Rt. 322; then westward on Rt. 322 to its intersection with Rt. 54; then southward on Rt. 54 to its intersection with Rt. 40 near Buena, the point of beginning. Zone 65 is excluded from Zone 25.

26. Zone No. 26: That portion of Atlantic and Burlington Counties lying within a continuous line beginning at the intersection of Rts. 40 and 54 near Buena; then southeast on Rt. 40 (40-322) to its intersection with the Garden State Parkway; then northeast on the Garden State Parkway to its intersection with the Mullica River; then northwest along the south bank on the Mullica River to its intersection with Rt. 563 at Green Bank; then north on Rt. 563 to its intersection with Rt. 542, then west on Rt. 542; to its intersection with Nescochague Creek at Pleasant Mills; then south along the west bank of Nescochague Creek to Nescochague Lake; then southwest along the western bank of Nescochague Lake to its intersection with Hammonton Creek; then westward along Hammonton Creek to its intersection with Rt. 30 (White Horse Pike), near Hammonton; then south on Rt. 30 to its intersection with Rt. 559 (Weymouth Rd.); then south on Rt. 559 to its intersection with the Atlantic City Expressway; then northwest along the Atlantic City Expressway to its intersection with Eighth Street; then southwest along Eighth Street to its intersection with Rt. 322 (Black Horse Pike); then northwest along Rt. 322 to its intersection with Rt. 54; then southwest along Rt. 54 to its intersection with Rt. 40 at Buena, the point of beginning. The Atlantic County Park System (Zone 61) is excluded from Zone 26.

27.-30. (No change.)

31. Zone No. 31: That portion of Cumberland County lying within a continuous line beginning at the intersections of Rts. 77 and 49 at Bridgeton; then east on Rt. 49 to the Maurice River near Millville; then south along the west bank of the Maurice River near Millville; then south along the west bank of the Maurice River to Buckshutem Creek; then west on the north bank of Buckshutem Creek to its intersection with Buckshutem Road (County Road 670); then northwest on Buckshutem Road to its intersection with Cedarville Road (County Road 610); then southwest on Cedarville Road to its intersection with Newport Centre Grove Road (County Road 629); then southwest on Newport Centre Grove Road to its intersection with Rt. 553; then northwest along Rt. 553 to the Cohansey River at Fairton; then north on the east bank of the Cohansey River to Bridgeton, the point of beginning.

32. Zone No. 32: That portion of Cumberland County lying within the continuous line beginning at the intersection of Rt. 49 and the Maurice River at Millville; then south along the east bank of the Maurice River to its intersection with Manumaskin Creek; then east along the north bank of Manumaskin Creek to its intersection with Rt. 47 in Port Elizabeth; then south on Rt. 47 to its intersection with Rt. 548; then east on Rt. 548 to its intersection with Cumberland-Port Elizabeth Road (County Road 646); then north on Cumberland-Port Elizabeth Road to its intersection with Rt. 49; then northwest on Rt. 49 to its intersection with Union Road (County Rt. 671); then north on Union Road to its intersection with Rt. 552; then southwest on Rt. 552 (and Rt. 552 spur) to Millville, Rt. 49 and the Maurice River, the point of beginning.

33. Zone No. 33: That portion of Atlantic and Cape May Counties lying within a continuous line beginning at the intersection of Rts. 40 and 50 at Mays Landing; then south on Rt. 50 to its intersection with Rt. 631, Tuckahoe Road; then east along Rt. 631 to its intersection with Rt. 9 at Marmora; then north along Rt. 9 to its intersection with Rt. 623; then east along Rt. 623 to the Atlantic Ocean at Ocean City; then northeast along the Atlantic Ocean to Atlantic City; then northwest along Rt. 322 (40) to McKee City; then west on Rt. 40 to its intersection with Rt. 50 at Mays Landing, the point of beginning. The Atlantic County Park System (Zone 61) is excluded from Zone 33.

34. Zone No. 34: That portion of Cumberland and Cape May Counties lying within a continuous line beginning at the confluence of the Maurice River and Manumaskin Creek at Port Elizabeth; then east along the south bank of Manumaskin Creek to its intersection with Rt. 47; then south on Rt. 47 to its intersection with Rt. 548; then east on Rt. 548 to its intersection with Rt. 49; then continuing east on Rt. 49 to its intersection with Rt. 50 at Tuckahoe; then south on Rt. 50 to its intersection with Rt. 631, Tuckahoe Road; then east along Rt. 631 to its intersection with Rt. 9 at Marmora; then north along Rt. 9 to its intersection with Rt. 623; then east along Rt. 623 to the Atlantic Ocean at Ocean City; then southeast along the Atlantic Ocean to Delaware Bay; then north and west along the east bank of Delaware Bay to the Maurice River; then north along the east bank of the Maurice River to Port Elizabeth and Rt. 548, the point of beginning.

35. (No change.)

36. Zone No. 36: Hunter's Choice Area: That portion of Bergen, Hudson, Essex, Morris, Union, Somerset and Middlesex Counties lying within a continuous line beginning at the intersection of Rt. 202 and the New York State line near Suffern; then south on Rt. 202 to its intersection with Rt. 23 near Wayne; then south on Rt. 23 to its intersection with Rt. 80; then southwest on Rt. 80 to its intersection with Rt. 511; then south on Rt. 511 to its intersection with Rt. 510; then west on Rt. 510 to its intersection with Rt. 124 at Morristown; then southeast on Rt. 124 to its intersection with Rt. 82; then southeast along Rt. 82 to its intersection with Rt. 22; then southwest on Rt. 22 to its intersection with Rt. 287 near Somerville; then southeast on Rt. 287 to its intersection with Rt. 18 near South Bound Brook; then southeast on Rt. 18 to its intersection with the New Jersey Turnpike; then north on the Turnpike to its intersection with the Raritan River; then east along the north bank of the Raritan River to Raritan Bay and the New York State line; then north along the New York State line to Arthur Kill and west bank of the Hudson River; then west along the New Jersey-New York border to the point of beginning near Suffern.

37.-41. (No change.)

42. Zone No. 42: That portion of Atlant County lying with a continuous line beginning at the intersectio of the Garden State Parkway and Mullica River at Chestnut Neck then southwest along the Garden State Parkway to its intersection ith Rt. 322 (40); then southeast along Rt. 322 to Atlantic City; th n northeast along the Atlantic Ocean to Great Bay; then west alo g the Atlantic County line to the intersection of the Garden State P kway and the Mullica River, the point of beginning. The Edwin B. Forsythe National Wildlife Refuge (Zones 56 and 57) are ex uded from Zone 42.

43. Zone No. 43: That portion of Cumberl d County lying within a continuous line beginning at the intersectio of Buckshutem Road (County Road 670) and Cedarville Road (C unty Road 610); then southwest on Cedarville Road to its inte ection with Newport Centre Grove Road (County Road 629); then outhwest on Newport Centre Grove Road to its intersection with t e Central Railroad of New Jersey (C.R.R.N.J.); then east on the C.R.R.N.J. line to its intersection with Haleyville Road (Co nty Road 676) at Mauricetown Station; then east on Haleyville oad to its intersection with the Maurice River at Mauricetown; the north along the west bank of the Maurice River to the north bank of Buckshutem Creek at Laurel Lake; then west along the north ban of Buckshutem Creek to Buckshutem Road; then northwest on Bu kshutem Road to its intersection with Cedarville Road, the poin of beginning.

44. Zone No. 44: That portion of Cumberl d County lying within a continuous line beginning at the inter ction of Haleyville-Mauricetown Road (County Road 676) and he Maurice Road at Mauricetown; then west on Haleyville-Mau icetown Road to its intersection with the Central Railroad of Ne v Jersey (C.R.R.N.J.) at Mauricetown Station; then west on the C.R.R.N.J. line to its intersection with Newport Centre Grove Ro d (County Road 29); and southwest on Newport Centre Grove R ad to its intersection with Rt. 553; then south and east on Rt. 5 3 to Hands Landing Road in Port Norris; then south to the wes bank of the Maurice River at Shell Pile; then north along the wes bank of the Maurice River to Haleyville-Mauricetown Road at M uricetown, the point of beginning.

45. Zone No. 45: That portion of Cumberl d, Atlantic and Cape May Counties lying within a continuous lin beginning at the intersection of Union Road (County Rt. 671) d Rt. 552; then east on Rt. 552 to its intersection with the Tuck oe River at Milmay; then south along the west bank, of the T ckahoe River to its intersection with Rt. 49 at Hunter's Mill; the southeast on Rt. 49 to its intersection with Rt. 548; then west on t. 548 to its intersection with Cumberland-Port Elizabeth Road (C unty Rt. 646) at Port Elizabeth; then north on Cumberland-Port lizabeth Road to its intersection with Rt. 49; then northwest on R 49 to its intersection with Union Road; then north on Union Roa to Rt. 552, the point of beginnning.

46.-49. (No change.)

50. Zone No. 50: That portion of Mon outh and Middlesex Counties lying in a continuous line beginning at the intersection of the New Jersey Turnpike and Rt. 522 r ar Jamesburg, then southeast on Rt. 522 to its intersection with Rt. 537 at Freehold, then southwest on Rt. 537 to its intersection with Rt. 33; then east on Rt. 33 to its intersection with the western edge of the fenced boundary of the Earle Naval Weapons Depot, then north and east along the fenced boundary of the Earle Naval Depot to its intersection with county route 38 (Wayside Road); then south on County Route 38 to its intersection with Rt. 547; then north on Rt. 547 and to its intersection with the Garden State Parkway; then north on the Garden State Parkway to its intersection with Rt. 36 near Eatontown; then east on Rt. 36 to the Atlantic Ocean; then north along the Atlantic coastline to the Raritan Bay; then south and west along the shore of Raritan Bay to the Raritan River; then continuing west along the south bank of the Raritan River to its intersection with the New Jersey Turnpike; then southwest along the New Jersey Turnpike to its intersection with Rt. 522, the point of beginning. Monmouth Battlefield State Park, Zone 64, and Earle Naval Weapons Station, Zones 39 and 40, and Fort Monmouth, Zone 62, are excluded from this zone.

51.-65. (No change.)

7:25-5.30 White-tailed deer bow permit season (either sex)

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

(d) Duration of the bow permit season is from November 13—December 4, 1993 in Zones 1-3, 5-37, 41-55, 58, 59, 61, 63 and 65; and November 13, 1993—January 1, 1994 in Zone 40 or any other time as determined by the Director. Legal hunting hours shall be ½ hour before sunrise to ½ hour after sunset.

(e)-(g) (No change.)

(h) Bow Permit Season Permits shall be applied for as follows:

1. Only holders of valid bow and arrow licenses including juvenile bow license holders may apply by detaching from their bow hunting license the stub marked special deer season 1993, signing as provided on the back, and sending the stub together with the permit fee and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2.-8. (No change.)

(i) Farmer Bow Permit Season Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office during the period of August 1 to 15. There is no fee required, and all qualified applications will receive a farmer permit bow season permit, delivered by mail.

4. (No change.)

(j) (No change.)

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1993 Bow Permit Season Quotas (Either Sex) are as follows:

1993 BOW PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest 1993	Permit Quota 1993	Portions of Counties Involved
1	1	82	750	Sussex
2	1	138	1265	Sussex
3	1	113	1040	Sussex, Passaic, Bergen
4		0	0	Sussex, Warren
5	1	317	2880	Sussex, Warren
6	1	131	1200	Sussex, Morris, Passaic, Essex
7	1	158	1450	Warren, Hunterdon
8	1	360	3300	Warren, Hunterdon, Morris, Somerset
9	1	120	1100	Morris, Somerset
10	1	196	1800	Warren, Hunterdon
11	1	113	1035	Hunterdon

12	1	218	2000	Mercer, Hunterdon, Somerset
13	1	87	800	Morris, Somerset
14	1	164	1502	Mercer, Somerset, Middlesex, Burlington
15	1	115	1059	Mercer, Monmouth, Middlesex
16	1	76	700	Ocean, Monmouth
17	1	62	569	Ocean, Monmouth, Burlington
18	1	43	390	Ocean
19	1	63	575	Camden, Burlington
20	1	44	400	Burlington
21	1	53	490	Burlington, Ocean
22	1	24	220	Burlington, Ocean
23	1	82	750	Burlington, Camden, Atlantic
24	1	37	340	Burlington, Ocean
25	1	98	900	Gloucester, Camden, Atlantic, Salem
26	1	65	600	Atlantic
27	1	87	800	Salem, Cumberland
28	1	65	600	Salem, Cumberland, Gloucester
29	1	63	576	Salem, Cumberland
30	1	18	161	Cumberland
31	1	8	70	Cumberland
32	1	5	45	Cumberland
33	1	25	232	Cape May, Atlantic
34	1	53	489	Cape May, Cumberland
35	1	106	969	Gloucester, Salem
36	1	25	230	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	1	13	120	Burlington (Fort Dix Military Reservation)
38		0	0	Morris (Great Swamp National Wildlife Refuge)
39	1	7	60	Monmouth (Earle Naval Weapons Station)
40	2	4	30	Monmouth (Earle Naval Weapons Station—Waterfront)
41	1	63	577	Mercer, Hunterdon
42	1	9	80	Atlantic
43	1	16	147	Cumberland
44	1	5	50	Cumberland
45	1	22	200	Cumberland, Atlantic, Cape May
46	1	22	200	Atlantic
47	1	16	150	Atlantic, Cumberland, Gloucester
48	1	63	582	Burlington
49	1	5	47	Burlington, Camden, Gloucester
50	1	57	519	Middlesex, Monmouth
51	1	50	459	Monmouth, Ocean
52	1	8	70	Ocean (Fort Dix Military Reservation)
53	1	4	40	Ocean (Lakehurst Naval Engineering Center)
54	1	7	35	Morris (Picatinny Arsenal—ARRAD Com)
55	1	9	80	Gloucester
56		0	0	Atlantic (Forsythe National Wildlife Refuge)
57		0	0	Atlantic (Forsythe National Wildlife Refuge)
58	1	5	50	Burlington, Ocean (Forsythe National Wildlife Refuge)
59	1	16	35	Salem (Supawna National Wildlife Refuge)
60		0	0	Hunterdon (Round Valley Recreation Area)
61	1	15	135	Atlantic (Atlantic County Parks)
62		0	0	Monmouth (Fort Monmouth)
63	1	33	300	Salem
64		0	0	Monmouth (Monmouth Battleground State Park)
65	1	16	150	Gloucester, Camden
Total		3,879	35,403	

(1) The Season Dates Code referred in the table in (k) above is as follows:

1. Indicates the season dates will be November 13—December 4, 1993.

2. Indicates the season dates will be November 13, 1993 to January 1, 1994.

(m)-(n) (No change.)

7:25-5.31 White-tailed deer permit shotgun season permit (either sex), Great Swamp National Wildlife Refuge (Zone 38).

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

(c) Duration of the Great Swamp Permit Shotgun Season permit shall be from sunrise to ½ hour after sunset on the following dates: December 2, 3, 4, 9 and 10, 1993 or as may otherwise be designated by the U.S. Fish and Wildlife Service.

(d)-(i) (No change.)

7:25-5.34 Controlled hunting—hunting restrictions on widlife management areas

(a) No wildlife management areas have been selected for limited hunter density for the 1993-94 season. However, hunting with firearms shall be prohibited on November 12, 1993 on those wildlife management areas designated as pheasant and quail stamp areas in N.J.A.C. 7:25-5.33.

(b) (No change.)

(a)

BOARD OF COMMISSIONERS OF F LOTAGE

Apprenticeship; License Examinatic n

Adopted New Rules: N.J.A.C. 7:61-2

Proposed: October 5, 1992 at 24 N.J.R. 347 (a).
Adopted: July 8, 1993 by the Board of Com iissioners of Pilotage, Edward Pulver, President.
Filed: July 9, 1993 as R.1993 d.385, **with sul stantive and technical changes** not requiring addition public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 12:8-2.

DEPE Docket Number: 40-92-09.
Effective Date: August 2, 1993.
Expiration Date: May 17, 1998.

These rules were proposed by publication in ıe New Jersey Register on October 5, 1992 at 24 N.J.R. 3477(a). An ouncement of the opportunity to respond was also published as a p blic notice in The Star Ledger, the Trentonian and the New York Journ l of Commerce. During the comment period which closed on November , 1992, comments were submitted by the following entities and indivi uals:

(1) Board of Commissioners of Pilots of t e State of New York;
(2) United New Jersey Sandy Hook Pilots enevolent Association;
(3) United New York Sandy Hook Pilots enevolent Association;
(4) The Chairman of the Applicant Apprenti e Selection Committee, United New York and New Jersey Pilots Ben volent Association;
(5) Interport Pilots Agency, Inc.;
(6) International Organization of Master M ates and Pilots;
(7) American Pilots Association, Inc.;
(8) Captain W.W. Sherwood, Jr.;
(9) Captain F.J. Payton;
(10) Captain Richard Schoenlank;
(11) Captain J.W. Akerman; and
(12) Captain Andrew McGovern.

Summary of Public Comments and Ager y Responses:

With one exception, the commenters were ge erally supportive of the concept of the rules dealing with the competit e selection of apprenticeship candidates, although concerns were exp essed over the possible practical problems in the functioning of the Bi- tate Selection Committee. Other commenters asked for clarifications to reflect the fact that the number of pilots to be licensed is limited an is set after consultation with the New York State Pilot Commissioners and also to reflect the fact that the apprenticeship training program is jointly administered by the New Jersey and New York State Pilot Assc iations. The rules have been amended on adoption to include these arifications.

COMMENT 1: The American Pilots Associati n, Inc. wrote to express its support for the rules which should ensure ob ctivity and merit-based decisions in the apprentice selection process, oting that the apprenticeship program for New Jersey and New Y k State licensed pilots has always produced competent responsible p ots.

RESPONSE: The Commissioners appreciate t e support for its efforts to ensure the continued safe passage on ship calling at the ports of New Jersey.

COMMENT 2: The President of the Interr tional Organization of Master Mates and Pilots expressed concern th t the new rules should not effect changes in the interstate cooperation f New Jersey and New York and that the professionalism, competence nd standard of service rendered by the New York/New Jersey Sandy ook Pilots should continue.

RESPONSE: As noted, the rules have beer amended on adoption to clarify some of the interstate aspects of the pprentice selection and training process which will be continued unde the new Board rules.

COMMENT 3: Concern over proposed N.J.A.C. 7:61-2.4, the provision of the rules dealing with dismissal of ap rentices, was expressed by several commenters, including the America Pilot Association and the President of the United New York Sandy look Pilots Benevolent Association and Captain Sherwood, a New ork State Pilot. These commenters questioned the rule provision requi ng a hearing in the case of dismissal of apprentices, particularly where lismissal may occur in the early, or probationary, stage of the appre ticeships.

RESPONSE: The rule as framed does not require a full formal hearing in every case of dismissal, but only where the apprentice requests a hearing. Where a formal dismissal action is required it may place some burden on the Pilots' Association, in the form of producing records, log books, and the like. The Commissioners believe, however, that the range of causes for dismissal will ensure the ability of the Board and the Association to remove any candidates who are unfit for licensure as pilots, while at the same time ensuring fundamental fairness in the treatment of license applicants. Implicit in the rule formulation permitting dismissal for failure to comply with rules of the training program or to perform assigned duties is the recognition that apprentice responsibilities may vary at different stages of training and that cause for a dismissal of a probationary apprentice may vary from cause for dismissal later in the program. Needless to say, the Association program and rules affecting apprentices and their duties will be set out in writing by the Association, subject to approval by the Board, as is the present practice and as is now required by proposed N.J.A.C. 7:61-2.3(b) (recodified as 2.6(b) on adoption).

COMMENT 4: The New York Board of Commissioners of Pilots requested clarification of the definition of "pilot."

RESPONSE: Neither the New Jersey nor the New York Pilotage statute defines the term "pilot." After consultation with the New York Board and the Associations, the definition has been amended on adoption to reflect the suggestions received.

COMMENT 5: The New York Board of Commissioners of Pilots also suggested that the rule setting the qualifications of applicants should include United States citizenship, an age limit and more specific physical standards relating to eyesight and hearing. The New Jersey Pilots Association also made this suggestion.

RESPONSE: United States citizenship is required for the United States Coast Guard issued licenses that must eventually be acquired by State license applicants. However, there is no need that at the time of application such citizenship has to have been already been acquired. Nevertheless the Commissioners agree that an applicant should be able to demonstrate that he or she is either a citizen or will have become naturalized in time to be eligible for the requisite Federal licenses. With respect to the general statement in the rule as to good health and physical fitness to perform the rigorous duties of a pilot, the Board believes that it provides sufficient guidance for the process of screening applicants to ensure that those with the greatest ability and aptitude are selected after undergoing the competitive selection process, without the necessity for specific definitions of visual acuity and the like.

COMMENT 6: The New York Board of Commissioners of Pilots and the New Jersey Pilots Association both suggested that the Board's annual review of apprentices should involve a personal interview with the apprentice rather than simply a report by the Association, so as to provide the Commissioners with a better opportunity to evaluate the apprenticeship program as well as the individual apprentices.

RESPONSE: The Commissioners have accepted this recommendation and have modified proposed N.J.A.C. 7:61-2.3(g) (adopted 2.6(g)) accordingly.

COMMENT 7: The New York Board of Commissioners of Pilots suggested that the length of the time for the apprenticeship should be clarified. Several other commenters made suggestions concerning this issue. Captain Schoenlank, a New Jersey pilot, noted that prior experience may be a factor in the selection process, but believed that after selection all apprentices should be on equal footing. However, Captain Akerman, also a New Jersey pilot, noted that some flexibility in time is required because of agreements by the two State associations concerning equalization of the number of pilots. Captain McGovern, a New Jersey pilot, also believed that flexibility in time was useful to take into account prior experience.

RESPONSE: The Commissioners have amended the rules on adoption to make it clear that certain decisions about the length of the apprenticeship program are keyed to the necessary limitations on the number of licensed pilots, a determination that is made after consultation with the New York Board and the need for planning ahead to ensure, as much as possible, that there will be timely openings for pilots for the candidates completing the program. On this issue it should be made clear, however, that all apprentices must serve the minimum four year time required by both the New Jersey and New York statutes.

COMMENT 8: Several commenters, including the President of the New York Pilots Association and Captains Schoenlank and Akerman noted that a selection committee of 10 members may be cumbersome.

RESPONSE: The New York State Board of Commissioners of Pilotage has agreed to the proposed committee composition, and has agreed to amend its rules accordingly. If experience proves that a smaller number will suffice, the rules may then be amended once again after consultation with the New York Commissioners and the Associations.

COMMENT 9: The New York Board of Commissioners of Pilots suggested that the rules should include a full description of the academic courses offered to apprentices by the Sandy Hook Pilots School.

RESPONSE: The rule provides that all prescribed courses shall be completed, and gives the Commissioners the authority to approve the course contents. Specifying the present course titles may be unduly limiting where any decision to approve dropping or adding courses would then require a rule amendment.

COMMENT 10: The New York Board of Commissioners of Pilots suggested that a requirement for pre-employment drug screening and a criminal records check should be added for applicants.

RESPONSE: The Commissioners have recently adopted comprehensive rules on drug screening (See N.J.A.C. 7:61-3, adoption notice at 25 N.J.R. 2123(a)). A rule eliminating applicants on the basis of a prior criminal record may be in conflict with the Rehabilitated Convicted Offenders Act (N.J.S.A. 2A:168A-et seq.) in some cases. Therefore, questions of past convictions must be dealt with on a case-by-case basis.

COMMENT 11: Several commenters including Captain McGovern and the New York and New Jersey Pilot Associations suggested that the Associations should have more voice in the apprentice selection process because apprentices are employees of the Associations during the training period and because when licensed they eventually become full partners in the Association.

RESPONSE: The Commissioners agree that the Associations are not only entitled to a voice in the selection process but also are well-qualified to assist in the decision making process, because of the expertise acquired after close to 100 years of having been required by the Licensing Act to provide apprenticeship training to candidates for licensure. However, final decisions about whether a particular applicant meets Board standards is the responsibility of the Board.

COMMENT 12: Captain Payton, a New York licensed Sandy Hook pilot, noted that the New Jersey Board's actions also affect the New York pilots because of the bi-state cooperation in running the apprenticeship program. He expressed the opinion that the final say in choosing apprentices should lie with the licensed pilots because the Sandy Hook pilots operate and finance the apprentice program, for which no state funds are appropriated.

RESPONSE: The Board rule, concurred in by the New York State Board, gives the pilots a majority on the selection committee but necessarily leaves the final decision making power in the hands of the Board, since this responsibility may not be delegated to private parties by the Board.

COMMENT 13: Captain Sherwood, a New York pilot, wrote to express his concern over the financing of the selection process which, based on past experience of the Associations in advertising for applicants, administering tests and interviewing candidates, could impose a significant burden on the Associations. The New York State Board of Commissioners of Pilots also alluded to the issue of who should pay the expenses of the selection committee.

RESPONSE: The present licensing act makes no provision for appropriations for such expenses. It is anticipated by the Board that the actual cost of any testing procedures will be paid directly by the applicants. It is also anticipated that pilotage rates should be adjusted to take into account other costs of running the apprenticeship program.

COMMENT 14: The Interport Pilots Agency, Inc. noted that Interport is strongly opposed to the present statutory licensing scheme for pilots, and expressed opposition to the adoption of the rule proposal because the rules fail to address the need for fundamental change in the licensing scheme, including change in the apprenticeship requirement.

RESPONSE: The comment evinces a misunderstanding of the authority of the Board, an administrative body appointed by the Governor to implement the statutory licensing scheme. Fundamental changes in the statutory pilot licensing scheme can only be made by amendments to the licensing act, N.J.S.A. 12:8-1 et seq.

Summary of Changes on Adoption:

Between the proposal of these rules and their adoption, the Board has proposed and adopted N.J.A.C. 7:61-3, a new subchapter of rules dealing with a drug-free workplace program. As a result, the rules proposed as subchapter 1 have been recodified as part of subchapter 2, since they actually apply specifically to this subchapter, and since subchapter 3 has its own definition section. Other changes are clarifications suggested by the comments, in particular those changes describing the effect of the bi-state agreements to limit the numbers of pilots and the need for flexibility in assignment of apprentices to the New Jersey or New York programs. Thus, a new subsection (c) has been added to proposed N.J.A.C. 7:61-2.2 (now recodified as 2.5) to reflect the fact that new apprentices may be assigned to either State. Proposed N.J.A.C. 7:61-2.3 (now recodified as 2.6) has a new subsection (k) explaining that apprentices may also be reassigned between States when necessary to fill anticipated openings for licensure pursuant to agreement between the Boards and the two State Associations.

Other changes to proposed N.J.A.C. 7:61-2.2 (now 2.5) include a new subsection (d) added by the Commissioners to ensure that applicants understand that during the apprenticeships they will be employees of the Association. Similarly new subsection (h) of proposed N.J.A.C. 7:61-2.3 (now 2.6(h)) informs applicants that if there is a delay between completion of the program and a scheduled licensing examination, they will be continued as employees of the Association.

As noted in the comment responses, the Commissioners determined that proposed N.J.A.C. 7:61-2.3(g) (now 2.6(g)) should be amended to require a yearly appearance by each registered apprentice before the Board in lieu of the proposed annual review of Association records concerning the apprentice. This will enable the apprentice to become familiar with Board meeting procedures and will assist the Board not only in evaluating the apprentices but also in evaluating the program itself.

Proposed N.J.A.C. 7:61-2.4 (now 2.7) was amended on adoption to remove the redundant term "repeatedly" from paragraphs (a)1, 2 and 4. The Board also determined that paragraph (a)3 should be amended to remove the term "gross" used in modifying negligence and incompetence so as to avoid confusion with concepts of tort law. The subsection as adopted clearly requires a finding of negligence or incompetence in more than one instance of performance of assigned duties, and it is not necessary to find repeated acts of "gross" negligence or incompetence (in the tort law sense) to provide a basis for disciplining or dismissing an apprentice. New subsection (b) simply clarifies the procedure to be followed in offering the opportunity for a hearing to an apprentice when verified information concerning grounds for his or her dismissal are presented to the Commissioners.

Proposed N.J.A.C. 7:61-2.5 (now 2.8) has been amended on adoption to make it clear that the scheduling of examination for new licenses will vary with the availability of openings for new licensees.

Proposed subsection N.J.A.C. 7:61-2.6(c) was amended on adoption to add the information that radar endorsements and radio operator certificates issued by the Coast Guard are presently required of pilots, and also clarifies that the apprentice will be expected to secure any other licenses and certificates that may be required in the future.

Proposed subsection N.J.A.C. 7:61-2.7(a)2 was amended on adoption to clarify that lawful orders of a captain or other superior officer on a vessel must always be carried out and that failure to do so is a ground for disciplinary action.

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

CHAPTER 61

THE NEW JERSEY COMMISSIONERS OF PILOTAGE

SUBCHAPTER 1. *[PURPOSE AND SCOPE; DEFINITIONS]*
(RESERVED)

SUBCHAPTER 2. APPRENTICESHIP, LICENSE EXAMINATION

7:61-*[1.1]***2.1*** Purpose

It is the purpose of this *[chapter]* ***subchapter*** to reduce the possibility of marine disasters such as collisions and pollution causing oil spills in the waters of New Jersey extending from the Upper and Lower New York bays and the adjoining rivers, channels, ports and harbors southward to include the bays, rivers, harbors or ports extending to Atlantic City, by setting out rules governing the piloting of foreign vessels and ***United States*** vessels sailing under register and by ensuring that the state-licensed pilots charged with this responsibility are qualified by high levels of training and experience.

7:61-*[1.2]***2.2*** Scope

This *[chapter]* ***subchapter*** prescribes he necessary qualifications and application procedures for person: wishing to be admitted to the apprenticeship program for Sandy H ook pilots, the general outline of the required apprenticeship pro ram and licensure examination procedures.

7:61-*[1.3]***2.3*** Definitions

The following words and terms, as us d in this *[chapter]* ***subchapter***, shall have the following mea ngs, unless the context clearly indicates otherwise.

"Commissioners" shall mean the Commi sioners of Pilotage appointed by the Governor pursuant to N.J. .A. 12:8-1.

"Pilotage" or "piloting" shall mean the bc rding of *[an incoming or outgoing ship]* ***a vessel*** for the purpos of ***advising the ship's master to*** safely conduct*[ing]* it over o through the waters of New Jersey as set out in N.J.S.A. 12:8-1 : seq.

"Sandy Hook pilot" *[shall mean a perso licensed by the Commissioners to pilot ships into or out of th Port of New York or ports of New Jersey by way of the bar at S ndy Hook or into any bays, rivers, harbors, or ports of the water of this State between Sandy Hook in the County of Monmouth a d the City of Atlantic City in the County of Atlantic.]* ***shall me a person licensed in accordance with State law to pilot ships ir the Port of New York and the ports of New Jersey.****

"Sandy Hook pilot apprentice" shall mean person duly registered with the Commissioners in accord with th chapter and actively serving the apprenticeship prerequisite to dmission to the Sandy Hook pilot licensing examination.

"Sandy Hook Pilots' Association" shall nean and include the United New Jersey Sandy Hook Pilots' Ben volent Association and the United New Jersey Sandy Hook Pilots Association.

*[SUBCHAPTER 2. APPRENTICESHIP

7:61-*[2.1]***2.4*** Number of apprentices

The number of Sandy Hook pilot appren ces shall be set by the Commissioners after consultation with the andy Hook Pilots' Association and the New York Board of Pil t Commissioners. The number shall be set so as to assure the *[av ilability]* ***sufficiency**** of the number of licensed Sandy Hook pi ots necessary to safely ***, properly and adequately*** pilot ships int or out of the ports of New Jersey and New York.

7:61-*[2.2]***2.5*** Qualifications of applican for apprenticeship

(a) A person wishing to be registered wit the Commissioners as an apprentice shall present satisfactory evi ence that he or she:

1. Is not less than 18 years of age;

2. Is of good moral character;

3. Is in good health, has normal visual acu y and color perception, normal hearing, and is free of speech impe liment, and in general has the physical ability to perform the rigo ous duties required of a Sandy Hook Pilot; and

4. Is the holder of a bachelor's degree fro an accredited college or university.

(b) Applicants shall be screened through n independent testing and review process and the results submitt d to a selection board appointed by the Commissioners and consis ing of two New Jersey Commissioners, two members *[of the Nev York Board of Commissioners of Pilotage]* ***of the Board of C mmissioners of Pilots of the State of New York as designated b the New York Commissioners***, three New Jersey licensed Sand Hook pilots and three New York licensed Sandy Hook pilots, as n minated by the respective state Sandy Hook pilots' associations. [Final decisions as to the selection of New Jersey registered app entices shall be made by the Commissioners.]* The availability of penings for applicant apprentices shall receive the widest dissemi ation by advertisement in area newspapers *[having the greatest]* ***of general*** circulation and in appropriate trade journals. These rec irements are designed to ensure that all who apply do so on an qual footing, and that those selected have the greatest ability, tem erament and aptitude to be a ship's pilot.

(c) By agreement with the Sandy Hook Pilots' Association and pursuant to their by-laws and/or contractual agreements with the association of New York State licensed Sandy Hook Pilots, apprentices selected by the selection board pursuant to the procedures set out in (b) above may be designated as applicants for the licensure examination of either state. The Commissioners may accept as New Jersey registered apprentices those so designated after review of the recommendation of the selection board to ensure that the apprentice meets New Jersey standards for entry into the apprentice program.

(d) After selection and Board registration, the apprentice shall become an employee of the Sandy Hook Pilots' Association subject to the Association by-laws and rules of employment.*

*[(c)]***(e)*** Appropriate application and testing fees will be required from all applicants for apprentice selection in an amount sufficient to cover administrative costs and testing fees. Application forms and information concerning the apprenticeship program and application procedures may be obtained from the Sandy Hook Pilots Association, 201 Edgewater Street, Staten Island, New York. At least three months prior to any scheduled examination date notice of the scheduled examination date shall be published as set out in (b) above.

7:61-*[2.3]***2.6*** The registered apprenticeship

(a) The apprenticeship shall be served under the Sandy Hook Pilot Associations who shall be responsible for assuring that all apprentices are fully instructed in such manner as to fully qualify them in every respect to perform the duties of a Sandy Hook pilot.

(b) The apprenticeship program shall include a minimum of four years training. Additional time requirements will vary depending on the varying levels of professional training already possessed by those entering the apprenticeship ***and the needs of the pilot service***.

(c) All apprentices must acquire ***Merchant Mariners Documents with*** Ordinary Seaman's *[papers,]* and Able-Bodied *[ticket]* ***endorsements***, a Motorboat Operator's License and a Master of Pilot Vessel's License ***issued*** with an endorsement as First Class Pilot, and necessary extensions of route for all areas of the ports of New York and New Jersey, all as issued pursuant to 46 C.F.R. Part 10 of the rules of the United States Coast Guard***, and such other licenses and certificates as may be required for the training program, including, but not limited to, radar endorsements and radio operator certificates****.

(d) In addition to the trips required to meet the requirements under (c) above, the apprentice shall make at least 225 additional trips during the last six to nine months of the apprenticeship on various ships under the supervision of a licensed Sandy Hook pilot.

(e) The apprenticeship shall include the prescribed academic courses at the Sandy Hook pilot school, or their equivalent.

(f) Instruction shall cover all aspects of piloting and shiphandling including, but not limited to, the use of navigation and communication equipment; the rules of the road, the use of aids to navigation, tides and currents, soundings, bearings and location of the several shoals, rocks, bars, and points of land, courses, distances, and depths of channels; and pollution control and environment protection. The apprentice shall learn the use of charts, coast pilots, tide tables, and current diagrams. The apprentice shall become familiar with the publications of the Army Corps of Engineers, the Coast Guard, the National Oceanic and Atmospheric Administration, and such other publications as may pertain to the piloting of vessels in the ports of New Jersey and New York.

(g) *[The Sandy Hook Pilots' Associations shall periodically, but at least once a year, report to the Commissioners on the progress of each registered apprentice, and when an apprentice has completed all the requirements of the apprenticeship, shall certify his or her record to the Commissioners who shall review the record, and if complete, shall admit the apprentice to the next scheduled licensing examination.]* ***Each registered apprentice shall appear before the Commissioners periodically and at least once a year and shall demonstrate that he or she is making satisfactory progress in the apprenticeship program, and is complying with the academic requirements and with the rules and regulations of the training program.****

(h) When an apprentice has completed all the requirements of the apprenticeship, the association shall certify his or her record to the Commissioners who shall review the record, and, if complete, shall admit the apprentice to the next scheduled licensing examination. Until such scheduled licensing examination, apprentices shall continue to be employed by the Sandy Hook Pilots' Association.

*[(h)]***(i)*** The Commissioners shall periodically review and approve the course contents and practical experience requirements of the apprenticeship program afer consultation with the Sandy Hook Pilots' Association and the New York State Board of *[Pilot]* Commissioners ***of Pilots***.

*[(i)]***(j)*** Before any change in the approved program is instituted, the Sandy Hook Pilots' Association shall report the proposed change to the Commissioners for approval.

(k) If at any time during the apprentice training program, but not less than four years prior to completion of training, it is determined by agreement between the Commissioners, the Board of Commissioners of Pilots of the State of New York and the associations (the Sandy Hook Pilots' Association and the United New York Sandy Hook Pilots Benevolent Association) that an apprentice should be licensed by a state to which he has not previously been designated for licensure, then and in that event, the apprentice's designation shall be appropriately amended and the apprentice shall be redesignated for licensure by the state as agreed by the parties aforesaid.

7:61-*[2.4]***2.7*** Dismissal of apprentices

(a) After an opportunity to be heard pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, a registered apprentice may be dismissed from the program on a showing that he or she:

1. Has *[repeatedly]* failed to complete academic assignments or to achieve passing grades on required tests and examinations;
2. Has *[repeatedly]* refused to perform or *[repeatedly]* failed to satisfactorily perform assigned apprenticeship duties ***or to carry out lawful orders***;
3. Has *[engaged in gross negligence or gross incompetence]* ***been negligent and incompetent*** in the performance of assigned apprenticeship duties;
4. Has *[repeatedly]* failed to comply with *[any of]* the rules and regulations of the Sandy Hook Pilots Association training program that have been approved by the Commissioners;
5. Has used or been found in possession of any illegal controlled dangerous substance;
6. Has pled guilty or nolo contendere or has been convicted of a crime of moral turpitude;
7. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
8. Has engaged in conduct inconsistent with, or which reflects adversely on, the position of registered apprentice, as may be determined by the Commissioners;
9. Is temperamentally unfit to fulfill the role of pilot; or
10. Is incapable, for medical or any other good cause, of discharging the necessary functions and duties of an apprentice pilot.

(b) Upon receipt by the Commissioners of verified information that grounds for dismissal exist, the apprentice shall be so notified by registered letter which shall state the reasons for the proposed dismissal and shall offer the apprentice the opportunity to respond within 10 days of receipt of the letter to contest the determination and to request a hearing. If no response is received the letter of notice shall become a final order of dismissal.

7:61-*[2.5]***2.8*** Examination

The *[Commissioner]* ***Commissioners*** shall conduct examinations for initial licensure as a deputy pilot on an as-needed basis, depending on the schedule of the certification of apprentices ***by the Sandy Hook Pilots' Association and the need to assure the availability of the number of pilots necessary to provide safe, adequate and proper pilotage of ships requiring the services of a New Jersey or New York licensed pilot***.

7:61-*[2.6]***2.9*** Branch pilots

Full branch pilot licenses***, or licenses to handle ships of unlimited draft and tonnage,*** shall be issued to deputy pilots who have demonstrated the necessary proficiency *[in handling ships of unlimited draft and tonnage]*, and grades of proficiency shall be established for deputy pilots depending on their experience and years of active service.

HEALTH

(a)

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICES ENVIRONMENTAL PROTECTION AND ENERGY DIVISION OF ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS

Worker and Community Right to Know Act Trade Secrets and Definitions

Jointly Adopted Amendments: N.J.A.C. 8:59-3.1, 3.2, 3.3, 3.4, 3.7, 3.8, 3.9, 3.10, 3.14, 3.15, 3.16; N.J.A.C. 7:1G-6.1, 6.2, 6.3, 6.4, 6.7, 6.8, 6.9, 6.10, 6.14, 6.15 and 6.16

Adopted Amendments: N.J.A.C. 8:59-3.5, 3.6, 3.11, 3.13 and 3.17; N.J.A.C. 7:1G-1.2, 6.5, 6.6, 6.11 and 6.13

Proposed: March 1, 1993 at 25 N.J.R. 858(a).
Jointly Adopted: July 7, 1993 by Bruce Siegel, M.D., M.P.H., Commissioner, Department of Health, and Scott Weiner, Commissioner, Department of Environmental Protection and Energy
Filed: July 9, 1993 as R.1993 d.386, **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. 34:5A-1 et seq., specifically N.J.S.A. 34:5A-30.

Effective Date: August 2, 1993.
Expiration Date: September 29, 1994.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Health and New Jersey Department of Environmental Protection and Energy proposed amendments to its Worker and Community Right to Know Act trade secret rules, N.J.A.C. 8:59-3 (N.J.A.C. 7:1G-6), in the New Jersey Register on March 1, 1993, at 25 N.J.R. 858. A public hearing was held on March 26, 1993, at Human Resources Development Center, 600 College Rd. Princeton, N.J., at which four persons representing the following eight organizations testified about the trade secret rules:

Jane Nogaki, New Jersey Environmental Federation, New Jersey Industrial Union Council—AFL-CIO, and Right to Know and Act Coalition

Glenn Roberts, Fragrance Materials Association, and Flavor and Extract Manufacturers' Association

Alan Bogard, Exxon Chemical Americas, and Chemical Industry Council of New Jersey

Julius Rakus, Alpha Chemical and Plastics Corporation

The hearing was conducted by Richard Willinger, Program Manager of the Right to Know Program for the Department of Health. Mr. Willinger recommended that the Departments consider the testimony and develop appropriate responses, which has been done and is included in the following summary of comments and responses. Copies of the comments and the hearing transcript may be viewed or purchased by contacting Mr. Willinger, at 609-984-2202, or at the Department of Health, CN 368, Trenton, NJ 08625-0368.

Written comments were received from the New Jersey Environmental Federation, New Jersey Industrial Union Council—AFL-CIO, Right to Know and Act Coalition, Fragrance Materials Association, Flavor and Extract Manufacturers' Association, Exxon Chemical Americas,

Chemical Industry Council of New Jersey, a d Alpha Chemical and Plastics Corporation.

An additional three written comments were s bmitted by the following organizations about the trade secret rules:

Atlantic Electric
Coalition Against Toxics
Union Carbide Corporation

The following summarizes the comments r eived and provides the Departments' responses to these comments. A ll comments are on file at the Department of Health and the Depa ment of Environmental Protection and Energy.

1. COMMENT: Exxon Chemical America (Exxon), the Chemical Industry Council of New Jersey (CIC), and Alp a Chemical and Plastics Corporation (Alpha Chemical and Plastics support the changes proposed to the rules. In general, Union Carbi e supports the proposed amendments.

RESPONSE: The rule amendments will be dopted with changes as explained below.

2. COMMENT: The Industrial Union Coun l—AFL-CIO (IUC), the Right to Know and Act Coalition (Right to K ow Coalition), the New Jersey Environmental Federation, and the Coa tion Against Toxics support the proposal, in N.J.A.C. 8:59-3, allowin employers to maintain their trade secrets for labeling at their place of usiness until it is needed for evaluation of a trade secret claim by the I epartment of Health or to assist emergency responders or medical pe onnel in an emergency, as long as it is kept at a facility in New Jer ey.

RESPONSE: The Department of Health d agrees in part with the commenters. An employer will be allowed to eep its trade secrets at whatever facility it deems appropriate. The D partment of Health believes that having trade secrets at out-of-Stat facilities will not delay the Department or emergency responders in o aining needed information in light of the new requirement in N.J.A . 8:59-3.6(c)9 for trade secret claimants to supply the Department with ne name and emergency phone number of an employer representativ to be contacted in an emergency.

3. COMMENT: The Fragrance Materials A ociation (FMA), Flavor and Extract Manufacturers' Association (FEM), Exxon, and CIC believe that since employers will no longer be fili g trade secrets with the Department of Health, it is unnecessary to h e a unique state trade secret numbering system, as required by N.J. .C. 8:59-3.6. FMA and FEMA suggest allowing an employer to certify n its annual certification that a unique numbering system exists in its p ce of business to recall the trade secret information. They feel that hav g a separate State trade secret numbering system, as required in the pro osed rules, is a duplication of effort. Exxon and CIC recommend th t employers be able to use a numbering system of their choice, wh h would eliminate the unnecessary burden of maintaining dual trade s ret number and product designation numbering systems.

Alpha Chemical and Plastics states there is n justification for continuing with the specific format for trade secret n nbers and believes that it should be eliminated, because its continu ion imposes an undue administrative burden on an employer. A con pany should be allowed to use its existing alphanumeric identificatio codes as trade secret numbers. To ensure that users know that ingre ients in the product are considered trade secrets and that required Rig t to Know labeling was not left off by negligence, it could be requi ed that the employer's internal code be preceeded by the words " .J. RTK Trade Secret Number" on the label. The only restrictions on company's code should be that it is unique for the product, that it should readily lead to information on the chemical identity of the five most predominant ingredients, and that it is different from the pr duct name under which it is sold. The company believes its suggested cha ge would make it easier to determine the ingredients of a product in a emergency because the extra step of going though the Departmer of Health would be eliminated. Atlantic Electric encourages the Department to require employers who claim trade secrets to continue o use the current trade secret numbering system because it assists in he identification of the source of the product. Without this labeling u formity, requests to the Department for health information would be urther delayed.

RESPONSE: The Department of Health ag es with the majority of commenters and has changed the requirement n N.J.A.C. 8:59-3.6(b)2 to allow an employer to use its own alpha and r numbering system to identify trade secrets on Right to Know labels as long it is preceeded by certain acronyms or words identifying it as a lew Jersey Trade Secret Number. Any employer who is currently usin a trade secret number assigned by the Department or generated by the employer from its New Jersey Employer Identification Number may continue to use these numbers.

4. COMMENT: The IUC and Right to Know Coalition believe it is unnecessary for employers to notify the Department of Health that trade secret information is being maintained, by submitting an annual notification as required by N.J.A.C. 8:59-3.6(b)1. They suggest that employers notify the Department of Health that they are maintaining label-related trade secret information by simply checking a box on the Department of Environmental Protection and Energy's (DEPE) Community Right to Know Survey. DEPE would then forward this information to the Department of Health. FMA and FEMA believe that filing trade secret claims with the Department of Health is not necessary at all. They point to the small number of requests for trade secret information made to the Department of Health over the past several years and feel that it is a wasteful administrative burden on the State. They also feel that filing trade secret claims with the State constitutes a significant financial cost to FMA and FEMA members as well as raising important concerns about the security of the information. Alpha Chemical and Plastics supports the elimination of the requirement to submit trade secret information to the Department of Health. Union Carbide opposes the proposal that an employer maintaining trade secret information onsite submit initial and annual notifications to the Department of Health advising them that the trade secret information is being maintained, because it imposes costs on employers and serves no purpose.

RESPONSE: The Department of Health agrees with the commenters that the notification procedure can be simplified, and that the current system of filing trade secret claims for labeling is unnecessary. The notification that will be required of employers who are claiming trade secrets on container labels has been modified at N.J.A.C. 8:59-3.6(b)1 to require one letter, with updates as necessary. After the initial notification, an employer will only have to communicate with the Department if the person responsible for handling trade secrets at the company changes, or if the trade secret numbers change. The purposes of the notification are to inform the Department of Health of the trade secret numbers being used by employers, to maintain a database of employers claiming trade secrets on labels, to enable the Department to contact employers about regulatory and policy changes, and to locate an employer when the Department needs to obtain the trade secret information for evaluation, such as when it receives a request.

5. COMMENT: FMA and FEMA request clarification of N.J.A.C. 8:59-3.6(b)1 regarding one aspect of the requirement to file an annual notification with the Department of Health. They suggest that an annual notification does not need to be filed separately for each trade secret claim and should be filed for each facility; but that if an employer has multiple facilities, it can file one notification for all facilities.

RESPONSE: The Department of Health concurs with the commenters and has amended N.J.A.C. 8:59-3.6(b)1 to clarify that only one notification needs to be filed for each employer, regardless if there are multiple facilities or multiple trade secret claims.

6. COMMENT: Alpha Chemical and Plastics supports the proposal at N.J.A.C. 8:59-3.6(b)3 which allows a trade secret number to be assigned to a product containing a mixture of ingredients, rather than to each ingredient. They believe that trade secrets could be revealed if each ingredient was assigned its own trade secret number. Union Carbide also supports the assignment of trade secret numbers to either products or ingredients.

RESPONSE: N.J.A.C. 8:59-3.6(b)3 will be adopted as proposed.

7. COMMENT: FMA, FEMA, and Union Carbide support the proposal in N.J.A.C. 8:59-3.6(b)8 to allow employers to retrieve their trade secrets which have been filed with the Department of Health. Union Carbide advises that it may be impossible for the person who signed the letter submitting the trade secret information to sign the request for return of the information due to staff turnover, and believes it should be sufficient for the request to be signed by an authorized employee of the employer who submitted the information.

RESPONSE: If the person who signed the letter submitting the trade secret claim is no longer with the employer or is otherwise unavailable, the Department of Health will release the information to another authorized employee. However, such authorization should come from the Chief Executive Officer of the company and will be confirmed by the Department.

8. COMMENT: Union Carbide feels that the information required in N.J.A.C. 8:59-3.6(c)7 is unclear and that it should either be made clear or deleted.

RESPONSE: Since this is a joint provision, both the Department of Health and Department of Environmental Protection and Energy have divided the paragraph in former N.J.A.C. 8:59-3.6(c)7 (7:1G-6.6(c)7) into two parts, creating a revised N.J.A.C. 8:59-3.6(c)7 (7:1G-6.6(c)7) and a new N.J.A.C. 8:59-3.6(c)8 (7:1G-6.6(c)8), to more accurately reflect the statute text at N.J.S.A. 34:5A-3u.

9. COMMENT: Union Carbide suggests that the new requirement, in N.J.A.C. 8:59-3.6(c)8, for the names and emergency phone numbers of employer representatives to accompany trade secret claims, be limited to those claims filed after the effective date of the amendments, and not be applied retroactively to trade secret claims already on file.

RESPONSE: The Department of Health disagrees because of the importance of having the names and emergency phone numbers of employer representatives. The new requirement, redesignated as N.J.A.C. 8:59-3.6(c)9, will be applied to all employers who have already filed trade secret claims as well as to those who file claims or notifications in the future.

10. COMMENT: Union Carbide states that N.J.A.C. 8:59-3.17(a) needs to be clarified to indicate that trade secret claims for labeling can either be filed with the Department of Health or maintained by the employer, similar to the language in N.J.A.C. 8:59-3.2.

RESPONSE: The Department of Health has clarified N.J.A.C. 8:59-3.17(a) by adding the words "or maintained."

11. COMMENT: Atlantic Electric suggests adding a provision to the rules which would require employers who claim trade secrets to provide hazard warnings on their labels which comply with the OSHA Hazard Communication Standard.

RESPONSE: The OSHA Hazard Communication Standard already requires hazard warnings on the containers of hazardous products.

12. COMMENT: Union Carbide claims that the term "workplace survey" was deleted in some sections of the rule but not all, and that all references to this term should be deleted.

RESPONSE: All references to "workplace survey" have been changed to "Right to Know Survey."

13. COMMENT: Atlantic Electric suggests that the additional required information in the Environmental Survey, in N.J.A.C. 7:1G-1.2, should be more clearly stated and defined.

RESPONSE: The additional information required in the Environmental Survey concerns three new reporting requirements which were incorporated into the Worker and Community Right to Know Act at N.J.S.A. 34:5A-3 at the time the Pollution Prevention Act of 1991 was passed. Because these three reporting requirements were added to the definition of Environmental Survey in the Act, they are being added to the Environmental Survey definition in the rules.

14. COMMENT: Atlantic Electric felt that use of the terms "Environmental Survey" and "Community Right to Know Survey" in N.J.A.C. 7:1G-1.2 cause confusion by pertaining to the same reporting form. They recommended replacing the term "Environmental Survey" with the term "Community Right to Know Survey" which is currently in use.

RESPONSE: The Department of Environmental Protection and Energy (DEPE) would like to clarify that the term "Environmental Survey" is currently used in the Worker and Community Right to Know Act. The Environmental Survey has always consisted of two components: one for collecting chemical inventory data and the second for environmental release and pollution prevention reporting. The proposed rule clarifies that the "Environmental Survey" is composed of these two separate components which are called the "Community Right to Know Survey" and the "Release and Pollution Prevention Report." Each component is used to collect different types of information. The Department always separated the reporting requirements of the "Environmental Survey" into separate reporting forms.

15. COMMENT: Atlantic Electric believes that reporting on recycled materials through the Community Right to Know Survey, required in N.J.A.C. 7:1G-1.2, would not benefit emergency responders. They are concerned about redundant reporting of these materials which may be regulated and reported under other rules. They also requested that the term "generate" as non-product output be further defined as well as "information pertaining to pollution prevention activities."

RESPONSE: Information concerning recycling activities, non-product output and pollution prevention activities will be added to the Release and Pollution Prevention Report component of the Environmental Survey in accordance with the amendments to the Worker and Community Right to Know Act made in August 1991, when the Pollution Prevention Act was passed. In order to obviate the need for dual reporting under both Acts, the Pollution Prevention Act mandates the DEPE to determine which pollution prevention information elements may be reported in an Environmental Survey (N.J.S.A. 13:1D-40(b)). The DEPE is planning to combine pollution prevention reporting elements with the current release, throughput, and waste transfer elements in the Release and Pollution Prevention Report component of the Environmental Survey. Although recycling information may be reportable under other environmental programs, the Act requires that information pertaining to this activity be collected on the Environmental Survey.

Summary of Agency-Initiated Changes:

Three lines that were not being amended were misplaced in the text of the proposed rule amendments. The lines in N.J.A.C. 8:59-3.9 (7:1G-6.9) between paragraphs (a)1-2 and (a)3 are being moved to N.J.A.C. 8:59-3.15 (7:1G-6.15) at the end of (c) but before (c)1, where they currently appear in the Code. In addition, several other non-substantive changes are being made. The changes proposed for N.J.A.C. 7:1G-6.4 also pertain to N.J.A.C. 8:59-3.4 and the latter citation is being added. One change is being made to this section, in N.J.A.C. 8:59-3.4(b) (7:1G-6.4(b)) to add the words "or maintain this information" to make it consistent with the rest of the rule allowing an employer to maintain his trade secret information for labeling at his place of business. The changes proposed for N.J.A.C. 7:1G-6.10 also pertain to N.J.A.C. 8:59-3.10 and the latter citation is being added as affected by this adoption. Several minor grammatical changes are being made to N.J.A.C. 8:59-3.6(d) and (i) and to N.J.A.C. 8:59-3.13(d), and the word "department" is being capitalized throughout the rules.

The definitions of "Environmental Survey," "Community Right to Know Survey," and "Release and Pollution Prevention Report," have been modified to more clearly reflect that the Environmental Survey consists of two components: the Community Right to Know Survey, which combines the inventory reporting requirements of the old Environmental Survey—Part I, the Emergency Services Information Survey, and Federal SARA—Title III, Section 312; and the Release and Pollution Prevention Report which replaces the Environmental Survey—Part II.

Changes have also been made to N.J.A.C. 7:1G-6.13 and N.J.A.C. 8:59-3.13 to add subsection (f), referring to the Office of Administrative Law rules at N.J.A.C. 1:21.

Full text of the amendments and new rules follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*):

SUBCHAPTER 3. (SUBCHAPTER 6.) TRADE SECRETS

8:59-3.1 (7:1G-6.1) Authority

(a) This subchapter is promulgated pursuant to the Worker and Community Right to Know Act, L.1983, c.315, N.J.S.A. 34:5A-1 et seq., in particular, N.J.S.A. 34:5A-15 and 30 and N.J.S.A. 13:1D-9.

(b) This subchapter is a jointly adopted rule of the Department of Health (see N.J.A.C. 8:59-3) and the Department of Environmental Protection and Energy (see N.J.A.C. 7:1G-6).

8:59-3.2 (7:1G-6.2) Purpose

(a) Trade secret claims will be filed or maintained by employers who are subject to the Act to maintain the confidentiality of information requested on the Right to Know Survey or the environmental survey and for the names of substances on container labels. It is the purpose of this subchapter to prescribe:

1. The procedures and guidelines for filing trade secret claims and maintaining trade secret information;

2.-7. (No change.)

8:59-3.3 (7:1G-6.3) Definitions

"Department" means, for purposes of this subchapter, both the New Jersey Department of Health and the New Jersey Department of Environmental Protection and Energy, unless otherwise indicated.

8:59-3.4 (7:1G-6.4) General provisions

(a) (No change.)

(b) An employer shall report the information for which a trade secret claim is being made to the appropriate *[department]* ***Department in accordance with N.J.A.C. 8:59-3.6 (7:1G-6.6), or maintain this information*** in accordance with the provisions of N.J.A.C. 8:59-3.6.

(c) On the Right to Know Survey and th environmental survey which the employer sends to county and loc l government agencies and which the employer retains on file at th facility for inspection by an enforcement officer or employees, the employer shall conceal or omit information claimed to be a trade secret, and shall note on the surveys where information has been claimed to be a trade secret.

(d) Any Right to Know Survey or environ iental survey shall only be made available to the public with trade ecret information concealed as required in subsection (c) above indicating pending or approved trade secret claim status.

(e) All documents containing the inform ition claimed to be a trade secret and supporting information wh h are submitted, shall be submitted to the appropriate *[departm nt]* ***Department*** by certified mail return receipt requested, by p rsonal delivery, or by other means which requires verification o receipt, the date of receipt, and the name of the person who re eives the document at the *[department]* ***Department***. Such do uments concerning the Right to Know Survey or labeling of contai ers shall be mailed or delivered to:

Manager, Right to Know Program
New Jersey Department of Health
CN 368, Trenton, NJ 08625-0368

Such documents concerning the environ ental survey shall be mailed or delivered to:

Chief, Bureau of Hazardous Subst nces Information
New Jersey Department of Envirc mental Protection and Energy
CN 405, Trenton, NJ 08625-0405

(f) The top of each page of any document ontaining the information for which a trade secret claim is bein made and submitted pursuant to (e) above, shall display the wor "CONFIDENTIAL" in bold type or stamp. If the documents su omitted in support of the trade secret claim are to be kept con dential, they shall be similarly stamped.

(g) The outside of the envelope conta ining the information claimed to be a trade secret and any othe envelopes containing information in support of such claim subr itted pursuant to (e) above, shall display the word "CONFIDEN IAL" in bold type on both sides. This envelope shall be enclose in a plain envelope addressed for mailing.

(h)-(k) (No change.)

(l) Compliance with this subchapter does ot constitute satisfaction of Federal trade secret claim requirem nts for substances exceeding the Federal reporting thresholds of Title III of the Superfund Amendments and Reauthorizatic n Act.

8:59-3.7 (7:1G-6.7) Confidentiality and secu y of trade secret information

(a) All trade secret information in support f a trade secret claim, pending or approved, shall be treated as con dential in accordance with (b) through (h) below.

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

(d) The *[department]* ***Department*** sh ll communicate only with the employer's chief executive offic r or his designated representatives, such designation to be mad in writing, regarding the trade secret claim. The individual signing he trade secret claim submitted to the *[department]* ***Departmer*** shall be considered the designated representative if no other com nunication is received from the employer.

(e) (No change.)

(f) Except as provided in N.J.A.C. 8:59-2 15 (6.15), no person other than the Commissioner and his designat d representatives and administrative law judges and their necessary taff conducting hearings on trade secret claims, shall have access o information regarding a trade secret claim. All designated re resentatives shall be employees of the State. Designations shall be made in writing. Designated persons other than administrativ law judges shall sign an agreement to protect the confidentiality of ne information before access is granted. Administrative law judges sh ll have access to trade secret information as necessary to preside ove pre-hearing activities, conduct the hearing, render an initial decision and return the record to either the Department of Environmental Protection and Energy or the Department of Health pursuant to N.J.A.C. 1:21.

(g)-(h) (No change.)

8:59-3.8 (7:1G-6.8) Decision-making agency on a trade secret claim

(a) The Department of Health is authorized to approve or deny a trade secret claim concerning:

1. Information reported on the Right to Know Survey.

2. (No change.)

(b) The Department of Environmental Protection and Energy is authorized to approve or deny a trade secret claim concerning information reported on an environmental survey.

(c) Trade secret claims for labeling and reporting filed with both *[departments]* ***Departments*** shall be approved or denied jointly by the Department of Health and the Department of Environmental Protection and Energy.

8:59-3.9 (7:1G-6.9) Criteria for determination of the validity of a trade secret claim

(a) Any formula, plan, pattern, process, production data, information, or compilation of information shall be considered a trade secret if the employer establishes that its secrecy is certified by an appropriate official of the Federal government as necessary for national defense purposes, or if the employer establishes that:

1.-2. (No change.)

[Employers shall be notified of this determination by the department prior to disclosure of the trade secret information. A contractor shall not receive any trade secret information unless:]

3. It is used in the research and development or production of an article or of a mixture; and

4. (No change.)

(b) (No change.)

(c) In determining whether a trade secret claim meets the requirements of (a) or (b) above, the *[department]* ***Department*** shall consider information provided by the employer or any other person, including the information in (c)1 through 6 below:

1.-3. (No change.)

4. The value of the information to the employer or the employer's competitor;

5.-6. (No change.)

8:59-3.10 (7:1G-6.10) Request for trade secret information

(a) Any person may submit, at any time, a written request for the disclosure of information for which a trade secret claim is pending or has been approved, to the appropriate *[department]* ***Department*** at the address provided in N.J.A.C. 8:59-3.4 (7:1G-6.4). The request shall state the requestor's name, address, and affiliation, and may include information concerning the validity of a pending or approved trade secret claim. The names of the employees making requests for trade secret information on a Right to Know Survey or a label shall be kept confidential.

(b) (No change.)

8:59-3.14 (7:1G-6.14) Disclosure of information determined not to be a trade secret

(a) After a trade secret claim has been denied and all appeals and the right to bring an appeal have been exhausted, the *[department]* ***Department*** shall take the following action:

1. Modify the employer's Right to Know Survey or environmental survey, as the case may be, on file with the *[department]* ***Department*** to substitute the omitted information for the trade secret docket or registry number and add the information wherever else appropriate; and

2. Direct the employer to modify the Right to Know Survey or environmental survey on file at his facility to include the information for which the trade secret claim was denied and add the information wherever else appropriate; to send modified copies of the revised Right to Know Survey or environmental survey to the appropriate *[department]* ***Department*** and all county and local agencies that are required by law, rule or regulation to receive the survey containing this information; and to replace the trade secret registry number with the chemical name and Chemical Abstracts Service number on its fact sheets and container labels, if applicable.

8:59-3.15 (7:1G-6.15) Restricted access to trade secret information retained by the Department

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

(c) A contractor of the State and its employees may be granted access to trade secret information protected by this subchapter if the *[department]* ***Department*** determines that such disclosure is necessary for the completion of any work contracted for in connection with the implementation of the Act, and that the requirements of (c)1 through 3 below have been satisfied. Such approval shall restrict access to the trade secret information to persons approved by the *[department]* ***Department***. ***Employers shall be notified of this determination by the Department prior to disclosure of the trade secret information. A contractor shall not receive any trade secret information unless:***

1. The contractor has submitted a plan to the *[department]* ***Department*** which describes measures for adequately protecting trade secret information from unauthorized disclosure, and such plan has been approved by the *[department]* ***Department***;

2. The contractor has provided written documentation demonstrating, to the satisfaction of the *[department]* ***Department***, that the contractor maintains Professional Liability Insurance or suitable indemnity insurance and Comprehensive General Liability Insurance in forms and in amounts to be set by the *[department]* ***Department***; and

3. In addition to the requirement of (e) below, the contractor has signed an agreement developed by the *[department]* ***Department***, protecting trade secret information from unauthorized disclosure. The agreement shall include a provision whereby the contractor assumes liability for any damages to an employer resulting from the intentional or negligent release of trade secret information by the contractor and its employees.

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

8:59-3.16 (7:1G-6.16) Penalties for unauthorized disclosure of trade secret information

(a) Any officer or employee of the State, contractor of the State, physician or osteopath, or employee of a county health department, county clerk, or designated county lead agency, local fire department, or local police department, or any other person who has access to any confidential information, and who willingly and knowingly discloses the confidential information to any person not authorized to receive it, is guilty of a crime of the third degree.

(b) (No change.)

7:1G-1.2 Definitions

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

. . .

"Community Right to Know Survey" means the reporting form which combines the chemical inventory reporting requirements of the environmental survey***, formerly*** Part I, the Emergency Services Information Survey, and the Superfund Amendments and Reauthorization Act, Section 312.

"Environmental Survey" means a written form, *[entitled Part I or]* ***comprised of*** the Community Right to Know Survey, and *[Part II or]* the Release and Pollution Prevention Report, prepared by the Department of Environmental Protection and Energy and transmitted to an employer, on which the employer shall provide certain information concerning each of the environmental hazardous substances at the facility, including, but not limited to, the following:

1.-12. (No change.)

13. The total quantity of environmental hazardous substances generated at the facility, including hazardous substances generated as nonproduct output;

14. The quantity of environmental hazardous substances recycled on-site and off-site; and

15. Information pertaining to pollution prevention activities at the facility.

. . .

"Release and Pollution Prevention Report" means the reporting form which is used to fulfill the environmental release and pollution prevention reporting requirements of the environmental survey, ***formerly known as*** Part II ***of the environmental survey***.

7:1G-6.5 Prohibited claims

(a) A trade secret claim may not be made to the Department of Environmental Protection and Energy for the following information:

1.-2. (No change.)

3. The following information requested on Part I of the environmental survey:

i.-iii. (No change.)

iv. Name and United States Department of Transportation Identification Number of a hazardous material also listed in N.J.A.C. 7:1G-2 where the employer is otherwise required to report emissions of such substances into the air or water or onto the land; and

v. The United States Department of Transportation designated Hazard Class of any hazardous material.

4. (No change.)

7:1G-6.6 Procedure for filing trade secret claims and maintaining trade secret information

(a) An employer who claims that disclosing information on an environmental survey would reveal a trade secret shall file a trade secret claim with the Department of Environmental Protection and Energy in accordance with (b) below.

(b) The following procedure shall apply to employers claiming trade secret protection on the environmental survey:

1. An employer shall submit two versions of the survey. The first version shall contain all information requested by the *[department]* ***Department***, including any information claimed to be a trade secret. The employer shall clearly indicate on this version, by highlighting, underlining or otherwise marking any information claimed to be a trade secret. The top of each page shall display the word "CONFIDENTIAL" in bold type or stamp.

2. An employer shall submit a second version to the Department which will go into the public files. This version shall be identical to the first version except that it shall not contain information which the employer alleges to be a trade secret. In order to provide public notice that information has been omitted from this version under a claim of confidentiality, the second version shall indicate "trade secret claimed" or "TSC" where such omissions have been made.

3. The surveys shall be accompanied by the summary information in (c) below when the claim is initially submitted. If the trade secret claim has been filed previously, an employer shall submit only new pertinent information affecting the pending or approved claim.

4. The Department may request complete trade secret information from an employer in order to make a determination on the trade secret claim or for public health or medical emergencies. The employer shall submit the information to the Department within 30 days of the request unless emergency circumstances apply, in which case the information shall be submited within a shorter period of time, as specified by the Department.

(c) An employer shall submit a summary of the following information at the time of submittal of the trade secret claim except as provided in (k) below:

1.-5. (No change.)

6. The ease or difficulty with which the information could be disclosed by analytical techniques, laboratory procedures, or other means; *[and]*

7. Whether it is used in the research and development***,*** or ***fabrication and*** production***,*** of an article ***of trade or service; and*** *[or of a mixture, when the trade secret claim concerns any]*

8. Whether the trade secret is a formula, plan, pattern, process, production data, information, or compilation of information.

(d) The Department may at any time subsequent to the filing of a trade secret claim, request, in writing, the information listed in (d)1 through 5 below. Within 30 days of such written request, an employer shall answer the request in writing. The department may extend the period for submitting an answer for good cause shown.

1.-5. (No change.)

(e)-(h) No change.)

(i) An employer shall update trade secre information affecting a pending or approved trade secret claim within 60 days of the employer's knowledge or receipt of new p rtinent information.

(j) (Reserved)

(k) (No change.)

(l) Private employers claiming confidentia ty for trade secrets for container labeling and public employers clai ing confidentiality for labeling or for reporting on Right to Know si veys shall comply with the regulations at N.J.A.C. 8:59-3.6.

7:1G-6.11 Notification of determination of t e validity of a trade secret claim

(a) (No change.)

7:1G-6.13 Appeal of determination

(a) (No change.)

(b) (Reserved)

(c) (No change.)

(d) Within 45 days of receipt of the adı inistrative law judge's initial decision containing a recommendatio on a matter referred to in (c) above, the *[department]* ***Dep rtment*** shall affirm, reject, or modify the recommendation. The *[lepartment]* ***Department*** shall inform the employer of its decisic ı on the administrative law judge's recommendation by certified r ail return receipt requested. The *[department's]* ***Department*** action shall be considered final agency action for purposes (the "Administrative Procedure Act", N.J.S.A. 52:14B-1 et seq., a ı shall be subject only to judicial review as provided in the Rules of Court.

(e) (No change.)

(f) Special rules applicable to trade secr claim appeals are set forth at N.J.A.C. 1:21.

8:59-3.5 Prohibited claims

(a) A trade secret claim may not be ma e to the Department of Health for the following information:

1.-2. (No change.)

3. The following information requested (ı the Right to Know Survey:

i.-ii. (No change.)

8:59-3.6 Procedure for filing trade secret cla ns and maintaining trade secret information

(a) Reporting shall be done as follows:

1. A public employer who claims that dis losing information on a Right to Know Survey would reveal a trade ecret shall list a trade secret registry number in place of the trade secret information in the Right to Know Survey to be distributed t the Department and all county and local agencies which are re uired by law, rule or regulation to receive the survey. The emp oyer shall derive the registry number by adding a numeral beginn ıg with "5000" at the end of its New Jersey Department of Labor mployer identification number (EIN) separated by a dash and pı ceded by the words, "Trade secret registry #". See (b)2 below fc examples. Each new trade secret claim shall be numbered consecut vely. A second version of the Right to Know Survey which includes both the trade secret registry number and the trade secret informa on shall be filed with the Department along with the information equired in (c) below, at the time of submission of the first surve .

2. A public employer may assign trade s ret registry numbers to ingredients or products.

(b) Labeling shall be done as follows:

1. An employer who claims that labeling a ontainer at his facility with the chemical name and Chemical Abstr cts Service number of the hazardous or other substance in the co ainer would reveal a trade secret, shall file a trade secret claim w h the Department of Health by *[submitting]*****:***

i. Submitting the trade secret informat on and the summary information required in (c) below*[,]*****;*** o

ii. *[notify]* ***Notifying*** the Departme , in writing, that the employer intends to conceal the chemical na ıe and Chemical Abstracts Service number of ingredients on a l bel for one or more ingredients or products. If a notification is fil d, the employer shall *[file an initial and annual notifications with tl e Department certifying]* ***certify*** that the trade secret information required in (b)4 below is being maintained*[. These notifications shall contain]*****, advise the Department of*** the *[prefix of the]* trade secret registry numbers ***being*** assigned***, and provide the Department with the name(s) and emergency phone number(s) of the employer representative(s) available in case of a public health or medical emergency, who is authorized by the employer to release trade secret information to the Department, or to others under such circumstances. The notification must be updated if the employer assigns a new employee to communicate with the Department regarding trade secrets, if the employer assigns a new emergency representative, or if the employer uses a new alpha and/or numeric numbering system for its trade secret registry numbers. One notification may be filed by an employer for the trade secret claims at each facility, and an employer with multiple facilities may file one notification for the trade secret claims at all of its facilities****.

2. An employer shall derive the trade secret registry number to use on containers ***in either of two ways:***

i. *[by]* ***By*** adding a numeral beginning with "5000" at the end of its New Jersey Department of Labor employer identification number (EIN), separated by a dash, and preceded by the words "Trade Secret Registry #." Each new trade secret registry number shall be numbered consecutively. Examples of acceptable numbers include:

Trade Secret Registry Number 12345600-5000
Trade Secret Registry # 12345600-5000
TSRN 12345600-5000
NJ TSRN 12345600-5000 ***; or***

ii. By using its own alpha and/or numeric numbering system. If this option is chosen, the trade secret registry number shall be preceeded by the words "New Jersey Trade Secret Registry Number." The acronyms and symbols "NJ," "TSRN," "TSR," "No.," and "#" may be used.*

3. Trade secret registry numbers may be assigned to ingredients or products. If assigned to products, the employer must keep a list of those ingredients in the product which are considered trade secrets. Those ingredients in the product which are not trade secrets must be listed on the label in accordance with N.J.A.C. 8:59.

4. If an employer chooses to file a notification with the Department pursuant to (b)1 above, he shall maintain the trade secret information on site or at the corporate facility. This information shall include the chemical names and Chemical Abstracts Service numbers of all trade secret ingredients and products and the trade secret registry numbers that the employer has assigned to the ingredients and products.

5. A Right to Know enforcement officer shall be allowed to see the area where the trade secret information is kept and the system which has been established by the employer to maintain the trade secret information, but shall not be allowed to see the trade secrets unless authorized to do so by the employer or this Subchapter.

6. Trade secret numbers shall be affixed to containers in accordance with N.J.A.C. 8:59-3.17.

7. The Department may request complete trade secret information from an employer in order to make a determination on the validity of the trade secret claim or for public health or medical emergencies. The employer shall submit the information to the Department within 30 days of the request unless emergency circumstances apply, in which case the information shall be submitted within a shorter period of time as specified by the Department. Trade secret information submitted to the Department shall include the information required in (c) below.

8. Trade secret information which is currently on file with the Department will be returned to the employer upon request.

(c) An employer shall submit a summary of the following information at the time of submittal of the trade secret claim except when a notification is filed pursuant to (b) above:

1.-6. (No change.)

7. Whether it is used in the research and development***,*** or ***fabrication and*** production***,*** of an article ***of trade or service.*** *[or of a mixture, when the trade secret claim concerns any]*

8. Whether the trade secret is a formula, plan, pattern, process, production data, information, or compilation of information.

*[8.]***9.* The name(s) and emergency phone number(s) of the employer representative(s) available in case of a public health or medical emergency, who is (are) authorized by the employer to release trade secret information to the Department, or to others under such circumstances.

(d) The *[department]* ***Department*** may at any time subsequent to the filing of a trade secret claim, request, in writing, the information listed in *[1]***(d)1* through 5 below. Within 30 days of *[receipt of]* such *[a]* ***written*** request, an employer shall answer the request in writing. The *[department]* ***Department*** may extend the period for submitting an answer for good cause shown.

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

(i) An employer shall update ***trade secret*** information affecting a pending or approved trade secret claim within 60 days of the employer's knowledge or receipt of new pertinent information.

(j) At the time a public employer receives notification from the *[department]* ***Department*** that a determination of a trade secret claim is being considered, this notification shall be posted on bulletin boards readily accessible to employees. Every public employer who employs persons whose native language is Spanish shall also post the notice in Spanish, such notice to be provided by the *[department]* ***Department***. The notice shall state for which survey the claim was made and shall invite any person to submit comments on the claim to the *[department]* ***Department***.

8:59-3.11 Notification of determination of the validity of a trade secret claim

(a) (No change.)

(b) Within 15 days of receiving an approval of a trade secret claim from the *[department]* ***Department***, a public employer shall post on bulletin boards readily accessible to employees a notice of the determination. Every public employer who employs persons whose native language is Spanish shall also post the notice in Spanish, such notice to be provided by the *[department]* ***Department***.

8:59-3.13 Appeal of determination

(a) (No change.)

(b) Within 15 days after filing a request for an administrative hearing, a public employer shall post on bulletin boards readily accessible to employees a notice of the request. Every public employer filing a request shall send a copy of the notice to the county health department, county clerk, or designated county lead agency in which the employer's facility is located. Every public employer filing a claim who employs persons whose native language is Spanish shall also post a notice in Spanish. The notice shall state for which survey the request was made and the date of the request and shall invite any person to submit comments to the *[department]* ***Department*** and provide testimony at the administrative hearing on the trade secret claim.

(c) (No change.)

(d) Within 45 days of receipt of the administrative law judge's initial decision containing a recommendation on a matter referred to in (c) above, the *[department]* ***Department*** shall affirm, reject, or modify the recommendation. The *[department]* ***Department*** shall inform the employer of its decision on the administrative law judge's recommendation by certified mail return receipt requested. The *[department's]* ***Department's*** action shall be considered final agency action for purposes of the "Administrative Procedure Act," N.J.S.A. 52:14B-1 et seq., and shall be subject only to *[judical]* ***judicial*** review as provided in the Rules of Court.

(e) (No change.)

(f) Special rules applicable to trade secret claim appeals are set forth at N.J.A.C. 1:21.

8:59-3.17 Labeling

(a) An employer shall affix a label with the trade secret registry number to the container in which a hazardous or other substance claimed as a trade secret is held in accordance with the requirements of N.J.A.C. 8:59-5 or N.J.A.C. 8:59-11, as appropriate. A trade secret claim shall be filed ***or maintained*** in accordance with N.J.A.C. 8:59-3.6 prior to affixing the label to the container.

(b) An employer shall affix a label with the trade secret registry number to a container received by an employer in which a substance claimed as a trade secret is held before employees open the container or within five working days of the container's arrival at the employer's facility, whichever is sooner, and shall file ***or maintain*** a trade secret claim in accordance with N.J.A.C. 8:59-3.6.

(a)

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICES

Worker and Community Right to Know Act Rules

Adopted Amendments: N.J.A.C. 8:59-1, 2, 5, 6, 9, 10, 11 and 12

Proposed: March 1, 1993 at 25 N.J.R. 864(a).
Adopted: July 6, 1993 by Bruce Siegel, M.D., M.P.H., Commissioner, State Department of Health.
Filed: July 9, 1993 as R.1993 d.384, **with substantive changes** not requiring additional public notice and comment. See N.J.A.C 1:30-4.3.

Authority: N.J.S.A. 34:5A-1 et seq., specifically N.J.S.A. 34:5A-30.

Effective Date: August 2, 1993.
Expiration Date: September 24, 1994.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Health proposed amendments to its Worker and Community Right to Know Act rules, N.J.A.C. 8:59, in the New Jersey Register on March 1, 1993, at 25 N.J.R. 864(a). A public hearing was held on March 26, 1993, at which 12 persons testified, representing the following 18 organizations:

Andrew Fono, Ph.D., Passaic Color and Chemical Company; Jane Nogaki, New Jersey Environmental Federation, New Jersey Industrial Union Council—AFL-CIO, and Right to Know and Act Coalition; Peter Carbone, Camden Fire Department; Glenn Roberts, Fragrance Materials Association, and Flavor and Extract Manufacturers' Association; Drew Kodjak, New Jersey Public Interest Research Group; Paul Gammarano, Essex County College; Alan Bogard, Exxon Chemical Americas, and Chemical Industry Council of New Jersey; Edwin Crowell, Union Camp Corporation, New Jersey Business and Industry Association, and Research and Development Council of New Jersey; George Thompson, Ph.D., Forum for Scientific Excellence; Julius Rakus, Alpha Chemical and Plastics Corporation; Ronald Johnson, New Jersey State Chamber of Commerce; and Dr. Sandra Mohr, New Jersey Coalition to Prevent Reproductive Hazards in the Workplace.

Written comments were received from Passaic Color and Chemical Company, New Jersey Environmental Federation, New Jersey Industrial Union Council—AFL-CIO, New Jersey Right to Know and Act Coalition, Camden Fire Department, Flavor and Extract Manufacturers' Association, Fragrance Materials Association, Essex County College, Exxon Chemical Americas, Chemical Industry Council of New Jersey, Union Camp Corporation, New Jersey Business and Industry Association, Research and Development Council of New Jersey, Forum for Scientific Excellence, Alpha Chemical and Plastics Corporation, New Jersey State Chamber of Commerce, and New Jersey Coalition to Prevent Reproductive Hazards in the Workplace.

Richard Willinger, Program Manager of the Right to Know Program for the Department of Health, conducted the hearing, recommending that the Department evaluate the testimony and respond appropriately in the adoption notice. The Department's responses to the testimony have been incorporated into the summary of comments and responses which follows.

An additional 15 written comments were submitted by the following organizations:

Atlantic Electric, Bristol-Myers Squibb Company, Coalition Against Toxics, Hackensack Water Company, Merck and Co., Inc., Mobil Oil Corporation, New Jersey Department of Corrections, Ocean County Board of Health, Owens-Corning Fiberglass Corporation, Pesticide Safety and Right to Know Coalition, Public Service Electric and Gas Company, Rutgers Universtiy, Schuller, International, Inc., Union Carbide Corporation, and W.B.R. Engineering, Inc.

The following summarizes the comments rec ived and provides the Department's responses to these comments. A comments are on file at the Department of Health, and can be reviev d by the public during normal business hours by contacting Richa l Willinger, Program Manager, Right to Know Program, New Jersey Department of Health, CN 368, Trenton, N.J. 08625, (609) 984-2202.

SUBCHAPTER 1. GENERAL INFORMATI)N

1. COMMENT: Atlantic Electric recommenc that the definition of "container" be amended to exclude building stru ures such as chimneys, parabolic cooling towers, storage buildings, cor eyor belts or systems, grates, and rail car sheds, that are not capable of holding or retaining a chemical substance. They also ask whether t bine condensers, heat exchangers, and slag tanks are considered con iners to be labeled.

RESPONSE: Containers covered by the Rigl to Know law have to be able to hold a liquid, solid, or gaseous substa ce. Language has been added to the definition to clarify that it does not ver building structures that are not capable of holding such substanc . Turbine condensers, heat exchangers, and slag tanks are containers hich must be labeled. However, if there are pipelines involved, a labe only has to be placed at the normally operated valve, outlet, vent, drai , or sample connection designed to allow the release of a substance fr n the pipeline at least once during a 24 hour period or in conn tion with repairs or maintenance performed at least once a month

2. COMMENT: The New Jersey Industrial Un n Council—AFL-CIO (IUC), and the Right to Know and Act Coa tion (Right to Know Coalition) support modifying the definition of "h zardous substance" in N.J.A.C. 8:59-1.3 to expand the exclusion of pr ducts from being considered hazardous, such as food, drugs and cosr etics. Regarding those products that are excluded from the definition of hazardous substance," Atlantic Electric recommends modifying the cons mer product exclusion where it refers to a private employee's exposure during handling, since private employees have been preempted from cc erage under State law by court decision. Union Carbide Corporation (U ion Carbide) supports the additional exclusions in the definition of " azardous substance."

RESPONSE: The consumer product exclusio will not be amended to distinguish between public employee and priv e employee coverage, because to do so would make labeling mor onerous on private employers; however, the phrase "present in norm consumer quantities" will be deleted to make the sentence consist nt with the statutory language at N.J.S.A. 34:5A-3m. In addition, the Department will add, in a proposal published elsewhere in this issu of the New Jersey Register, three categories of exclusions to cover ubstances that are an integral part of a facility structure or furnishings evidence stored in an evidence locker or room, and products which are the personal property and are for the personal use of an employee The exclusions were proposed by the Department of Environmental rotection and Energy in their proposed amendments to their Right to Know rules published in the New Jersey Register on April 19, 1993 at 25 N.J.R. 1631(a), except for evidence in an evidence locker or room, whic will be added by the Department.

3. COMMENT: It was brought to the Depart ent's attention that it is not clear that a public employer is defined in N J.A.C. 8:59-1.3 under "employer."

RESPONSE: A new definition of "public em loyer" will be added which is identical to the existing definition of " mployer" in N.J.A.C. 8:59-1.3. Pursuant to the statute, public employers re covered; therefore, in order to make this clear, the term "State, Cou nty and Local government, including any agency, authority, department bureau or instrumentality thereof" has been added.

4. COMMENT: Exxon Chemical Americas (Ex on) and the Chemical Industry Council of New Jersey (CIC) object to excluding pilot plants from being considered research and developme t laboratories in the definition of "research and development laborator " in N.J.A.C. 8:59-1.3, because pilot plants are an integral part of rese rch and development (R&D) activity; they are operated by highly qu ified personnel; they handle non-commercial size quantities; and their exclusion imposes an unwarranted burden on R&D facilities. Unio Camp Corporation (Union Camp), the New Jersey Business and Indu ry Association (BIA), and the Research and Development Council c New Jersey (R&D Council) also object to excluding pilot plants becat e most research pilot plants are only a small size up from bench scale perations. They point out that the DEPE has made a distinction bet een semi-works and research pilot plants in its air quality permits prog m, based on whether the operation of the pilot plant is under the di ct management of a research or manufacturing director, and recommends using this management chain concept.

The Coalition Against Toxics supports the exclusion of pilot plants from being considered research and development laboratories. The Flavor and Extract Manufacturers' Association (FEMA) and Fragrance Materials Association (FMA) object to the exclusion of pilot plants because they allege that it runs counter to the Act and that they are not like production facilities. Merck and Company (Merck) believes the exclusion of pilot plants is inappropriate because they are an integral part of R&D, are operated by technically qualified professionals just as R&D laboratories, use chemicals in quantities significantly less than quantities used in commercial scale facilities, consist of operations that are in a constant state of flux, and would only add an additional layer of paperwork for the facility without enhancing the safety of any involved personnel.

RESPONSE: The Department of Health, in consultation with the Department of Environmental Protection and Energy, agrees with the majority of the commenters in that pilot plants are an integral part of R&D activities, are operated by qualified personnel, and handle hazardous chemicals in amounts significantly less than the amounts used in commercial facilities. Therefore, the Department will treat pilot plants as research and development laboratories and will delete the proposed amendment.

5. COMMENT: The New Jersey State Chamber of Commerce (Chamber of Commerce) supports the existing exemption for research and development laboratories because they contain small quantities of substances that pose little threat to emergency responders or workers.

RESPONSE: Research and development laboratories have been exempted from certain Right to Know requirments since the law was enacted in 1983. However, the Department does not agree that the substances in an R&D laboratory pose little threat to emergency responders or workers. While the chemicals in R&D laboratories may be in small quantities, they are still numerous and hazardous. That is why the Occupational Safety and Health Administration (OSHA) and the New Jersey Department of Labor have enacted a Laboratory Standard to provide for hazard communication to the workers in an R&D laboratory. That is also why the New Jersey Right to Know law requires that the supervisor of an R&D laboratory be technically qualified and that the laboratory establish an effective communications program with the local fire department so that the fire department can be prepared in case it has to respond to an emergency at the laboratory.

6. COMMENT: Exxon and CIC suggest including quality control laboratories that are responsible for testing activities in the definition of "research and development laboratory" in N.J.A.C. 8:59-1.3. They recommend changing the language of the definition from "primarily for research, development, and testing activity," to "primarily for research, development or testing activity." The Coalition Against Toxics opposes including quality control laboratories in this definition. FEMA and FMA support including quality control laboratories within the definition because they claim that they are similar to R&D laboratories.

RESPONSE: The Department does not believe that quality control laboratories are similar to R&D laboratories, since quality control laboratories have fewer chemicals than R&D laboratories, have chemicals in larger quantities, and perform standardized testing. Therefore, quality control laboratories will not be included in the definition. The Department of Environmental Protection and Energy agrees that quality control laboratories should not be considered research and development laboratories.

7. COMMENT: Union Camp, BIA and the R&D Council recommend modifying the definition of "technically qualified person" in N.J.A.C. 8:59-1.3 to include the physical sciences, biological sciences, and engineering in order to recognize the breadth of technically qualified people supervising research activities in the State. Bristol-Myers Squibb Company (Squibb) and the R&D Council recommend further modifications to the definition to include Certified Industrial Hygienist, Certified Environmental Health and Safety Professionals, Environmental Professionals, and other specialists holding science or environmental health and safety degrees.

RESPONSE: The definition of "technically qualified person" is used for two purposes—for supervising a research and development laboratory and for teaching public employees. In practice, the Department has found most persons with a degree in the physical and biological sciences to be technically qualified under the catch-all phrase of "or a related field." In engineering, while a chemical engineer may have the appropriate training, an electrical engineer would not.

In order to clarify the requirements for these two purposes, paragraphs one and two of the definition have been amended to limit them to the training of public employees and to include Certified Industrial Hygienists. In addition, the Department is adding the phrase "or higher" after the words "bachelor's degree" to clarify that a master's degree in one of the fields listed is acceptable even if a person's bachelor's degree is not in an acceptable field. "Physical and biological sciences" will not be added, because the terms are too broad and could include persons with inappropriate degrees. In regard to other degrees and certifications for public employee training purposes, the professional associations and individuals who possess these degrees can submit, for consideration by the Department for future amendment to the definition, the requirements of the degrees and certifications, with particular emphasis on education and training in occupational health and safety, industrial hygiene, and hazardous materials. For those degrees and certifications not specifically accepted in the definition, the trainer will be evaluated on his or her entire resume, including degrees, training, and experience, in determining whether he or she is technically qualified. For research and development laboratories, the definition of "technically qualified person", has been amended to conform to the definition proposed by DEPE in the April 19, 1993 New Jersey Register at 25 N.J.R. 1631(a) since a R.N. would not be found as a supervisor in a R&D lab. However, R.N. will be retained for purposes of training, since people with such backgrounds are found in training positions, and are qualified by virtue of their background in scientific and health fields to provide training regarding hazardous substances.

SUBCHAPTER 2. RIGHT TO KNOW SURVEY

8. COMMENT: Atlantic Electric has suggested that subchapters that only pertain to the public sector, such as this one, state this in their title in order to reduce confusion, particularly among small businesses.

RESPONSE: The commenter's suggestion will be adopted.

9. COMMENT: Essex County College felt that the Right to Know Survey in its new format was difficult to complete and should use more plain language, rather than codes, in order to make it more meaningful to those who use the data. The College made the following recommended changes regarding completion of the Right to Know Survey: make mandatory the reporting of the location of small quantities of materials (it is currently optional); change the container codes to three letter descriptors, such as AGT for Above Ground Tank (there is currenlty a two-number code); list actual percentages (codes are currently used); use the letter that describes the physical state of the material, such as G for Gas, S for Solid, and L for Liquid (instead of C for Cubic feet, P for Pounds, and G for Gallons); eliminate the requirement to list the ingredients of small quantities; and offer these changes as an option for future years. They also recommended a substitute survey which would include only a product's name, location, and quantity, and location of its Material Safety Data Sheet. The New Jersey Department of Corrections found that it took many hours to complete the Right to Know Survey, and recommended a substitute survey which would include a general survey with applicable Material Safety Data Sheets attached.

RESPONSE: The Department significantly revised the Right to Know Survey for 1992 to make it more useable by public employees, Right to Know trainers, and emergency responders. In order to help public employers learn how to fill out the survey, the Right to Know Program held 32 workshops throughout the State to explain the changes. The feedback on the new survey has been overwhelmingly positive. In addition, public employers have learned to fill out the new survey and have adapted their computer programs to the new survey. However, suggestions to further improve the survey are welcomed and will be considered for future changes to the survey. The following is the Department's response to the commenter's suggestions:

The commenter proposes listing the location of all small quantities. The Department believes that it is always a good idea for public employees and emergency responders to know the location of all hazardous materials in the workplace. Now that employers are familiar with completing the new Right to Know Survey, it would be easier for them to list the location of products in small quantities. However, before proposing such a change, the Department wishes to hear the views of other public employers, public employees, and emergency responders on the proposed change. A questionnaire will be put in the next Right to Know Survey booklet to solicit public comments. In the meantime, reporting the location of small quantities will continue to be optional for the next (1993) survey.

The commenter suggests the use of three letter descriptors for describing the type of container that the hazardous substance is contained in. The current two-digit codes were developed by DEPE in 1984 and are used in their Community Right to Know Surveys. Any change to the codes should be agreed to by DEPE and used for both DEPE's Community Right to Know Survey and the Department of Health's Right to Know Survey. This change to the Right to Know Survey does not need a change to the rules and can be implemented administratively. The Department will consider making this change, but not for the next (1993) survey. As a point of information, the Right to Know inventory data will soon be accessible by computer modem through a Local Area Network (LAN) located at DEPE and jointly administered by DEPE and the Department of Health. The software written for this LAN automatically converts all codes into actual names on the screen.

The commenter suggests listing the actual percentages of hazardous chemical ingredients in a mixture instead of a code representing a range of the ingredient percentage. A problem with this suggestion is that many Material Safety Data Sheets (MSDS) list the percentage in ranges, so that it would be difficult for a public employer to list the exact percentage of the ingredient. Most exact percentages would be unknown. An alternative to the proposal would be to list the ingredients in just two categories—pure and mixture. As with the container codes, DEPE developed these codes in 1984 and continues to use them in their Community Right to Know Survey. Any change to the codes should be agreed to by DEPE and used for both DEPE's Community Right to Know Survey and the Department of Health's Right to Know Survey. This change to the Right to Know Survey does not need a change to the rules and can be implemented administratively. The Department will consider making this change, but not for the next (1993) survey. The Local Area Network mentioned above converts the ingredient codes into actual numerical ranges on the screen.

The commenter suggests using different codes for the physical state of the product. The survey currently uses the following codes for the physical state of the product: C for Cubic feet for Gases; P for Pounds for Solids; and G for Gallons for Liquids. The reason for this is to make it easier for a user of the survey to read the information on the survey. The column (Column #9) in front of the column for physical state of the product (Column #10) is for the quantity of the product. These two columns are meant to be read together. For example, if Column #9 shows code 11 (11-100) and Column #10 shows "G" (gallons), it reads that the product is present in a quantity between 11 and 100 gallons. The Department feels that the use of these codes is appropriate and not confusing.

The commenter does not want to list the hazardous ingredients of products present in small quantities. The Department believes that it is important for a public employee to know the hazardous ingredients in all products that he or she works with, even if they are only present in small quantities. The quantity of a product is not indicative of an employee's exposure to that product, nor to its hazard. While 100 pounds, gallons or cubic feet of a product may or may not be of great concern to an emergency responder, it is of great concern to the employee who works with that product. An employee must know about the hazardous ingredients of all the products which he or she works with. This information is obtained from the label, from the survey, and in training. The product could be flammable, corrosive, carcinogenic, mutagenic, or hazardous in other ways. It is one of the basic guarantees of the Right to Know law that a public employee has the right to know this information.

The commenter suggests offering the above changes as an option in future years. This cannot be done because all data collected on the Right to Know Survey must be uniform in order to be understandable and useful. The same information cannot be reported in two different ways. If any changes are to be made, they will be required of all public employers.

The substitute surveys recommended by the commenters cannot be accepted for the following reasons: they eliminate the New Jersey Substance Number, which is essential for computerizing the inventory; Essex County College's proposed survey could result in not listing all of the hazardous ingredients of the product, eliminates the Chemical Abstracts Service (CAS) number, which is important in identifying a chemical because it is a unique identification number, and eliminates the Department of Transportation (DOT) number, which is critical for emergency responders in fighting a fire or spill of the material; they eliminate the container code, which is used in identifying the product; Essex County College's proposed survey eliminates the percentage of each ingredient which is used in determining the hazard of that ingredient in the product, and eliminates the physical state of the product

which is used in identifying the product; they e iminate the number of employees exposed or potentially exposed to th product which is used in training and surveillance activities; and the eliminate the special health hazard codes which are used in determ ining or helping to determine the hazard of the product. In additi n, the Department of Corrections' proposed survey eliminates the loca ion and quantity of the hazardous products, which is critical for emergen / responders in fighting fires and dealing with spills and other emerge cies.

10. COMMENT: Schuller International belie s that the "good faith" requirement in N.J.A.C. 8:59-2.2(e) to contact product manufacturer two times to determine the unknown ingredient of a product is unreasonable, because it assumes that the first con ct was not valid, and recommends limiting it to one contact. They als believe that requiring more information on a New Jersey label than is equired on a Material Safety Data Sheet means that New Jersey is requ ring greater protection for emergency responders and community resi nts than for workers.

RESPONSE: The Department believes that an employer has an obligation to take meaningful action to obtain inform ation about the ingredients of products, and that two contacts are n t burdensome to find out this important information. New Jersey's la els are used by public employees as well as emergency responders an community residents.

SUBCHAPTER 3. TRADE SECRETS

Comments made by persons who testified at th March 26, 1993 public hearing and who submitted written comment about the proposed amendments to the trade secret rules are sum arized and responded to in a separate adoption, published elsewhere i this issue of the New Jersey Register.

SUBCHAPTER 4. HAZARDOUS SUBSTAN E FACT SHEETS

11. COMMENT: Atlantic Electric has suggest l that subchapters that only apply to the public sector, such as this one state this in their title in order to reduce confusion, particularly amo g small businesses.

RESPONSE: The commenter's suggestion ha been adopted.

12. COMMENT: The IUC and RTK Coal ion believe that the Hazardous Substance Fact Sheets ("fact sheets" produced by the Department are extremely valuable and that the D partment has done an excellent job of distributing them to hospitals doctors, local health departments, fire departments, and public sector facilities, but urge the Department to evaluate additional ways to get th fact sheets to private sector employees and employers, and neighbor of a facility. Atlantic Electric suggests that private employers who subm it a Community Right to Know Survey should be able to request and eceive fact sheets for the chemicals listed on their survey, for free. Sin larly, Alpha Chemical and Plastic suggests that Hazardous Substance F t Sheets be automatically sent to private employers.

RESPONSE: Hazardous Substance Fact Sheet are written for workers, and would be as useful to private employee as they are to public employees. Many in the private sector recogniz this, as evidenced by the hundreds of private employers who purchase he fact sheets for use in their companies, even though they are not leg lly obligated to do so. The Department agrees that more widespread stribution of the fact sheets would be beneficial to private employer and employees, and community residents, and will explore ways of pu icizing the availability of fact sheets to these groups. The Department ag es with the comments about increasing distribution of fact sheets to priv te employers and will provide free fact sheets to any private employer v nich submits a request to the Department of Health (Right to Know Pro am, CN 368, Trenton, New Jersey 08625-0368) for Hazardous Subst nce Fact Sheets for substances reported on their Community Right o Know Survey.

13. COMMENT: The Chamber of Comme e wants to see the elimination of Hazardous Substance Fact Sheets b cause they claim that Material Safety Data Sheets (MSDSs) provide ad quate information and are available upon purchase of a chemical, and fe ls that the fact sheets are duplicative documents that provide no me ningful benefit. The Camden Fire Department states that "The Haz dous Substance Fact Sheets prepared by the Department of Healt are the most comprehensive data available concerning the health ffects and protection needed when employees and emergency respo ders are exposed to hazardous chemicals." They say that the Haza dous Substance Fact Sheets have been their backup when Material S fety Data Sheets are deficient. Camden Fire Department testified tha "(In) every instance that I can recall, the Hazardous Substance Fact heets have contained the necessary information that the emergency re ponder needed which may not have been answered on the Material Safe / Data Sheets." Essex County College remarks that every vendor has devised its own format and content for its MSDS and there are inconsistencies on MSDSs from one manufacturer to another, and recommends that government regulations require manufacturers to conform to one standard. Alpha Chemical and Plastics agrees that there are inconsistencies in Material Safety Data Sheets.

RESPONSE: The Department disagrees with the Chamber of Commerce. Among the millions of fact sheets that have been distributed, the overwhelming majority of persons and organizations commenting on them have been extremely positive. The Chamber of Commerce's opinion that all MSDSs are adequate is not supported by the published studies and articles that have evaluated MSDSs, including recent studies by Congress. Because of the inadequacies of MSDSs in regard to content and understandability, OSHA is looking at standardizing the format and content areas of MSDSs. Since MSDSs are regulated by OSHA, only OSHA can standardize them. National professional organizations and international agencies are also working on standardizing and improving MSDSs. When the Right to Know law was first enacted, among the major deficiencies of MSDSs were the lack of information on chronic health hazards and medical testing, and the inability of workers to understand a document intended for health and safety professionals. Although MSDSs have improved over the years, many are still deficient in these and other areas. All MSDSs have not been evaluated by a governmental agency, so many of them continue to be deficient.

Hazardous Substance Fact Sheets prepared by the Department are comprehensive in the information they contain, offer an objective evaluation of toxicological studies of health effects, contain an easy to find page devoted to the needs of firefighters, contain standardized headings, format and language, and provide information never found in MSDSs, such as definitions of acronyms and common questions and answers. Their excellence has been recognized at a national level in their selection by the Environmental Protection Agency for distribution over a national database.

Even though many are deficient, many MSDSs are valuable in education and training of public employees and emergency responders, and should be used with appropriate Hazardous Substance Fact Sheets in this training. The Department requires Fact Sheets to be used with MSDSs in the Right to Know training of public employees and emergency responders, when hazardous chemicals are listed as ingredients of a product in the MSDS. Certain hazards of ingredients, such as flammability, may be modified by non-hazardous ingredients which would lower the overall hazard of the product and be reflected on the MSDS. Other chemicals, such as carcinogens, would retain their hazard even though present at very low levels in the mixture. Since the Fact Sheets are more complete than MSDSs, it is important that they be used together.

14. COMMENT: The New Jersey Coalition to Prevent Reproductive Hazards in the Workplace (Coalition to Prevent Reproductive Hazards) commends the Hazardous Substance Fact Sheets and indicates that they are used as examples in other states. They suggest, in light of the recent U.S. Supreme Court decision in *Johnson Controls,* that in the section of the fact sheet about the proper precautions that a worker should use to avoid exposure to the hazardous chemical, a statement should be added informing the worker "that discrimination by gender as a means for controlling for toxicity (reproductive or otherwise) is not acceptable."

RESPONSE: The Department agrees with the commenter and will add a statement to future Hazardous Substance Fact Sheets.

15. COMMENT: The Pesticide Safety and Right to Know Coalition requests that the Hazardous Substance Fact Sheets continue to be published in Spanish.

RESPONSE: The Department has been able to publish 235 fact sheets in Spanish, representing those hazardous chemicals most frequently reported by public employers on the Right to Know Survey. Unfortunately, funds are limited and the Department does not expect to be able to translate any new fact sheets. However, funds will be allocated to update the existing Spanish fact sheets whenever their English counterpart is updated.

SUBCHAPTER 5. LABELING CONTAINERS

General Provisions

16. COMMENT: The IUC, Right to Know Coalition, and Union Carbide support the labeling amendments that pertain to retains and batch samples in N.J.A.C. 8:59-5.1(o) and (p). Exxon, CIC, Union Camp, BIA, and the R&D Council believe that the definition of "retain" is too narrowly defined, because it excludes raw materials, intermediate products, by-products, samples of products, and waste products. Exxon

and CIC also object to the definition of "batch samples" because it does not apply to samples that are analyzed subsequent to completion of the batch. FEMA, FMA, Exxon, and CIC point out that, under the proposed rule, it appears that retains and batch samples would have to be labeled in quantities less than the general threshold established in N.J.A.C. 8:59-5.6, and that the threshold for all containers should apply to retains and batch samples.

RESPONSE: The Department agrees with the commenters and has expanded the definition of "retains" and "batch samples" to include the additional types of retains and time of testing for batch samples. While it was always intended that the new labeling threshold apply to retains and batch samples, the proposed thresholds for batch samples will be deleted from N.J.A.C. 8:59-5.1(o), and language will be added to make it clear that the general labeling threshold applies to retains and batch samples.

17. COMMENT: The IUC, Right to Know Coalition, Exxon, CIC, Public Service Electric and Gas Company (PSE&G), Atlantic Electric, Union Carbide, and Mobil support the labeling amendments allowing U.S. Department of Transportation (DOT) labeling for non-direct use shipping containers in N.J.A.C. 8:59-5.1(q).

RESPONSE: Since all commenters support this amendment, it will be adopted as proposed.

18. COMMENT: The IUC, Right to Know Coalition, and Coalition Against Toxics believe that the National Paint and Coatings Association Hazardous Materials Information System (HMIS) should be made mandatory and phased in over a reasonable time period, rather than just being suggested in N.J.A.C. 8:59-5.1(r). The Forum for Scientific Excellence (FSE) believes that employee and emergency responder awareness would be increased if employers were required, rather than encouraged, to label with an HMIS or equivalent labeling system. They request an amendment that would allow use of FSE's SAF-T-LABELS and SAF-T-PRODUCT labels, since they fulfill all of the stipulated criteria. FEMA and FMA support a system of nationally standardized warning labels, such as those developed by the National Fire Protection Association (NFPA), HMIS, or DOT, rather than New Jersey's universal labeling. Alpha Chemical and Plastics suggested using a hazard warning system that is colorful, such as NFPA or HMIS. Atlantic Electric does not believe that any one commercial labeling system should be favored over another and that all labeling systems which meet the intent of the OSHA Hazard Communication Standard should be encouraged. They also believe that the NFPA system should be referred to as "beneficial" rather than the term "acceptable" used in the rule. Union Carbide also objects to the use of the term "acceptable" as it pertains to the NFPA system, since the paragraph is only a recommendation.

RESPONSE: The requirement to apply a hazard communication warning on a container label already exists for New Jersey's and the nation's chemical manufacturers, importers and suppliers, under the OSHA Hazard Communication Standard, therefore, such a requirement under State law would not be necessary and may be pre-empted by Federal law. To their credit, many companies are already using the HMIS and NFPA labeling systems. The Department hopes that trade associations would promote these and similar labeling systems because of their ease of understanding and ability to provide important hazard information quickly. Together with the chemical ingredient names and CAS numbers, one would have an ideal label. The Department has determined that the inclusion of this paragraph is not appropriate since it is only a recommendation, and it will be deleted.

19. COMMENT: The IUC and Right to Know Coalition propose that the Department add a new rule requiring the 11,000 out-of-State chemical manufacturing facilities to insure that containers of chemicals that are delivered to a point within New Jersey be labeled pursuant to the Right to Know law, as a condition of doing business in the State.

RESPONSE: The Department shares the concern raised by the commenters that some regulated employers in New Jersey must re-label containers that are purchased from out-of-State manufacturers and suppliers in order to be in compliance with New Jersey law. To remedy this situation, the Department has always advised employers to put into their purchasing contracts a requirement that all materials be labeled pursuant to the New Jersey Right to Know law. For State agencies, the Purchase Bureau in the Department of Treasury has made Right to Know labeling a condition of all materials purchased through them. The Department agrees that it would be beneficial to the regulated community in New Jersey to notify out-of-State chemical manufacturers and suppliers of New Jersey's labeling requirements, and will send a notice to the major chemical manufacturers and suppliers requesting them to label their containers in conformance with the New Jersey Right to Know law.

Research and Development Laboratories

20. COMMENT: The IUC and Right to Know Coalition support the changes to the research and development laboratory labeling requirements set forth in N.J.A.C. 8:59-5.3.

RESPONSE: Certain modifications to the proposed rule amendments will be made as explained below.

21. COMMENT: Exxon and CIC suggest that N.J.A.C. 8:59-5.3 state that facilities with existing R&D laboratory exemptions need not reapply, and that the terms and scope of existing exemptions are unaffected by the regulatory changes.

RESPONSE: The Department agrees and has added appropriate language in N.J.A.C. 8:59-5.3(c)5.

22. COMMENT: Exxon and CIC suggest that the ability to use the alternative labeling system in N.J.A.C. 8:59-5.3(a) be allowed for all containers above the labeling threshold set forth in N.J.A.C. 8:59-5.3(b), and that the ability to use a code or number system on containers should not be limited to those R&D laboratories which comply with the OSHA Laboratory Standard.

RESPONSE: Language has been added to indicate that the new labeling threshold set forth in N.J.A.C. 8:59-5.6 will apply to R&D laboratories which use the alternative labeling system in N.J.A.C. 8:59-5.3(a). Use of a code or number system is not limited to R&D laboratories which comply with the OSHA Laboratory Standard.

23. COMMENT: Union Camp, BIA, the R&D Council, FEMA and FMA recommend that R&D laboratories be given a total exemption from universal labeling because of their special situation, in that they have technically qualified persons in charge of their laboratories, are in compliance with the OSHA Hazard Communication Standard, and have established an acceptable communications program with the local fire department. Union Carbide recommends a total exemption from universal labeling for R&D laboratories which are subject to the OSHA Laboratory Standard because they claim that the quantities of hazardous chemicals in an R&D laboratory are unlikely to be of significance to an emergency responder. Rutgers University proposes granting an automatic facility-wide R&D laboratory exemption to colleges and universities because they have many rooms containing tens to hundreds of chemicals in small quantities, usually less than one gallon or five pounds; the rooms are supervised by highly trained and technically qualified persons; and emergency responders have indicated little or no interest in the hazardous substance surveys for these rooms.

RESPONSE: The Department agrees with the commenters that Research and Development laboratories should be given a total exemption from universal labeling. The total exemption is justified for the reasons that the Right to Know law has always treated R&D laboratories differently from other covered facilities, the OSHA Laboratory Standard was enacted after passage of the Right to Know law and fulfills similar functions, technically qualified supervisors are present in each laboratory, and the R&D laboratories must work with their local fire departments to establish an effective communications program to deal with emergencies. This exemption also applies to public employer R&D laboratories which became subject to the Laboratory Standard on June 21, 1993. If public employer R&D laboratories wish to take advantage of this exemption, they must comply with the entire Public Employees Occupational Safety and Health Act Laboratory Standard, which is identical to the OSHA Laboratory Standard.

The Department disagrees with the statement that R&D laboratories are not of interest to emergency responders. While the quantity of each chemical may be small, there may be hundreds and thousands of chemicals in an R&D laboratory, some of them extremely hazardous, which, in the aggregate, are of extreme importance to emergency responders. Accidents occur in R&D laboratories. Not all laboratory employees are as trained as the scientist in charge. There are laboratory technicians, students, maintenance staff, as well as degreed scientists, who can cause accidents. The fire departments that must sign off on the applications of R&D laboratories have used this opportunity to become better acquainted with the laboratory facility and some have found it necessary to require additional safeguards to be implemented by the laboratory. All the laboratories at colleges and universities are not R&D laboratories; many are teaching laboratories which contain a much smaller number of chemicals. In addition, public employees who work in college and university laboratories have the right to see a list of the hazardous chemicals used in their laboratories and to work with con-

tainers that identify their chemical ingredien . The Department of Environmental Protection and Energy agrees ith the sentiments expressed in the response above as they pe ain to private R&D laboratories.

24. COMMENT: Union Camp, BIA, the R&) Council, FEMA and FMA claim that N.J.A.C. 8:59-5.3(b)1 imposes nore stringent requirements on R&D laboratories than on other fac ity operations because the proposed labeling threshold of five pounds o 0.5 gallons that applies to other facility operations only applies to R&D l boratories if the belowthreshold containers are labeled according to he OSHA Laboratory Standard.

RESPONSE: The Department did not intend t impose more stringent requirements on R&D laboratories. The total e emption from Right to Know labeling that is being granted to R&D lab ratories eliminates the threshold and resolves the commenters' conce ns.

25. COMMENT: Exxon and CIC recomme d the adoption of a threshold of 10 pounds and one gallon for R& D laboratories instead of the five pounds (2.3 kilograms) and 0.5 gal ns (1.9 liters) and set forth in N.J.A.C. 8:59-5.3(b)1, because the epartment's proposed threshold is too small to have any real effect n reducing the private employer labeling burden. Merck recommends the adoption of a 20 pound and two gallon threshold. Squibb and th R&D Council recommend the adoption of a 10 pound and four lit r threshold because it is a standard laboratory amount. Exxon and CIC uggest that it be made clear that R&D laboratories are exempt from t e aggregate thresholds contained in N.J.A.C. 8:59-5.6(g).

RESPONSE: The total exemption from Righ to Know labeling that is being granted to R&D laboratories elimin es the threshold and renders this issue moot.

26. COMMENT: Union Carbide feels that N.J A.C. 8:59-5.3(b)2 needs to be clarified to limit it to public employee wo kplaces to ensure that a private employer does not feel that she m st provide alternative information sources without the permission or as stance of management to a public employee who is visiting her work lace.

RESPONSE: The language has been clarifie .

27. COMMENT: FEMA and FMA claim tha the Department does not have the authority to require hazard war ings on containers as required in N.J.A.C. 8:59-5.3(b)4. Although allo ing OSHA Laboratory Standard labeling in lieu of Right to Know abeling should be an improvement for R&D laboratories, Merck fe ls that requiring containers filled from incoming containers to be abeled with the same hazard warning and chemical identification infor nation as is present on the incoming container negates the benefits re lized by following the OSHA Laboratory Standard labeling requirem nts, and believes that labeling with the product name would be suffi ient.

RESPONSE: The total exemption from Righ to Know labeling that is being granted to R&D laboratories eliminat s this paragraph.

28. COMMENT: Union Carbide believes that he application process set forth in N.J.A.C. 8:59-5.3(c) should be dele ed because employers can determine on their own whether their facilit s meet the criteria for an R&D laboratory and if they do not qualify, the nforcement provisions of the Act are sufficient to compel compliance

RESPONSE: The Department believes it is a r uch more efficient and effective administration of the law to determi e the status of R&D laboratories in advance of being inspected; the efore, the application process will not be deleted.

29. COMMENT: Exxon and CIC object to lett g the local fire department determine whether an acceptable commu lications program has been established between the R&D laboratory a d the fire department to assist them in responding to emergencies at the laboratory, as required by N.J.A.C. 8:59-5.3(c)3iv. They recommend hat the language be changed to "providing documentation that the lc al fire department has been communicated with in a manner that me ts their needs for the handling of emergencies" at the R&D facility. They believe that the current language places the fire department in th inappropriate position of determining the acceptability of such comm nication.

RESPONSE: Throughout the history of the Right to Know law, industry has stated that they wanted to make the labeling and inventory information required by the law meaningful to mergency responders. This provision is the only opportunity for fire epartments to require companies and agencies to establish a commun ations program which the fire department feels is adequate to enable th m to properly respond to an emergency at the facility, such as a fire or a spill. The Department believes that it is appropriate for the fire depar nent to determine the acceptability of this communications program and will not change the language in the rule.

30. COMMENT: Exxon and CIC object to the requirement in N.J.A.C. 8:59-5.3(c)3v, to provide the technical qualifications of the supervisors in each R&D laboratory area, because it is burdensome and proprietary, and, instead, suggest that only the name of one qualified supervisor for the entire R&D laboratory site be provided. For example, for Exxon's New Jersey facilities, this would reduce the burden of providing the names of approximately 1,000 area supervisors to only four site supervisors. Union Camp, BIA, and the R&D Council agree with the above comment and recommend that this requirement be deleted.

RESPONSE: In practice, where there are more than a few supervisors at the facility, the Department has accepted a statement saying that all supervisors have a minimum of a master's degree in chemistry, or some similar statement. The Department does not need to know the name and degree of each laboratory supervisor. On the other hand, it would not meet the intent of the law to insure that the laboratories are supervised by qualified personnel to know that the one supervisor of 1,000 employees had a Ph.D. degree. Language has been added to the rule to say that a general statement can be made by the employer about the qualifications of his laboratory supervisors.

31. COMMENT: Union Camp, BIA, and the R&D Council object to the requirement in N.J.A.C. 8:59-5.3(c)4 that a determination to grant or deny the R&D laboratory exemption will be made jointly by the Department of Health and DEPE, because the existing approval process in DEPE appears to be working well and a joint operation would imply that the two departments lack confidence in each other.

RESPONSE: The Department of Health and DEPE have been jointly reviewing R&D laboratory exemption applications since 1984 when the law went into effect. The award of R&D laboratory status affects both departments—filing a Community Right to Know Survey with DEPE, and universal labeling which is regulated by the Department of Health. Therefore, both agencies feel that they need to be consistent in their criteria for awarding R&D laboratory status, and the way to do this is to jointly review applications. Joint review of all applications will continue, even though private employers submit their applications to DEPE and public employers submit their application to the Department of Health.

Exceptions to Labeling

32. COMMENT: Atlantic Electric proposes that the language of N.J.A.C. 8:59-5.5(b) allowing certain DOT labeling in lieu of Right to Know labeling to reflect the language of N.J.A.C. 8:59-5.1(q), which allows all DOT container labeling.

RESPONSE: The applications of the two sections are different. N.J.A.C. 8:59-5.1(q) applies to DOT labeled shipping containers which are not direct use containers. N.J.A.C. 8:59-5.5(b), however, applies to direct use containers if the name on the DOT label is the same as the chemical name on the Right to Know Hazardous Substance List.

33. COMMENT: The IUC and Right to Know Coalition oppose the expansion of the labeling exception in N.J.A.C. 8:59-5.5(d) for drugs, cosmetics, food, flavors and fragrances labeled pursuant to the Federal Food, Drug, and Cosmetic Act (FDCA) from a five gallon container to no size limit, because it may allow poorly labeled large containers and no labeling of Special Health Hazards, which poses a risk to firefighters and workers. Exxon, CIC, PSE&G, and Union Carbide support this amendment. However, Exxon and CIC believe it should be expanded to apply to all such substances regardless of whether a specific container is subject to FDCA regulation. They recommend changing the language "when they are subject to" to "if, at any time, they are subject to." FEMA and FMA criticized the expansion of the FDCA exception because it fails to provide appropriate and necessary relief to the flavor and fragrance industry. For example, while most flavors are regulated by FDCA, some are regulated by the U.S. Department of Agriculture while others are regulated by the Bureau of Alcohol, Tobacco and Firearms. In regard to fragrances, some fragrances are regulated by the OSHA Hazard Communication Standard, while others are regulated by the Consumer Product Safety Commission. A flavor or fragrance company does not distinguish, on the shop floor, where a container will go and what Federal or state labeling law applies. Therefore, FEMA and FMA recommend that the exception for flavors and fragrances be expanded to include all Federally regulated flavors and fragrances. The Forum for Scientific Excellence opposes a labeling exemption for flavors and fragrances because some of them are very hazardous and many of them have never been tested for chronic health effects.

RESPONSE: The Department agrees with the concern expressed about possible unlabeled large containers in the workplace and has modified the proposed exemption to limit it to containers that are smaller than 55 gallons. The change results in increasing the original FDCA exemption from five gallons to 54 gallons, and only requires Right to Know labeling on large containers which are of particular concern to emergency responders. In addition, the Department has always interpreted the law to exclude from labeling raw food materials, food additives, and finished food products intended for human or animal consumption, and language has been added to the rule to reflect this, except for those raw food materials and food additives that are not intended for human or animal consumption and are used to manufacture non-food products.

34. COMMENT: Ocean County Board of Health asks whether the products at their veterinary facility which have labels approved by the Food and Drug Administration would be exempt from further labeling under N.J.A.C. 8:59-5.5(d).

RESPONSE: Yes, for all containers less than 55 gallons or 450 pounds.

35. COMMENT: The IUC, Right to Know Coalition, and Union Carbide support the new exception to labeling in N.J.A.C. 8:59-5.5(j) for alcoholic beverages regulated by the Federal Alcohol Administration Act.

RESPONSE: The provision will be adopted as proposed.

36. COMMENT: Atlantic Electric suggests adding containers labeled in accordance with U.S. Department of Agriculture rules to the list of labeling law exceptions. Rutgers University and Atlantic Electric suggest adding containers labeled in accordance with the OSHA Hazard Communication Standard to the list of labeling law exceptions. PSE&G recommends adding containers labeled in accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) to the list of labeling law exceptions.

RESPONSE: The labeling laws of the U.S. Department of Agriculture will be examined to determine whether they provide sufficient identification of chemicals to meet the intent of the New Jersey Right to Know law. The Department will not adopt the labeling requirements of the OSHA Hazard Communication Standard because that standard does not provide for sufficient chemical ingredient identification on the container label. Containers labeled pursuant to FIFRA are already allowed in place of Right to Know labeling (see N.J.A.C. 8:59-5.5(a)).

Exclusions from Labeling

37. COMMENT: PSE&G recommends that the definition of "article" be modified to make it consistent with the definition in the OSHA Hazard Communication Standard.

RESPONSE: The definition of "article" in N.J.A.C. 8:59-1.3 is identical to the definition used by OSHA in the Hazard Communication Standard. Articles are excluded from labeling in N.J.A.C. 8:59-5.6(a)1 only if they are not used in a manner that changes their physical form (for example, from a solid to a metal fume), and do not pose any acute or chronic health hazard to an employee or emergency responder exposed to them.

38. COMMENT: The IUC and Right to Know Coalition oppose the threshold of five pounds or 0.5 gallons for consumer products, in N.J.A.C. 8:59-5.6(a)4, below which containers would not have to be labeled, because many consumer products bought in hardware and paint stores are hazardous and are brought into the workplace and home. Poison Information Centers need to know the chemical ingredients of these products to save the lives of children and workers in the chemical poisoning incidents that occur. They recommend that consumer products below the threshold contain, at a minimum, the chemical names of Special Health Hazard ingredients. The Camden Fire Department believes that there are a significant number of retail products that should contain ingredient labeling. Exxon, CIC, Union Camp, BIA and the R&D Council believe that the threshold for consumer products should be increased to ten pounds or one gallon because it is the largest container size generally used for such products. Atlantic Electric and Mobil support the ten pounds or one gallon threshold. Exxon and CIC believe that there is no need for the direct labeling of consumer products and that shelf or box labeling should be allowed for consumer products that are larger than the threshold quantity. They also recommend that a normal consumer quantity be defined as 550 pounds or 55 gallons rather than a case.

Exxon, CIC, Union Camp, BIA, the R&D Council, Atlantic Electric, and Mobil object to the use of criteria that considers private employee exposure to the product, for determining whether consumer products should be labeled, since private employees have been pre-empted from coverage under the Right to Know law. Union Camp, BIA, and the R&D Council suggest that the sentence be terminated after the phrase "use by the general public." Exxon and CIC believe that, due to the employee use test for consumer products, consumer products are more regulated than non-consumer products that are below the threshold. Union Camp, BIA and the R&D Council suggest that the threshold limits be set in metric units, such as four liters (as opposed to one gallon, which equals 3.78 liters), or five kilograms (as opposed to 10 pounds, which equals 4.54 kilograms). PSE&G suggests that the threshold be set at ten pounds or four liters because many consumer products are sold in four liter sizes which can weigh from eight to 10 pounds.

The Forum for Scientific Excellence points out that many consumer products are highly hazardous and, when used frequently in the workplace, pose significant risks to employees. Therefore, they believe that hazardous consumer products in the workplace should not be excluded from labeling requirements. The State Chamber of Commerce believes that any product that is readily available for retail sale should not be labeled according to the Right to Know law and they cannot comprehend how a product on the shelf of a store can mysteriously become a highly regulated, hazardous substance when placed in the workplace. Rutgers University also calls for an exemption from labeling for all containers that are available for general retail sale in New Jersey; however, they recognize the hazards of such products and state that their workers will be trained on the hazards of hazardous consumer products and how to work safely with the products. Mobil disagrees with the definition of "normal consumer quantity" as less than a case. Ocean County requests confirmation that only containers that are larger than five pounds or 0.5 gallons need to be labeled.

RESPONSE: The purpose of setting a labeling threshold was not to exclude all consumer products from Right to Know labeling. Many consumer products are hazardous, and their ingredients should be known by employees, emergency responders, and citizens of the community, because they can pose significant risks to these groups. Just because a product is offered for retail sale does not mean that it is sufficiently labeled. Poison Control Centers have experienced problems in determining the hazardous ingredients of retail consumer products. Since the Department has determined that there should not be a different threshold between public employers and private employers, a balance must be set between the need to eliminate the labeling of small containers in private workplaces that would not be of concern to emergency responders, and the need to maintain labeling of small containers for the benefit of public employees in their workplaces and citizens in their homes. The proposed threshold sets the appropriate balance between the two needs. However, the proposed threshold of five pounds or 0.5 gallons has been changed to metric units of two kilograms (which is slightly less than five pounds) or two liters (which is slightly more than 0.5 gallons), in accordance with the recommendations of several of the commenters to use metric numbers.

The Department agrees with the commenters who stated that, due to their serious hazard, Special Health Hazard Substances should be listed on the labels of consumer products that are below the new container size threshold. Since such a requirement would constitute a substantive change to the rules, it will be published in the New Jersey Register as a proposed amendment in order to obtain additional public comment.

The criteria that is used to determine whether consumer products above the threshold should be labeled will not be changed because to do so would make labeling more onerous for the private sector than for the public sector. The phrase "normal consumer quantity" will be deleted in order to simplify compliance and renders moot the issue of whether a case constitutes a normal consumer quantity. In answer to the County's question about consumer product labeling: for the public sector, all consumer products at or below the threshold are exempt from labeling, while products above the threshold must be labeled if their use is greater than a consumer.

39. COMMENT: The IUC and Right to Know Coalition support the clarification about solid articles that do not have to be labeled, in N.J.A.C. 8:59-5.6(d). Exxon, CIC and PSE&G suggest that the Department indicate that the list of excluded products are examples of such products and do not constitute an inclusive list. Exxon and CIC point out that the listing of "flashlight batteries" would exclude the use of such batteries for purposes other than flashlights. Atlantic Electric recommends that "flashlight batteries" be changed to "dry cell batteries" to allow the inclusion of batteries for electronic equipment such as computers and clocks. PSE&G requests that resins and activated carbon that are contained in a vessel (for example, for water purification

purposes) be added to the list of excluded articles, since these materials will not be released from the vessel and will therefore not cause any exposure to workers, emergency responders and the community.

RESPONSE: The Department agrees that the list of solid articles only represents examples of excluded articles and is not an exclusive list, and has added language to indicate this. Since the intent of listing "flashlight batteries" was to exclude the dry cell batteries used in such articles, the listing will be changed to read "dry cell batteries." Resins and activated carbon contained in a vessel will not be added to the list because they do not fit the definition of an excluded article in N.J.A.C. 8:59-5.6(a)1.

40. COMMENT: The IUC and Right to Know Coalition support the clarification about certain consumer products that do not have to be labeled, in N.J.A.C. 8:59-5.6(e).

RESPONSE: The amendment will be adopted as proposed.

41. COMMENT: The IUC, Right to Know Coalition, and Atlantic Electric support the exclusion of offices from labeling requirements, in N.J.A.C. 8:59-5.6(f). FEMA and FMA believe that janitors' closets are not of concern to emergency responders and, therefore, should be included in the office exemption.

RESPONSE: The Department disagrees with the commenters that emergency responders would not be interested in products that are used by maintenance personnel because they can be hazardous; therefore, this section will not be changed.

42. COMMENT: The IUC, Right to Know Coalition, Coalition Against Toxics, and Union Carbide support the threshold of five pounds or 0.5 gallons below which containers do not have to be labeled unless they contain Special Health Hazard Substances (which are chemicals that appear on the Special Health Hazard Substance List), in N.J.A.C. 8:59-5.6(g). Exxon and CIC believe that the proposed threshold does not provide meaningful relief from labeling. They recommend that the threshold be increased to 10 pounds or one gallon, except for Special Health Hazard Substances, which would reduce the number of containers that would have to be labeled by 75 to 90 per cent and reduce the excessive, burdensome and expensive cost of labeling while not increasing the risk to emergency responders. Atlantic Electric, Mobil, and Alpha Chemical and Plastics also support a 10 pound/one gallon threshold. PSE&G suggests that the threshold be set at 10 pounds or four liters, because many products are sold in four liter sizes, which weigh from eight to 10 pounds. Alpha Chemical and Plastics recommends using metric numbers for the threshold.

The Forum for Scientific Excellence (FSE) objects to the use of thresholds because, while numerous factors affect the hazards of products, container size is not one of them, and too many dangerous chemical products below the threshold would remain unlabeled. FSE points out that the threshold's impact on public employers such as schools would not merely reduce the burden of labeling, it would nearly eliminate all labeling requirements, which is not a good idea because school departments and classrooms contain many highly hazardous substances. It is the opinion of FSE that, if the threshold were to be implemented, the following school rooms would only have to label the following percentage of products: art room-one percent, metal shop-one to two percent, science laboratories-two to five percent auto shop-four to five percent, print shop-10 percent, and custodial/maintenance areas—10 to 15 percent.

The Chamber of Commerce calls for realistic and appropriate minimum thresholds to be established. Schuller International believes that placing a label on three-ounce containers of a nonhazardous material requires considerable resources and provides zero protection to an emergency responder or the community in an emergency. They believe that labels should only be required on containers used to store or process materials in quantities with the potential to contribute additional hazard to an emergency situation. FEMA and FMA support the threshold, but believe that a 10 pound threshold would be more useful and appropriate, since the purpose of private sector labeling is to address the needs of emergency responders. FEMA and FMA also believe that the 10 pound threshold should apply to Special Health Hazard Substances, at least for private employers, since daily exposure is not an issue for emergency responders. Ocean County requests confirmation that only containers that are larger than five pounds or 0.5 gallons need to be labeled.

Exxon and CIC recommend that the aggregate amount present at a single location be increased from 120 pounds or 12 gallons to "less than" 550 pounds or 55 gallons of the same material in a single location, and that if lower limits are to be set for Special Health Hazard Substances, the limits and their selection criteria should be incorporated into the rules. Mobil and Alpha Chemical and Plastics recommend that the aggregate be set at "less than or equal to" 550 pounds or 55 gallons of the same material. Atlantic Electric recommends that the aggregate amount be doubled to 240 pounds or 24 gallons, which is approximately one-half of a 55-gallon drum.

RESPONSE: As discussed in Response 38, since the Department has determined that there should not be a different threshold between public employers and private employers, a balance must be set between the need to eliminate the labeling of small containers in private workplaces that would not be of concern to emergency responders, and the need to maintain labeling of small containers for the benefit of public employees in their workplaces and citizens in their homes. From the testimony submitted, it appears that the proposed threshold would eliminate labeling of 85 to 99 percent of all containers in some of the largest and most numerous public workplaces—schools. In order to safeguard school and other public employees, the threshold will not be raised. It will, however, be changed to metric units of two kilograms (which is slightly less than five pounds) or two liters (which is slightly more than 0.5 gallons), in accordance with the recommendations of several of the commenters to use metric numbers.

The threshold is not absolute and Special Health Hazard Substances must be labeled on containers that are at or below the threshold. Special Health Hazards include substances that are carcinogenic, mutagenic, teratogenic, flammable, reactive and corrosive. Carcinogens, mutagens, and teratogens must be listed on the label if they are present in a product at a percentage of at least 0.1 per cent. Flammable, reactive and corrosive substances will only have to be listed on the label if the product as a whole meets the criteria of a Special Health Hazard. These criteria are set forth in N.J.A.C. 8:59-10.2(a)4, 5 and 6. Special Health Hazard flammables include those products which meet the National Fire Protection Association definition of flammability in the fourth degree or third degree, or the United States Department of Transportation definitions of flammable liquid, flammable compressed gas, or flammable solid. Special Health Hazard reactives include those products which meet the National Fire Protection Association's definition of reactivity in the fourth, third or second degree. Corrosives must meet the Department of Transportation criteria for corrosivity. The Department believes that emergency responders, as well as public employees and citizens, would want to know and have a need to know about the existence of such important hazards, in order to protect their health and the health and safety of their property and family. The Department is proposing a zero threshold for the size of containers containing Special Health Hazard Substances. This proposal has been published elsewhere in this issue of the New Jersey Register for public comment, as a proposed amendment to the rule.

The proposed aggregate threshold had set an upper limit above which loose containers had to be labeled, which made the threshold exclusion very confusing. Therefore, the aggregate threshold will be deleted. To answer the County's question regarding labeling of non-consumer products: all containers at or below the threshold are exempt from labeling, with the exception of those which contain Special Health Hazard Substances, while containers above the threshold must be labeled.

43. COMMENT: Union Camp, BIA and the R&D Council recommend that, for labeling of mixtures, the requirement to label down to 0.1 per cent only apply to carcinogens, mutagens and teratogens, and not apply to flammables, reactives and corrosives which are on the Special Health Hazard Substance List.

RESPONSE: For containers above the new labeling threshold, normal Right to Know labeling will continue to apply, which means that flammables, reactives and corrosives that are present in a mixture down to 1.0 percent must be included on a label. For containers at or below the threshold, a different requirement will apply: only if the product as a whole meets the Special Health Hazard criteria for flammability, reactivity or corrosivity, (see N.J.A.C. 8:59-10.2(a)4, 5 and 6) do the flammable, reactive and corrosive ingredients need to appear on the label.

Summary of Agency-Initiated Changes:

In the April 19, 1993 New Jersey Register, the DEPE proposed amendments to their Right to Know rules. In order to maintain consistency in the implementation of the Right to Know law between the two agencies, the Department of Health will propose an additional labeling exclusion in N.J.A.C. 8:59-5.6(a)12 to exclude products which are the personal property and for the personal use of employees. In addition, the Department will propose to add to the list of excluded containers evidence found in a police department's evidence locker or room. This codifies a long-standing interpretation of the law by the Department.

Common Name

44. COMMENT: The Coalition to Prevent Reproductive Hazards emphasized the need for container labels to contain standardized chemical names.

RESPONSE: The Department has standardized the names that appear on labels for the hazardous substances that are listed on the Right to Know Hazardous Substance List (RTKHSL). Up to three acceptable names (a common chemical name, a CAS or IUPAC chemical name, and a common synonym) are listed on the RTKHSL for use on labels.

45. COMMENT: Atlantic Electric objects to the proposed requirement to label diesel fuel as "Fuel Oil," in N.J.A.C. 8:59-5.7(b)3, because it is incorrect labeling, will create confusion for facility employees as to which container or tank to use, and will confound proper product deliveries. Atlantic Electric states that the American Petroleum Institute separates diesel fuel from fuel oil and other heating fuels. Atlantic Electric recommends the elimination of this labeling requirement and that employers be permitted to use the term "diesel" or "diesel fuel."

RESPONSE: The Department agrees with the commenter and has deleted the words "diesel fuel" from the proposed amendment. The Right to Know Hazardous Substance List lists "diesel fuel" as an acceptable name to be used on labels.

SUBCHAPTER 6. EDUCATION AND TRAINING PROGRAM

46. COMMENT: Atlantic Electric has suggested that subchapters that only pertain to the public sector, such as this one, state this in their title in order to reduce confusion, particularly among small businesses.

RESPONSE: The comment will be adopted.

47. COMMENT: Ocean County asks if the requirement to train volunteers in N.J.A.C. 8:59-6.2(a) applies to volunteers who do not work directly with hazardous materials and who merely spend time in a facility where such materials are located.

RESPONSE: When an employee, including volunteers, does not work directly with a hazardous material, one has to consider the potential exposure to the person from hazardous materials from working near the material. If there is no potential exposure to the volunteers, they do not need to be trained. If there is potential exposure, they need to receive Right to Know training.

48. COMMENT: Rutgers University sees little, if any, benefit from annually retraining employees and proposes elimination of the requirement to annually retrain employees who are exposed or potentially exposed to hazardous substances, in N.J.A.C. 8:59-6.2(a). The Forum for Scientific Excellence believes that education and training is a minimal cost factor that has a low-to-moderate employee and management benefit, whose benefit is minimized because of the annual infrequency of training.

RESPONSE: The Department disagrees with the first commenter and believes that annual training has an important benefit to workers who work with hazardous chemicals. Persons can quickly forget what they learned in a training course and need to be reminded of the hazards of hazardous products and how to work with them safely. Plus, there is always new information to be imparted to employees, such as new types of personal protective equipment, newly discovered health hazards about a product, new changes in the law, and new products being worked with. The annual training program should not be a repeat of the initial training program. While the employer should review the major points from the initial program, he should concentrate on chemical specific training, which means reviewing the Material Safety Data Sheets and Hazardous Substance Fact Sheets for all of the hazardous products that the employees work with. Copies of these documents should be handed out and exercises which teach employees how to use them should be utilized. The Department has prepared a booklet entitled "The Trainer's Guide to the Right to Know Law" which describes methods for making training more interesting and effective. Free copies are available from the Right to Know Program, New Jersey Department of Health, CN 368, Trenton, New Jersey 08625-0368. Certainly, training can be a waste of time if it is done improperly and with too many people jammed into a large room. However, regular training is one of the most important methods that can be used to reduce the incidence of illnesses and injuries among public employees in New Jersey.

49. COMMENT: The IUC and Right to Know Coalition object to the provision in N.J.A.C. 8:59-6.2(b) which extends the allowable time for volunteers to be trained from one month to six months, because this would allow volunteer firefighters to fight chemical fires for six months without having had appropriate Right to Know training. They note that volunteer fire departments have an occupational injury and illness incidence rate nearly double the rate for other public employees.

RESPONSE: The Department shares the commenter's concern about volunteers being sent to fight fires involving hazardous chemicals without proper hazardous materials training. However, it is impossible for many volunteer fire companies to provide such training within one month, due to the limited amount of time volunteers have to devote to the company and the other basic training that they need to take. This issue could be rectified if all new volunteers take the newly developed Department of Community Affairs (DCA) Recruit Firefighter Training Course, which incorporates Right to Know and hazardous materials training. (For information, contact DCA at 633-6110, Bureau of Fire Safety) The Department strongly urges volunteer fire departments not to allow any of their firefighters to fight hazardous materials fires without proper training, and has added this recommendation to the rule.

50. COMMENT: Ocean County asks whether they could provide the limited type of training allowed in N.J.A.C. 8:59-6.3(f) for staff who are qualified to present Right to Know training themselves and who are exposed to only a limited number of chemicals. This limited training would only require the County to provide the employee with the Hazardous Substance Fact Sheets and Material Safety Data Sheets for the hazardous chemicals the employee works with, review these documents with the employee, answer any questions, and provide the employee with a copy of the Right to Know brochure.

RESPONSE: No. The abbreviated training described in N.J.A.C. 8:59-6.3(f) is only allowed in very limited circumstances, for a few selected products. Annual training does not take up a large amount of time and can be accomplished in one hour if there are only a few hazardous chemical products to train about, so the Department does not believe that it imposes a major burden on an employer. Just because a person meets the definition of a "technically qualified person" does not mean that he or she knows everything about every chemical. Meeting this criteria only implies that the person has a basic science background upon which can be built additional knowledge of the subject matter of occupational health and safety and the hazardous chemicals that he or she will be teaching. A person may have an advanced degree in a specific area which allows him or her do his or her job, and yet have no knowledge of the industrial hygiene, toxicological, and medical aspects of the hazardous chemicals in the workplace.

51. COMMENT: Exxon and CIC commend the Department for including in the annual Right to Know education and training program the use of Material Safety Data Sheets, in N.J.A.C. 8:59-6.3(g)2.

RESPONSE: The Department believes that, even though many are deficient, Material Safety Data Sheets on mixtures are important for Right to Know training because they provide information about the hazards of mixtures that would not be found elsewhere. For single substances, MSDSs would need to be used, if the Hazardous Substance Fact Sheets developed by the Department are not available for that chemical.

SUBCHAPTER 9. RIGHT TO KNOW HAZARDOUS SUBSTANCE LIST

52. COMMENT: The Chamber of Commerce states that New Jersey's list of hazardous substances should be firmly rooted in sound science and should make use of existing Federal lists.

RESPONSE: The Right to Know Hazardous Substance List is firmly rooted in sound science and has always used existing Federal lists, since the list was developed in 1984. The New Jersey list is a compilation of State, Federal and international agency lists of hazardous substances. The Department uses lists developed by OSHA, the American Conference of Governmental Industrial Hygienists (ACGIH), DOT, the National Institute of Occupational Safety and Health, the International Agency for Research on Cancer, the National Toxicology Program, the Environmental Protection Agency, and the New Jersey Department of Environmental Protection and Energy.

53. COMMENT: Passaic Color and Chemical Company requests that Azo Dyes, Substance number 3298, which has proposed to be added to the lists be deleted from the proposed revised Right to Know Hazardous Substance List because, while some AZO dyes have been found to cause allergies, there has not been sufficient testing to conclude that all AZO dyes cause allergies. The specific AZO dyes that are allergenic are already listed on the Right to Know Hazardous Substance List.

RESPONSE: The commenter has submitted well documented material and the Department will delete AZO Dyes from the list, since we agree that listing the generic name AZO Dyes may inadvertently list non-allergenic dyes; therefore we will maintain on the list only those AZO dyes known to be allergenic.

54. COMMENT: The Pesticide Safety and Right to Know Coalition and the Coalition Against Toxics support the changes and additions to the Right to Know Hazardous Substance List.

RESPONSE: Additional changes to the list need to be made and then the list will be published as a proposal in the New Jersey Register, in a future issue.

55. COMMENT: Union Carbide advises the Department that it is using the word "Part" in CFR citations when it should be using "Section," in N.J.A.C. 8:59-9.3(b) and elsewhere in the rules.

RESPONSE: The Department will make the appropriate changes in its citations.

56. COMMENT: Union Carbide points out that some of the sources cited in N.J.A.C. 8:59-9.3(b) are not the most recent versions, and suggests that, since many of the amendments to the sources correct, add, and delete substances, the most recent versions be used.

RESPONSE: The Department agrees that the most recent versions of sources should be used and has updated the source citations in N.J.A.C. 8:59-9.3(b).

57. COMMENT: Owens-Corning Fiberglas requests that "Fibrous Glass," Substance number 0933, be deleted from the proposed revised Right to Know Hazardous Substance List, because the term is overly broad, and includes forms of glass fibers, such as continuous filament for which there is no scientific evidence of any significant acute or chronic health effect. As an alternative, the text should be changed to read "glass wool fibers, respirable size," due to positive implantation studies.

RESPONSE: The Department does not agree. The Department lists hazardous chemicals as they appear on the lists used to create the Right to Know Hazardous Substance List. Since ACGIH uses the term "fibrous glass," this wording will continue to be used. However, since ACGIH qualifies their listing with the word "dust," the qualifier "dust" will be added to the Right to Know Hazardous Substance List.

58. COMMENT: Atlantic Electric requests that the listings for the following chemicals be made more specific about the form or physical state that the chemical must be in (such as dust, mist, fume, or vapor) before it is considered hazardous, citing OSHA as a source; gypsum is hazardous as a dust; mica is hazardous as a dust; silica is hazardous as a dust; titanium dioxide is hazardous as a dust; and cadmium is hazardous as a dust or fume. In addition, lithium is hazardous in its metallic form, not as a compound.

RESPONSE: The qualifiers listed on the OSHA Hazardous Materials List will be added to the Right to Know Hazardous Substance List as follows: "Gypsum (Dust)," "Mica (Dust)," "(Dust)" will be added to the different listings for "Silica," and "Titanium Dioxide (Dust)." Lithium will not be changed because its CAS number identifies it as being in a metallic form. Cadmium will not be qualified because at least one of its sources does not limit its hazard to dust and fumes.

The above changes, as well as others being made upon the Department's own initiative to add, delete and correct entries on the Right to Know Hazardous Substance List, will be proposed shortly in the New Jersey Register as a repeal of the old list and adoption of a new list.

SUBCHAPTER 10. SPECIAL HEALTH HAZARD SUBSTANCE LIST

59. COMMENT: The Coalition to Prevent Reproductive Hazards supports the inclusion of both known human and animal carcinogens and teratogens on the Special Health Hazard Substance List because there is little or no known human health data for most chemicals and practicing occupational and environmental health physicians need to rely on any available data, including animal studies. They point out that there are chemicals that have serious reproductive health effects other than teratogenesis, such as infertility (both male and female) and abortifacients (causing miscarriages) which, if known to occur in humans, should also be included on the Special Health Hazard Substance List.

RESPONSE: The Special Health Hazard Substance List is limited by definition (see N.J.A.C. 8:59-10) to substances which have one of the following six hazards: carcinogenicity, mutagenicity, teratogenicity, flammability, reactivity and corrosivity. Any substances on the Right to Know Hazardous Substance List which have reproductive health effects other than teratogenesis will have those health effects listed on the Hazardous Substance Fact Sheets written for those substances. Right to Know training should include the reproductive health effects listed on Hazardous Substance Fact Sheets and Material Safety Data Sheets.

60. COMMENT: The Pesticide Safety and Right to Know Coalition and the Coalition Against Toxics support the changes and additions to the Special Health Hazard Substance List.

RESPONSE: Additional changes to the list need to be made and then the list will be published as a proposal in the New Jersey Register.

Summary of Agency-Initiated Changes:

Changes being made upon the Department's own initiative to add, delete, and correct entries on the Special Health Hazard Substance List, will be proposed shortly in the New Jersey Register as a repeal of the old list and adoption of a new list. In addition, two minor changes have been made to the rule: the name Health Hazard Assessment Group has been substituted for the previous name of Carcinogen Assessment Group in N.J.A.C. 8:59-10.2 and a typo was corrected in N.J.A.C. 8:59-10.2(a)4.

SUBCHAPTER 11. COMMUNITY RIGHT TO KNOW; LABELING; PRIVATE EMPLOYERS

61. COMMENT: Union Carbide pointed out a typo in the citation for *New Jersey Chamber of Commerce v. Hughey* (Hughey II) and suggested citing the 1985 case (Hughey I), as well.

RESPONSE: The error has been corrected; however, the usual method of citing a case is to list the final court decision and not all preceeding decisions.

SUBCHAPTER 12. CERTIFICATION OF CONSULTANTS AND CONSULTING AGENCIES

62. COMMENT: Atlantic Electric has suggested that subchapters that only pertain to the public sector, such as this one, state this in their title in order to reduce confusion, particularly among small businesses.

RESPONSE: The commenter's suggestion will be adopted.

Summary of Agency-Initiated Changes:

The amendments proposed eliminating the expiration date for provisional certification. However, this would make it difficult to maintain quality control over persons who do not teach for long periods of time. Therefore, a two-year expiration date for provisional certification has been added to address the situation where the Department has not received any notification from a consultant or consulting agency that it is presenting Right to Know training sessions during this period. If provisional certification expires, the consultant or consulting agency must re-apply.

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

The following is a complete listing of employer groups who are currently covered by the Right to Know law:

SIC	Description
	AGRICULTURAL SERVICES
0782	Lawn and garden services
20	FOOD AND KINDRED PRODUCTS (ENTIRE GROUP)
21	TOBACCO PRODUCTS (ENTIRE GROUP)
22	TEXTILE MILL PRODUCTS (ENTIRE GROUP)
23	APPAREL AND OTHER TEXTILE PRODUCTS (ENTIRE GROUP)
24	LUMBER AND WOOD PRODUCTS (ENTIRE GROUP)
25	FURNITURE AND FIXTURES (ENTIRE GROUP)
26	PAPER AND ALLIED PRODUCTS (ENTIRE GROUP)
27	PRINTING AND PUBLISHING (ENTIRE GROUP)
28	CHEMICALS AND ALLIED PRODUCTS (ENTIRE GROUP)
29	PETROLEUM AND COAL PRODUCTS (ENTIRE GROUP)
30	RUBBER AND MISCELLANEOUS PLASTIC PRODUCTS (ENTIRE GROUP)
31	LEATHER AND LEATHER PRODUCTS (ENTIRE GROUP)
32	STONE, CLAY AND GLASS PRODUCTS (ENTIRE GROUP)
33	PRIMARY METAL INDUSTRIES (ENTIRE GROUP)
34	FABRICATED METAL PRODUCTS (ENTIRE GROUP)

35	INDUSTRIAL MACHINERY AND EQUIPMENT (ENTIRE GROUP)
36	ELECTRONIC AND OTHER ELECTRIC EQUIPMENT (ENTIRE GROUP)
37	TRANSPORTATION EQUIPMENT (ENTIRE GROUP)
38	INSTRUMENTS AND RELATED PRODUCTS (ENTIRE GROUP)
39	MISCELLANEOUS MANUFACTURING INDUSTRIES (ENTIRE GROUP)
	TRANSPORTATION BY AIR
4512	Air transportation, scheduled
4513	Air courier services
4581	Airports, flying fields, and airport terminal services
46	PIPELINES, EXCEPT NATURAL GAS (ENTIRE GROUP)
	TRANSPORTATION SERVICES
4741	Rental of railroad cars
4783	Packing and crating
4785	Fixed facilities and inspection and weighing services for motor vehicle transportation
4789	Transportation services, not elsewhere classified
	COMMUNICATION
4812	Radiotelephone communications
4813	Telephone communications, except radiotelephone
4822	Telegraph and other message communications
49	ELECTRIC, GAS AND SANITARY SERVICES (ENTIRE GROUP)
	WHOLESALE TRADE—DURABLE GOODS
5085	Industrial supplies
5087	Service establishment equipment and supplies
5093	Scrap and waste materials
	WHOLESALE TRADE—NONDURABLE GOODS
5122	Drugs, drug proprietaries, and druggists' sundries
5162	Plastics materials and basic forms and shapes
5169	Chemicals and allied products, not elsewhere classified
5171	Petroleum bulk stations and terminals
5172	Petroleum and petroleum products wholesalers, except bulk stations and terminals
5181	Beer and ale
5182	Wines and distilled alcoholic beverages
5191	Farm supplies
5193	Flowers, nursery stock, and florists' supplies
5194	Tobacco and tobacco producs
5198	Paints, varnishes, and supplies
5199	Nondurable goods, not elsewhere classified
	AUTOMOBILE DEALERS AND GASOLINE SERVICE STATIONS
5511	Motor vehicle dealers (new and used)
5521	Motor vehicle dealers (used only)
5541	Gasoline service stations
	PERSONAL SERVICES
7216	Dry cleaning plants, except rug cleaning
7217	Carpet and upholstery cleaning
7218	Industrial launderers
	AUTOMOTIVE REPAIR, SERVICES, AND GARAGES
7532	Top, body, and upholstery repair shops and paint shops
7533	Automotive exhaust system repair shops
7534	Tire retreading and repair shops
7536	Automotive glass replacement shops
7537	Automotive transmission repair shops
7538	General automotive repair shops
7539	Automotive repair shops, not elsewhere classified
	MISCELLANEOUS REPAIR SERVICES
7692	Welding repair
	HEALTH SERVICES
8062	General medical and surgical hospitals
8063	Psychiatric hospitals
8069	Specialty hospitals, except psychiatric
	EDUCATIONAL SERVICES
8211	Elementary and secondary schools
8221	Colleges, universities, and professional schools
8222	Junior colleges and technical institutes
8249	Vocational schools, not elsewhere classified
	ENGINEERING, ACCOUNTING, RESEARCH, MANAGEMENT, AND RELATED SERVICES
8734	Testing laboratories
	STATE, COUNTY AND LOCAL GOVERNMENT, including any agency, authority, department, bureau, or instrumentality thereof

8:59-1.3 Definitions

The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

...

"Container" means a receptacle used to hold a liquid, solid, or gaseous substance, including, but not limited to, bottles, pipelines, bags, barrels, boxes, cans, cylinders, drums, cartons, vessels, vats, and stationary or mobile storage tanks. "Container" shall not include process containers ***or building structures that are not capable of holding liquids, solids, or gases***.

...

"Hazardous substance" means any substance, or substance contained in a mixture, included on the hazardous substance list developed by the Department of Health pursuant to N.J.S.A. 34:5A-5, introduced by an employer to be used, studied, produced, or otherwise handled at a facility. "Hazardous substance" shall not include:

1.-3. (No change.)

4. Any hazardous substance present in the same form and concentration as a product packaged for distribution and use by the general public to which a public or private employee's exposure during handling is not significantly greater than a consumer's exposure during the principal use of the toxic substance*[, present in normal consumer quantities]*;

5. Any fuel in a motor vehicle;

6. Tobacco or tobacco products;

7. Wood or wood products;

8. Foods, drugs, cosmetics, or alcoholic beverages in a retail establishment which are packaged for sale to consumers; or

9. Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace.

...

"Public employer" means the State and local governments, or any agency, authority, department, bureau, or instrumentality thereof, except for the purposes of the Worker and Community Right to Know Fund, N.J.S.A. 34:5A-26.

...

"Research and development laboratory" means a specially designated area***, including pilot plants,*** used primarily for research, development, and testing activity and not primarily involved in the production of goods for commercial sale *[or pilot plant activities]*, in which hazardous substances or environmental hazardous substances are used by or under the direct supervision of a technically qualified person. "Primarily" means greater than 50 percent.

...

"Technically qualified person" means

1. A person who is a registered nurse, or has a bachelor's degree in industrial hygiene, environmental science, health education, chemistry, or a related field and understands the health risks associated with exposure to hazardous substances;

2. A person who has completed at least 30 hours of hazardous materials training offered by the New Jersey State Safety Council, an accredited public or private educational institution, labor union, trade association, private organization or government agency and understands the health risks associated with exposure to hazardous substances, and has at least one year of experience supervising employees who handle hazardous substances or work with hazardous substances. The 30 hour requirement may be met by the combination of one or more hazardous materials training courses;

3. For training purposes, a person who has successfully completed a Department of Health approved instructor training course;

4. For purposes of teaching the recruit firefighting training course established by the Department of Community Affairs, a person who has fulfilled the requirements of Firefighter Instructor Level I as certified by the Department of Community Affairs; or

5. A person who has received certification pursuant to N.J.A.C. 8:59-12.

...

SUBCHAPTER 2. RIGHT TO KNOW SURVEY*—FOR PUBLIC EMPLOYERS*

8:59-2.2 Completion of Right to Know Survey

(a) A public employer shall report the hazardous substances which are present at its facility on the Right to Know Survey as follows:

1. Hazardous substances shall be reported by the common name permitted by N.J.A.C. 8:59-5.7, and Chemical Abstracts Service number listed on the Right to Know Hazardous Substance List.

2. Hazardous substances which are special health hazard substances shall be reported on the Right to Know Survey in accordance with N.J.A.C. 8:59-10.1(b).

3. Hazardous substances other than special health hazard substances which are included in a mixture shall be reported on the Right to Know Survey if they constitute one percent or more of the mixture or if the substance is present in the aggregate of 500 pounds or more in a container at the facility regardless of the percentage of the substance in a mixture.

4. The name of the product in which the hazardous substance is contained shall be reported on the Right to Know Survey in alphabetical order. For each product, the type of container, greatest amount of the product in the prior 12 months (inventory), physical state of the product (unit), number of employees exposed or potentially exposed to the product, and the exact location of the product on site, shall be reported.

5. The name of the hazardous ingredients of a product shall be listed in alphabetical order underneath the product name. For each ingredient, the New Jersey Right to Know Hazardous Substance List Substance Number, Chemical Abstracts Service number (CAS), United States Department of Transportation Hazardous Materials Identification Number (DOT No.), percentage of the hazardous ingredients in the product (mixture), and the Special Health Hazard Codes of the ingredients, shall be reported.

6. The Right to Know Survey inventory pages shall be divided into large quantities of hazardous products at single locations and all other products, to be called small quantities. Large quantity is defined as a product present in a quantity greater than 100 pounds, gallons or cubic feet (inventory range codes 12 through 20). The Department shall have the discretion not to require the reporting of location of product for small quantities.

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

SUBCHAPTER 5. HAZARDOUS SUBSTANCE FACT SHEETS *—FOR PUBLIC EMPLOYERS*

8:59-5.1 General provisions

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

(d) Labels shall be affixed to containers before containers are opened or within five working days of the container's arrival at the facility, whichever is sooner. No employer may use the contents of a container unless that container is appropriately labeled. In warehouses, storage or transfer facilities associated with employers covered by this Act, where containers are not opened, labeling required by or consistent with United States Department of Transportation, 49 CFR *[Part]* 172.101 requirements, may be used.

(e)-(k) (No change.)

(l) Public employers who operate prisons or jails who believe that container labeling will constitute a security risk at the institution, may request a waiver of the labeling requirements of this subchapter. The waiver shall insure that the employees of the public employer receive all of the information about hazardous and other substances in containers that they are entitled to under the Act, although in a modified manner.

(m)-(n) (No change.)

(o) Retains are samples of *[product]* ***products, raw materials, and intermediates*** that are stored by an employer for quality control and historical purposes. In the area such as a room, cabinet, or shelves where retains are stored, the labeling information required by this subchapter may be placed on a shelf or on a box that contains one or more retain samples. Retains that are removed from the storage area shall be labeled with the same labeling information that appears on the box or shelf. ***The labeling threshold based on container size set forth in N.J.A.C. 8:59-5.6 shall apply to retain sample containers.****

(p) Batch samples are samples of product that are taken to a laboratory for quality control testing*[, that are one gallon (3.8 liters) or smaller for non-hazardous materials and one pint (473 milliliters) or smaller for hazardous materials,]* and that are tested during ***or after*** the batch operation. Batch samples may be labeled according to this subchapter by means of a label on a box or other container in which the sample is being held. Any samples that are removed from the laboratory shall contain labeling information as required by this subchapter. ***The labeling threshold based on container size set forth in N.J.A.C. 8:59-5.6 shall apply to batch sample containers.****

(q) Containers in which products are shipped into or out of a facility that are not direct use containers may be labeled pursuant to the requirements of the United States Department of Transportation (USDOT) for hazardous materials being shipped. This requirement would require product or chemical name and hazard classification on the label if the product is hazardous and meets a minimum threshold. If USDOT regulations do not require a name or hazard classification on the shipping container, then none shall be required under this subchapter.

[(r) Employers are encouraged to use the labeling system developed by the National Paint and Coatings Association called the Hazardous Materials Information System (HMIS) for containers that are 55 gallons or larger, in conjunction with Right to Know labeling. This system supplements Right to Know chemical identities with hazard warning information on a scale from 0 to 4 on health, flammability and reactivity, in an easy to understand manner. The National Fire Protection Association (NFPA) 704 system would also be acceptable in conjunction with Right to Know labeling, if the employer labeled the different quadrants of the triangle with the type of hazard contained therein and included chronic health effects in the hazard warning for health effects.]

8:59-5.3 Research and development laboratories

(a) Alternative labeling system requirements follow:

1. Instead of labeling pursuant to this subchapter, employers who follow the procedure in (c) below and are approved by the Department as a research and development laboratory may label containers in the research and development laboratory by means of a code or number system. The code or number system must enable a public employee or emergency responder to readily make a cross reference to a hazardous substance fact sheet or documentary material retained on file by the employer at the facility which will provide the public employee or emergency responder with the chemical name or common name permitted by N.J.A.C. 8:59-5.7, and Chemical Abstracts Service number of the substance contained in the container, if it exists, or the trade secret registry number assigned to the substance. ***The labeling threshold based on container size set forth in N.J.A.C. 8:59-5.6 shall apply to research and development laboratories using the alternative labeling system.****

2. The code or number system shall be designed to allow the public employee free and ready access at all times to the chemical name and Chemical Abstracts Service number of the substances in the container, shall be designed to allow the public employee access to this information without the permission or assistance of management, and shall be available to the public employee at close proximity to his or her specific job location or locations.

(b) OSHA Laboratory Standard requirements follow:

1. Instead of labeling pursuant to this subchapter or (a) above, employers who follow the procedure in (c) below and are approved by the Department as a research and development laboratory, may

label containers *[that are five pounds (2.3 kilograms) or 0.5 gallons (1.9 liters) or smaller in a research and development laboratory]* in accordance with the Occupational Safety and Health Standard adopted by the United States Occupational Safety and Health Administration (OSHA)***, for private employers, and by the New Jersey Department of Labor, for public employers,*** entitled "Occupational Exposure to Hazardous Chemicals in Laboratories" (Laboratory Standard), ***at*** 29 CFR Part 1910, Section 1450 (1910.1450), promulgated on January 31, 1990, at 55 FR 3300***, for private employers, and at N.J.A.C. 12:100-4.2, promulgated on June 21, 1993, at 25 N.J.R. 2688(b), for public employers***.

*[2. Public employees shall have free and ready access at all times to the chemical name and Chemical Abstracts Service number of the substances in the containers through alternative information sources, shall have access to this information without the permission or assistance of management, and shall have this information available at close proximity to his or her specific job location or locations.

3. All other requirements of the Laboratory Standard shall also be complied with by the public employer, including the chemical hygiene plan, information and training, and hazard identification. Such training shall be given to all public employees exposed or potentially exposed to hazardous chemicals in the research and development laboratory, including maintenance personnel and persons washing laboratory equipment.]*

2. In order for public employers to qualify for the labeling exemption in (b)1 above, all other requirements of the Laboratory Standard shall be complied with by the public employer including the chemical hygiene plan, information and training, and hazard identification. Such training shall be given to all public employees exposed or potentially exposed to hazardous chemicals in the research and development laboratory, including maintenance personnel and persons washing laboratory equipment.

3. In public workplaces, public employees shall have free and ready access at all times to the chemical name and Chemical Abstracts Service number of the substances in the containers through alternative information sources, shall have access to this information without the permission or assistance of management, and shall have this information available at close proximity to his or her specific job location or locations.*

*[4. A container that is filled from an incoming container shall be labeled with the same hazard warning and chemical identification information as is present on the incoming container.

5. Containers that are larger than five pounds (2.3 kilograms) or 0.5 gallons (1.9 liters) shall be labeled with the universal labeling information required by this subchapter.]*

(c) An employer that wishes to obtain a research and development laboratory exemption shall comply with the following procedure:

1. For public employers, the employer shall submit to the Department of Health a completed research and development laboratory exemption application on forms approved by the Department.

2. For private employers, the employer shall submit to the Department of Environmental Protection and Energy (DEPE) a completed research and development laboratory exemption application on forms approved by DEPE.

3. The application forms required in (c)1 and 2 above shall contain the following information:

i. The name and address of the employer and facility (if different), location of the facility, and New Jersey Employer Identification Number of the employer;

ii. An 8½ × 11 map of the facility indicating the designated research and development area(s) of the facility. The map should indicate if research and development activities are limited to specific locations within the facility or if the entire facility is dedicated to research and development activities;

iii. The percentage of total work hours devoted to research and development activities in the designated area(s);

iv. Written verification from the local fire department stating that an acceptable communications program has been established with them to assist them in responding to emergencies at the research and development laboratory;

v. A description of the technical qualifications of each supervisor of the research and development laboratory area(s) ***or a certification by the supervisor of the research and development laboratory operations that each research and development laboratory is under the direct supervision of a technically qualified person***; and

vi. A signed certification that the information contained in the research and development laboratory exemption application is true, accurate and complete.

4. Upon receipt of a completed research and development laboratory exemption application, the Department of Health and Department of Environmental Protection and Energy shall jointly make a determination to grant or deny the application. A letter will be sent by the Department of Health (to public employers) or the DEPE (to private employers) to the applicant advising them of the approval or denial or the application. The research and development laboratory exemption shall become effective upon receipt by the employer of a letter from the Department of Health or DEPE approving the application.

5. Employers who have received a research and development laboratory exemption as of August 2, 1993 need not reapply according to the procedure set forth in (c)1 through 4, above, and the terms and scope of existing exemptions are not affected by these amendments. Any changes which the employer wishes to make to the terms and scope of an existing exemption would require an application to be made pursuant to (c)1 through 4, above, reflecting those changes.*

8:59-5.5 Exceptions to labeling requirements; Federal and State labeling laws

(a) The labeling requirement of N.J.A.C. 8:59-5.1 shall not apply to containers affixed with labels pursuant to the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act, 61 Stat. 163 (7 U.S.C. 136 et al.).

(b) Containers labeled with shipping names of specific substances with identification numbers from the United States Department of Transportation's Hazardous Materials Table, *[Title 49 Code of Federal Regulations Part]* ***49 CFR*** 172.101, columns 2 and 4, may be substituted for the information required by N.J.A.C. 8:59-5.1 if the name on the container is identical to the chemical or common name on the Right to Know Hazardous Substance List.

(c) (No change.)

(d) Any food, food additive, color additive, drug, cosmetic, or medical or veterinary device, including materials intended for use as ingredients in such products (for example, flavors and fragrances), as such terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and regulations issued under that Act, shall be exempt from the labeling requirements of N.J.A.C. 8:59-5 when they are subject to the labeling requirements under the Federal Food, Drug, and Cosmetic Act by the Food and Drug Administration ***and are in containers that are less than 55 gallons or 450 pounds.***

1. All raw food materials, food additives, and finished food products intended for human or animal consumption regulated by Federal law shall be exempt from the labeling requirements of N.J.A.C. 8:59-5 regardless of the size of the container they are contained in.*

2. A public employer shall make available to public employees on request, all hazardous substance fact sheets prepared by the Department relevant to the above products, including hazardous substance fact sheets on inactive ingredients as defined by the FDCA.

(e)-(i) (No change.)

(j) Any distilled spirits (beverage alcohols), wine, or malt beverage intended for nonindustrial use, as such terms are defined in the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) and regulations issued under that Act, shall be exempt from the labeling requirements of N.J.A.C. 8:59-5 when they are subject to the labeling requirements of the Federal Alcohol Administration Act and labeling regulations issued under that Act by the Bureau of Alcohol, Tobacco and Firearms.

8:59-5.6 Exclusions from the requirement to label

(a) Containers containing the following categories of hazardous or other substances shall be exempt from the requirements of labeling:

1.-3. (No change.)

4. Any product which contains a hazardous or other substance in the same form and concentration as a product packaged for distribution and use by the general public, if the primary use container of the product is *[five pounds (2.3 kilograms) or 0.5 gallons (1.9 liters)]* ***two kilograms (4.4 pounds) or two liters (0.53 gallons)**** or smaller.

i. (Reserved)

ii. Consumer products above this threshold shall be exempt from labeling *[only]* if the product is in the same form and concentration as a product packaged for distribution and use by the general public to which a public or private employee's exposure during handling is not significantly greater than a consumer's exposure during the principal use of the product*[, and the product is present in normal consumer quantities. A normal consumer quantity shall be defined as less than a case of the product]*;

5. Any fuel in a motor vehicle;

6. Tobacco or tobacco products;

7. Wood or wood products;

8. Food, drugs, cosmetics, or alcoholic beverages in a retail establishment which are packaged for sale to consumers; *[or]*

9. Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace*[.]*;*

10. Materials gathered as evidence by a law enforcement agency and maintained in an evidence locker or room;

11. Substances which are an integral part of a facility structure or furnishings; or

12. Products which are the personal property and are for the personal use of an employee.*

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

(d) Articles that are excluded by (a)1 above shall include solid articles that contain some amount of liquid or powder which, due to the design and use of the article, is not released from the article and thus *[do]* ***does**** not cause any exposure to public employees and emergency responders. The following solid articles***, which are examples and do not represent an exclusive list of excluded articles,**** meet the requirements of (a)1 above and are excluded from labeling:

1. Ammunition;
2. Bars of soap;
3. Chalk;
4. Pills and capsules;
5. Polaroid film;
6. *[Flashlight]* ***Dry cell**** batteries;
7. Glue sticks;
8. Photocopier toners and developers in self-contained cartridges;
9. Grinding wheels;
10. Pens;
11. Pastels;
12. Sorbent sample tubes; and
13. Thermometers.

(e) Consumer products that meet the requirements of (a)4 above in all cases and are excluded from labeling include typewriter correction fluid (for example, "Wite-Out," "Liquid Paper").

(f) All offices that are used for office work shall be exempt from labeling containers in that office. Rooms in an office building that are used for storage of cleaning supplies printing, storage of maintenance materials, and other non-office work activity shall not be included in this exemption.

(g) All containers that are *[five pounds (2.3 kilograms) or 0.5 gallons (1.9 liters)]* ***two kilograms (4.4 pounds) or two liters (0.53 gallons)**** or smaller shall be exempt from labeling*[, unless the number of such containers in a single location exceeds 120 pounds (54.4 kilograms) or 12 gallons (45.4 liters) and are not contained in shipping containers, in which case they shall be labeled according to this subchapter]*. *[A single location is defined as an indoors room, which can range from a small storage room to a large warehouse area, or, if outdoors, an open area that is physically separate from other open areas.]* The thresholds specified by this subsection shall not apply to Special Health Hazard Substances. The Department shall set lower thresholds for substances which appear on the Special Health Hazard Substance List, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30.

(h) *[Public employers have the option of choosing the]* ***The**** threshold set forth in (g) above *[or of continuing to comply with the labeling requirements of N.J.A.C. 8:59-5 for all containers. This threshold]* shall only apply to public employers if the public employer complies with the labeling requirements of the OSHA Hazard Communication Standard, 29 CFR 1910.1200, for all containers which are lower than this threshold. Even though public employers who choose *[the threshold will]* ***to comply with the OSHA Hazard Communication Standard may**** not be required to label containers ***below the threshold**** according to the requirements of the Right to Know Act *[under the threshold quantity]*, the hazardous substances in these containers still have to be reported on the Right to Know Survey, Material Safety Data Sheets and Hazardous Substance Fact Sheets still have to be maintained in the Right to Know Central File for these chemicals, and public employees still have to receive training about these chemicals.

8:59-5.7 Common name

(a) (No change.)

(b) Four hazardous substances listed on the Right to Know Hazardous Substance List:

1. The first name shall be considered the common name for the hazardous substance for purposes of labeling containers. If there is only one name listed for a hazardous substance on the Right to Know Hazardous Substance List, no other name may be used for purposes of labeling containers;

2. Any synonym (designated as "syn") listed on the Right to Know Hazardous Substance List shall be considered an acceptable common name for purposes of labeling containers; and

3. Generic names (designated as "gen") listed on the Right to Know Hazardous Substance List can only be used on container labels if there is a CAS number next to the generic name, except for Fuel Oil and Petroleum Oil which can be used without a CAS number. The phrase "Fuel Oil" should be used to label *[diesel fuel and]* heating oil.

(c) (No change.)

SUBCHAPTER 6. EDUCATION AND TRAINING PROGRAM ***—FOR PUBLIC EMPLOYERS****

8:59-6.2 Program for employers

(a) By December 31, 1985, a public employer shall have provided current employees with a complete education and training program, and shall provide an education and training program for these employees annually thereafter. Volunteers shall have received an education and training program by October 1, 1990.

(b) A public employer shall provide new or reassigned employees with an education and training program within the first month of employment or reassignment with the exception of volunteers who shall receive an education and training program within six months of becoming a volunteer. ***Volunteer firefighters should not respond to emergencies involving hazardous materials during this six month period until they have received the required education and training.****

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

8:59-6.3 Contents of program

(a) (No change.)

(b) An education and training program for employees shall contain, at a minimum, the following:

1.-5. (No change.)

6. The opportunity for employees to ask questions related to hazardous substances and the New Jersey Worker and Community Right to Know Act; and

7. If a public employer chooses the option in N.J.A.C. *[8:59-5.6(g)]* ***8:59-5.6(h)**** to label containers that are *[five pounds (2.3 kilograms) or 0.5 gallons (1.9 liters)]* ***two kilograms (4.4 pounds) or two liters (0.53 gallons)**** or smaller, according to the labeling requirements of the OSHA Hazard Communication

Standard, 29 CFR 1910.1200, the public employer shall explain to employees the Standard's requirements for labeling and other forms of warning.

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

(f) If the only hazardous substance to which an employee is exposed is toner or developer for a copying machine when the employee periodically replenishes the toner or developer in the machine, or gasoline for a motorized vehicle when the employee periodically fills the vehicle or a small can with gasoline, the public employer is not required to provide the full education and training program (including a technically qualified trainer) or annual training to the employee if the public employer:

1. (No change.)

2. Reviews the hazardous substance fact sheet and material safety data sheet with the employee and explains its provisions;

3. (No change.)

4. Provides the employee with the Right to Know brochure developed by the Departments of Health, Environmental Protection and Energy, and Labor.

(g) An education and training program shall be given annually by a public employer to all employees who received the initial education and training set forth in (b) above, and who continue to be exposed or potentially exposed to products which contain hazardous chemical ingredients. The program shall be conducted by a technically qualified person. The contents of the program shall include, at a minimum:

1. Summary information about the Worker and Community Right to Know Act, including any changes in the rules. If a public employer chooses the option in N.J.A.C. *[8:59-5.6(g)]* ***8:59-5.6(h)*** to label containers that are *[five pounds (2.3 kilograms) or 0.5 gallons (1.9 liters)]* ***two kilograms (4.4 pounds) or two liters (0.53 gallons)*** or smaller, according to the labeling requirements of the OSHA Hazard Communication Standard, 29 CFR 1910.1200, the public employer shall explain to employees the Standard's requirements for labeling and other forms of warning;

2. Chemical specific training for all new hazardous products and existing commonly used hazardous products. The Material Safety Data Sheets (MSDSs) and Hazardous Substance Fact Sheets (HSFSs) for these products shall be reviewed and the health effects, safety hazards, methods of controlling exposure, and appropriate work practices for the products, shall be explained. Any new information on the MSDSs and HSFSs for the commonly used hazardous products shall be reviewed. The program shall incorporate occupational health principles relevant to the employees while discussing these products. Hands-on training in the use of appropriate personal protective equipment need not be given if it was given during the initial education and training program; and

3. A walkthrough of the facility to identify the location of any new hazardous products. The walkthrough can be conducted by a supervisor.

8:59-6.4 Documentation for program

(a) A public employer must maintain the following documentation of all initial and annual Right to Know education and training programs:

1. The date and location of the training program;

2. The name and qualifications of the instructor. This shall include a resume or, in the case of consultants who are certified pursuant to N.J.A.C. 8:59-12, proof of current certification;

3. Rosters of attendance which shall include the names and signatures of participants for each session. If the classroom and walkthrough sessions are given at different times, separate rosters must be maintained. The participant's title or job description shall also be listed. For emergency responders who have taken the State Police or other Department approved Hazardous Materials Emergency Responder Awareness and Operational training courses, certificates from these courses shall be sufficient proof of attendance at these courses;

4. Whether the course is an initial or annual program;

5. The course objectives, which shall include both cognitive (learned) and behavioral goals;

6. A detailed course outline or detailed description of covered topics, which shall include the length of time for each major topic and which describes the methods of instruction of the topics;

7. If a videotape is used to cover required subjects, a brief written description of the videotape, including title, producer and the subject covered. In place of this description, a copy of the videotape may be kept with the education and training program records;

8. Copies of all materials handed out to participants; and

9. The methods used to evaluate the effectiveness of the program such as tests, exercises or written evaluations.

(b) The documentation required in (a) above shall be provided by a public employer, upon request, to a Right to Know Enforcement Officer.

(c) Rosters of attendance at initial and annual education and training programs, dates and locations of the programs, and whether it is an initial or annual program, shall be maintained by a public employer for the duration of the employee's employment. The balance of the material required in (a) above shall be maintained until a Right to Know Enforcement Officer reviews and approves the training programs during an inspection, after which time this material may be disposed of for programs conducted prior to the year of inspection.

8:59-6.6 29 CFR 1910.120(q) Hazardous Waste Operations and Emergency Response Training

(a) The Public Employees Occupational Safety and Health Act Standard 29 CFR 1910.120(q) Hazardous Waste Operations and Emergency Response, requires training for emergency responders such as firefighters, both paid and volunteer, and police officers. This section will explain 29 CFR 1910.120(q)'s relationship to the requirements of the Worker and Community Right to Know Act.

(b) Firefighter training requirements are as follows:

1. Firefighters will be in compliance with Right to Know training requirements by taking the New Jersey Hazmat Emergency Response Course—Awareness, and the New Jersey Hazmat Emergency Response Course—Operational (using the manual dated May 10, 1990 or later), both developed by a committee under the auspices of the New Jersey State Police, Office of Emergency Management. In addition, firefighters should receive training on any hazardous materials in the firehouse which do not fit within the solid article or consumer product exemptions, if not already covered in other training. Training on the use of personal protective equipment must be given if not covered in other training. Instructors must provide documentation to the fire company that they are "technically qualified persons" and a signed attendance roster must be maintained at the firehouse.

2. Annual Right to Know training can be combined with the annual refresher training required by 29 CFR 1910.120(q), however, "demonstrated competency" will not be allowed as a substitute for Right to Know annual training. A Right to Know brochure must be distributed to all firefighters during the annual training course.

3. Awareness and Operational courses developed by other organizations may be used in place of the State Police program for Right to Know compliance upon submission to and approval by the Department of Health, Right to Know Program.

(c) All police officers are not required to receive Right to Know training, even though they may be required to take the New Jersey Hazmat Emergency Response Course—Awareness under 29 CFR 1910.120(q). Only those police officers who are exposed or potentially exposed to hazardous substances during the course of their work must receive Right to Know training. Examples of police work that are covered include working with photographic chemicals and giving breathalyzer tests. In the example of the breathalyzer test, since only one hazardous chemical is being used, abbreviated training as described in N.J.A.C. 8:59-6.3(f) can be given. Since ammunition meets the solid article exception, training does not have to be provided on this product.

8:59-9.3 Modification of the list

(a) (No change.)

(b) The Right to Know Hazardous Substance List shall be revised to reflect revisions to the following sources which are hereby incorporated by reference:

1. (Source #1) Occupational Safety and Health Administration, 29 CFR *[Part]* 1910—Occupational Safety and Health Standards, Subpart Z—Toxic and Hazardous Substances July 1, *[1990]* ***1992, as amended by AFL-CIO v. OSHA, 965 F.2d 962 (11th Cir. 1992)****.

2. (Source #2) "*[1990-1991]* ***1992-1993*** Threshold Limit Values (TLVs) for Chemical Substances in the Work Environment," American Conference of Governmental Industrial Hygienists (ACGIH), *[1990]* ***1992****.

3. (Source #3) Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, 49 CFR *[Part]* 172.101 —Hazardous Materials Table, *[December 31, 1991]* ***October 1, 1992****.

4. (Source #4) "*[NIOSH Recommendations for Occupational Safety and Health Standards]* ***NIOSH Compendium of Policy Documents and Statements****," National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health and Human Services, *[Morbidity and Mortality Weekly Report Supplement, Vol. 37, No. S-7, August 26, 1988]* ***No. 1992-100, 1992****.

5. (Source #5) "*[Fifth]* ***Sixth*** Annual Report on Carcinogens, Summary *[1989]* ***1991****," National Toxicology Program, National Institute of Environmental Health Sciences U.S. Department of Health and Human Services, *[NTP 89-239 1989]* ***1991****.

6. (Source #6) "Environmental Hazardous Substance List," New Jersey Department of Environmental Protection and Energy, N.J.A.C. 7:1G-2, as amended by P.L. 1991, c. 235 on August 1, 1991.

7. (Source #7) "Overall Evaluations of Carcinogenicity: An Updating of IARC Monographs Volumes 1 to 42," IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Supplement 7, Groups 1, 2A and 2B, International Agency for Research on Cancer (IARC), World Health organization 1987.

8. (Source #8) Integrated Risk Information System (IRIS) Database, Human Health Assessment Group (HHAG), Office of Health and Environmental Assessment, U.S. Environmental Protection Agency (EPA), *[April 1, 1991]* ***January 31, 1993****.

9. (Source #14):

i. "Prohibited and Restricted Use Pesticide List," New Jersey Department of Environmental Protection and Energy, N.J.A.C. 7:30-2.3, November 21, 1988.

ii. Pesticides classified for restricted use, United States Environmental Protection Agency, 40 CFR *[Part]* 152.175, July 1, *[1989]* ***1992****.

10. (Source #16) List of Acutely Toxic Chemicals, Chemical Emergency Preparedness Program, U.S. Environmental Protection Agency, December 1985.

11. (Source #17) 1990 Emergency Response Guidebook, Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, March 31, 1990.

12. (Source #18) List of Toxic Chemicals, Section 313, Title III—Emergency Planning and Community Right to Know, Superfund Amendments and Reauthorization Act of 1986 (SARA), Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, 40 CFR *[Part]* 372.65, July 1, *[1990, as amended through August 1991]* ***1992****.

13. (Source #19) List of Extremely Hazardous Substances and Their Threshold Planning Quantites (TPQ), Section 302, Title III—Emergency Planning and Community Right to Know, Superfund Amendments and Reauthorization Act of 1986 (SARA), U.S. Environmental Protection Agency, 40 CFR *[Part]* 355—Emergency Planning and Notification, Appendix A, July 1, *[1990]* ***1992****.

14. (Source #20) List of Hazardous Substances and Reportable Quantities (RQ), Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), U.S. Environmental Protection Agency, 40 CFR *[Part]* 302, Table 302.4, July 1, *[1990, as amended in 55 FR 30185, July 24, 1990]* ***1992****.

15. (Source #21) Hazardous Wastes from the P and U Lists, Resource Conservation and Recovery Act (RCRA), U.S. Environmental Protection Agency, 40 CFR 261.33, July 1, *[1989]* ***1992****.

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

8:59-10.2 Contents of the Special Health Hazard Substance List

(a) The Special Health Hazard Substance List consists of hazardous substances with the following properties:

1. Carcinogen—Carcinogens which have met the criteria established by the International Agency for Research on Cancer (IARC) or the National Toxicology Program (NTP) or the Environmental Protection Agency's *[Carcinogen Assessment Group (CAG)]* ***Health Hazard Assessment Group (HHAG)**** or the criteria of the National Institute for Occupational Safety and Health (NIOSH) for benzidine based dyes, are included on the Special Health Hazard Substance List.

i.-ii. (No change.)

iii. *[CAG]* ***HHAG**** includes substances which demonstrate substantial or strong evidence of *[carcinogencity]* ***carcinogenicity**** in humans or animals, based upon positive human epidemiological studies, or a statistically significant increase in malignant tumors or an increase in benign tumors of a progressive nature in at least one animal species. Evidence of carcinogenicity in short-term bioassays was used only as supportive evidence.

iv. (No change.)

2.-3. (No change.)

4. Flammable—The flammability hazards of materials are classified according to their susceptibility to burning. Pure substances which meet the United States Department of Transportation's (DOT) criteria for flammability set forth in 49 CFR 173 *[of]* ***or**** the National Fire Protection Association's (NFPA) criteria for flammability in the third and fourth degrees of hazard set forth in "Standard Systems for the Identification of the Fire Hazards of Materials," No. 702-1975 are included on the Special Health Hazard Substance List. Special health hazard substances contained in mixtures shall be considered to be special health hazard substances unless the flammability hazard of the mixture does not meet the criteria set forth below for flammability. This documentation shall be made available to the department upon request.

i.-ii. (No change.)

5.-6. (No change.)

(b) (No change.)

8:59-11.1 Authority

This subchapter is promulgated pursuant to the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., in particular, N.J.S.A. 34:5A-14 and 30, and the case of New Jersey Chamber of Commerce v. Hughey, *[838 F2d 621 (3rd Cir. 1989), cert. den. 109 S.Ct. 3246, 106 L.Ed.2d 593 (July 3, 1989)]* ***868 *F.2d* 621 (3rd Cir.), *cert. den.*, 492 *U.S.* 920 (1989).****

8:59-11.3 Definitions

(a) (No change.)

(b) For this subchapter and for N.J.A.C. 8:59-1, 3, 5, 8, 9 and 10, "employer" shall also mean any person or corporation in the State engaged in business operations, including an owner/operator with no employees, which has a Standard Industrial Classification, as designated in the Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget, within the following Major Group Numbers, Group Numbers, or Industry Numbers, as the case may be:

Major Group Number 07 (Agricultural Services), only Industry Number 0782—Lawn and Garden Services;

Major Group Numbers 20 through 39 inclusive (manufacturing industries);

Major Group Number 45 (Transportation by Air), only Group Numbers 451 Air Transportation, Scheduled, And Air Courier Services, and 458—Airports, Flying Fields, and Airport Terminal Services;

Major Group Number 46 (Pipelines, Except Natural Gas);

Major Group Number 47 (Transportation Services), only Group Numbers 474—Rental of Railroad Cars, and 478—Miscellaneous Services Incidental to Transportation;

Major Group Number 48 (Communication), only Group Numbers 481—Telephone Communications, and 482—Telegraph and Other Message Communications;

Major Group Number 49 (Electric, Gas and Sanitary Services);

Major Group Number 50 (Wholesale Trade—Durable Goods), only Industry Numbers 5085—Industrial Supplies, 5087—Service Establishment Equipment and Supplies, and 5093—Scrap and Waste Materials;

Major Group Number 51 (Wholesale Trade, Nondurable Goods), only Group Numbers 512—Drugs, Drug Proprietaries and Druggist's Sundries, 516—Chemicals and Allied Products, 517—Petroleum and Petroleum Products, 518—Beer, Wine and Distilled Alcoholic Beverages, and 519—Miscellaneous Nondurable Goods (except Industry Number 5192—Books, Periodicals, and Newspapers);

Major Group Number 55 (Automobile Dealers and Gasoline Service Stations), only Group Numbers 551—Motor Vehicle Dealers (New and Used), 552—Motor Vehicle Dealers (Used only), and 554—Gasoline Service Stations;

Major Group Number 72 (Personal Services), only Industry Numbers 7216—Dry Cleaning Plants, Except Rug Cleaning, 7217—Carpet and Upholstery Cleaning, and 7218—Industrial Launderers;

Major Group Number 75 (Automotive Repair, Services, and Garages), only Group Number 753—Automotive Repair Shops;

Major Group Number 76 (Miscellaneous Repair Services), only Industry Number 7692—Welding Repair;

Major Group Number 80 (Health Services), only Group Number 806—Hospitals;

Major Group Number 82 (Educational Services, only Group Numbers 821—Elementary and Secondary Schools, and 822—Colleges, Universities, Professional Schools, and Junior Colleges, and Industry Number 8249—Vocational Schools, Not Elsewhere Classified; and

Major Group Number 87 (Engineering, Accounting, Research, Management, and Related Services), only Industry Number 8734—Testing Laboratories.

SUBCHAPTER 12. CERTIFICATION OF CONSULTANTS AND CONSULTING AGENCIES*—FOR PUBLIC EMPLOYERS*

8:59-12.1 General provisions

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

(g) All consultants and consulting agencies shall inform the Department of Health, every month, of upcoming Right to Know education and training programs to be conducted, and shall permit representatives of the Department of Health to attend, evaluate and monitor the Right to Know education and training programs. This notification shall be submitted at least one week prior to the first training session in that month.

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

8:59-12.3 Provisional certification of consultants

(a) (No change.)

(b) Provisional certification of consultants shall be granted upon the submission of the above documents and the Department's review and approval of same, and shall be effective until certification is granted or denied. ***However, if the Department does not receive notification of Right to Know education and training programs being conducted by the consultant for two years, provisional certification shall expire.***

8:59-12.4 Certification of consultants

(a) In order to secure certification, a consultant shall possess a current provisional certification, shall demonstrate, during one or more Right to Know education and training programs, the knowledge, skills and ability to effectively convey the information required by N.J.A.C. 8:59-6 to employees participating in the program, and shall provide documentation required by N.J.A.C. 8:59-6 to the public employer.

(b) (No change.)

(c) Certification shall be effective for two years. At the end of two years from the date of issuance of the certification, the consultant must renew the certification.

8:59-12.5 Renewal of certification of consultants

(a) An applicant for renewal of certification as a consultant shall submit the following to the Department 60 days prior to the expiration of the certification:

1.-3. (No change.)

(b) An applicant for renewal of certification as a consultant shall comply with all requirements of N.J.A.C. 8:59-6 and 8:59-12.

8:59-12.6 Provisional certification of consulting agencies

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

(c) Provisional certification of consulting agencies shall be granted upon the submission of the documents in (a) and (b) above and the Department's review and approval of same, and shall be effective until certification is granted or denied. ***However, if the Department does not receive notification of Right to Know education and training programs being conducted by the consulting agency for two years, provisional certification shall expire.***

8:59-12.7 Certification of consulting agencies

(a) In order to secure certification, a consulting agency shall possess a current provisional certification as a consulting agency, demonstrate, during one or more Right to Know education and training programs, that the program's contents contain the information required by N.J.A.C. 8:59-6 and the instructors possess the knowledge, skills and ability to effectively convey the information to the employees participating in the program, and that all documentation required by N.J.A.C. 8:59-6 has been provided to the public employer.

(b) (No change.)

(c) Certification shall be effective for two years. At the end of two years from the date of certification, the consulting agency must renew the certification.

8:59-12.8 Renewal of certification of consulting agencies

(a) An applicant for renewal of certification as a consulting agency shall submit the following to the Department 60 days prior to the expiration of the certification:

1.-3. (No change.)

(b) An applicant for certification renewal as a consulting agency shall comply with all requirements of N.J.A.C. 8:59-6 and 8:59-12.

8:59-12.9 Fees

(a) (No change.)

(b) Fees for an individual consultant shall be as follows:

1. (No change.)

2. Renewal of certification—$100.00.

(c) Fees for a consulting agency shall be as follows:

1. (No change.)

2. Renewal of certification—$200.00..

(d) (No change.)

8:59-12.11 Suspension or revocation of certification

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

(c) A consultant whose provisional certification or certification is suspended or revoked may not reapply for provisional certification until six months have elapsed after the date of suspension or revocation. When reapplying for provisional certification, the consultant shall present documentation of having taken appropriate courses to develop appropriate knowledge in the areas in which they were found to be deficient. The fee for initial certification application shall apply. If provisional certification is granted, it shall be considered probationary provisional certification and all training conducted by the consultant shall be done under the supervision of the Department of Health.

(d) A consulting agency whose provisional certification or certification is suspended or revoked may not reapply for provisional certification until six months have elapsed after the date of suspension or revocation. When reapplying for provisional certification, the consulting agency shall present documentation that its

consultant trainers have taken appropriate courses to develop appropriate knowledge in the areas in which they were found to be deficient. The fee for initial certification application shall apply. If provisional certification is granted, it shall be considered probationary provisional certification and all training conducted by the consulting agency's trainers shall be done under the supervision of the Department of Health.

PUBLIC NOTICES

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Notice of Action on Petition for Rulemaking Land Survey Rules

Petitioner: T.S. Madson II, Executive Director, New Jersey Land Surveyor's Council.

Take notice that the Department of Banking received 12 petitions for rulemaking from Petitioner on April 21, 1993. A notice as to the receipt was published June 7, 1993 in the New Jersey Register at 25 N.J.R. 2592(a). The Department of Banking (the "Department") denies the petitions for the reasons set forth below.

The Department received a comment, dated May 17, 1993, from Barry Wood, President of the New Jersey Credit Union League. The commenter "strongly opposed" the petitions on the following ground:

The measure would greatly increase costs to the consumer and financial institutions and would cause great delays in all types of financial transactions. In our view, it is simply an outrageous moneymaking scheme to benefit land surveyors.

The Department received a second comment from Samuel J. Damiano, President, New Jersey Council of Savings Institutions. The commenter indicated that his association voted to oppose the provisions of the petitions on the ground that implementation of the proposed changes would add delay and additional costs to the transaction to the consumer's detriment. The Council, in particular, objected to the proposed changes which would prohibit an affidavit and that would require a land or boundary survey in every financial transaction.

Several of the petitions concern regulation of the activities of surveyors. For example, the petitions request the promulgation of rules which (1) prohibit the use of an owner's survey affidavit and indemnification agreement in lieu of a correct survey; (2) require that a current land or boundary survey less than 90 days old be used by an appraiser; (3) define land and boundary surveys and require that such be performed by a registered land surveyor; (4) prohibit the use of a "sketch of description" map in lieu of a full, current and correct survey; and (5) prohibit the use of any land or boundary survey without an accompanying map, plat, drawing or sketch which meets minimum statutory requirements.

The regulation of surveyors is, in the first instance, the responsibility of the Board of Professional Engineers and Land Surveyors. In fact, the Department of Banking has no statutory authority to regulate the activity of surveyors. It has come to the Department's attention that this professional board has received almost identical petitions as the petitions received by the Department of Banking. The Department views the professional board to be the proper forum to consider these proposed changes, and therefore declines these petitions. Further, these petitions are procedurally deficient because they do not provide the Department with references to the authority for the agency to take the requested action, as required by N.J.S.A. 52:14B-4(f). The Department notes that these proposed changes would add considerable expense to many mortgage loan transactions to the detriment of consumers and would therefore not support the proposed changes.

The next group of petitions suggests rule changes which would place administrative burdens on licensed lenders who order and use surveys incident to mortgage loans. In particular, the petitions request the promulgation of rules which (1) allow for treble damages for licensees who do not take reasonable care when purchasing, soliciting for, receiving or using any land or boundary survey which fails to meet New Jersey minimum technical standards; (2) define the fiduciary duty of a licensee when ordering or advising a client about ordering a land or boundary survey; (3) require that licensees collect payment for a land or boundary survey at the same time that payment for the real estate appraiser or credit report is collected the licensee; (4) require a land or boundary survey in every financial transaction where the real property is to be used as collateral for any mortgage loan; (5) prohibit the use of any land or boundary survey over 90 days old; and (6) prohibit the purchase, promotion or use of a "wash-out" survey.

The Department views it as totally inappropriate to impose treble damages upon a licensee as proposed by the petitioner. Rather, such damages should be reserved, for example, for cases of consumer fraud and intentional misconduct. There is already authority for consumers to seek treble damages in these instances. Further, the Department views the imposition of treble damages to be a legislative prerogative. Accordingly, this petition is denied.

The next petition requests that the Department define the fiduciary duty of a licensee when ordering or advising a client about ordering a land or boundary survey. The Department views counsel, not the licensee, as the party to advise a borrower about ordering a land or boundary survey. Accordingly, the Department rejects this petition.

The next petition suggests a rule which would require that licensees collect payment for a land or boundary survey at the same time that payment of the real estate appraiser or credit report is collected by the licensee. The Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq., and the Secondary Mortgage Loan Act, N.J.S.A. 17:11A-34 et seq., are both intended to protect consumers, not persons providing services to licensees. Since such a rule would serve to only protect surveyors, it is inconsistent with the intent of these licensing laws. Accordingly, this petition is rejected.

The next two petitions suggest rules which would require a land or boundary survey in every financial transaction where real property is to be used as collateral for any mortgage loan, and prohibit the use of any land or boundary survey over 90 days old. The Department does not view it to be necessary to have a survey in every transaction, and does not think it appropriate to prohibit surveys over 90 days old. In this regard, the Department takes note of the comment filed by the Credit Union League. These rules would add significantly to the cost of a loan transaction to the public detriment. Accordingly, these petitions are rejected.

The next petition requests a rule requiring the Department to acknowledge receipt of all correspondence and to notify any and all affected parties within five working days following action by the Department. The Department already acknowledges receipt of correspondence, and does not view it necessary to codify such a requirement in regulation.

Finally, one of the petitions suggests a prohibition against "wash-out" surveys, since the practice violates the Real Estate Settlement Procedures Act, 12 U.S.C. §2601 et seq. ("RESPA"). The Department has already codified the RESPA prohibition against referrals. See N.J.A.C. 3:38-4.1. Accordingly, no regulatory change is necessary. If the petitioner has evidence of a RESPA violation by a licensee, it is suggested that the petitioner bring it to the attention of the Department.

The Department therefore denies the petitions for the reasons stated above.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

SITE REMEDIATION

Notice of Rates for the Oversight Cost Formula in the Department's Oversight of Site Remediation Regulations, and Fees Pursuant to the Industrial Site Recovery Act, Underground Storage of Hazardous Substances Act, and Remediation Discharge to Ground Water Permits under the Water Pollution Control Act.

Take notice that the Department of Environmental Protection and Energy (Department) hereby announces the oversight cost rates which the Department will use to calculate its oversight costs for conducting remediation of a contaminated site. The Department will also use these same oversight cost rates in assessing fees pursuant to the recently proposed fee regulations under the Industrial Site Remediation Act, N.J.S.A. 13:1K-6 et seq., the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-1 et seq., and for remediation discharge

to ground water permits pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., once they have been adopted by the Department.

On May 17, 1993, the Department adopted the Procedures for Department Oversight of the Remediation of Contaminated Sites, N.J.A.C. 7:26C (see 25 N.J.R. 2002(a)). An integral part of any oversight document developed pursuant to those rules is that the person responsible for conducting the remediation must pay the Department's costs of overseeing the remediation. The Department calculates its oversight costs pursuant to the Oversight Cost Formula which is included in Appendix I of N.J.A.C. 7:26C. Two of the rates used in the formula vary from year to year, the indirect cost rate and the fringe benefit rate.

Fringe Benefit Rate = 29.35%

The Department obtains the applicable fringe benefit rate from the New Jersey Office of Management and Budget. The Office of Management and Budget negotiates with the United States Department of Health and Human Services for a composite fringe benefit rate of a certain percentage of base salaries. The rate is applicable to personnel who are members of the Public Employees' Retirement System and covers charges for the following benefits: pension, health benefits including prescription drug and dental care programs, workers compensation, temporary disability insurance and unused sick leave. The employer's share of FICA taxes is added to the composite fringe benefit rate. The rate is used by all state agencies for estimating and computing actual charges for fringe benefit costs related to Federal, Dedicated and Non-State programs.

The Office of Management and Budget published the Fringe Benefit Rate in Circular 93-07 OMB, effective July 1 1992.

Indirect Cost Rate = 95.48%

The Department developed the indirect cost rate in accordance with Federal OMB Circular A-87, "Cost Principles for State and Local Governments." Indirect costs are those costs which are incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved.

The components of the Department's indirect cost rate include indirect salaries and various indirect non-salary costs (such as operating expenses) incurred by Department management, the Division of Publicly Funded Site Remediation, the Division of Responsible Party Site Remediation, and divisional indirect offices—Commissioner, Division Directors and Assistant Directors, the Division of Financial Management and General Services and the Division of Personnel.

Building rent and the Departmental allocation as determined by the Department of Treasury in the Statewide Cost Allocation Plan are also included as part of the indirect costs. The Statewide Cost Allocation Plan pertains to central services costs which are approved on a fixed basis and included as part of the costs of the State Department during a given fiscal year ending June 30.

The total of these indirect costs divided by the total direct costs of the Site Remediation Program determined the indirect cost rate.

Any person needing more information on this matter should contact Mr. Ronald Corcory, Assistant Director, Responsible Party Cleanup Element, at (609) 633-1480.

(a)

FISH, GAME AND WILDLIFE

Marine Fisheries

Notice of Striped Bass Trophy Fish Check Stations

Take notice that the Department of Environmental Protection and Energy, pursuant to N.J.S.A. 23:5-45.1(c) and N.J.A.C. 7:25-18.1(n)1ii, announces fish checking stations for the striped Bass Trophy Fish Program. Persons harvesting a trophy striped bass pursuant to N.J.A.C. 7:25-18.1(n) must present their fish for registration on the day caught at one of the following Division of Fish, Game and Wildlife authorized fish check stations:

Bait and Tackle Shop	City/County
Ask Us Sports Inc. 2A South Washington Ave.	Bergenfield/Bergen
Outdoorsman Ltd. 12 East Columbia Ave.	Palisades Park/Bergen
Parsippany Bait, Sport & Tackle 180 Parsippany Rd.	Parsippany/Morris
Joe Spinazzola's Sport Shop 1630 Springfield Ave.	Maplewood/Essex
Ray's Sport Shop Inc. 559 Highway 22 West	North Plainfield/Somerset
Tackle Box Inc. 1134 Highway 36	Hazlet/Monmouth
Julian's Bait & Tackle Route 36 East	Atlantic Highlands/Monmouth
Giglio's Bait & Tackle 1123 East Ocean Ave.	Sea Bright/Monmouth
Jim's Bait & Tackle 50 Atlantic Ave.	North Long Branch/ Monmouth
Mac's Shark River Bait & Tackle 1301 Route 35	Neptune/Monmouth
Fisherman's Den Belmar Marina Route 35	Belmar/Monmouth
Brielle Bait & Tackle 800 Ashley Ave.	Brielle/Monmouth
Sportsmen's Center U.S. Highway 130	Bordentown/Burlington
Pine Barrens Stove & Sport Shop Route 72	Chatsworth/Burlington
Gates Bait & Tackle 5 Ocean Ave.	Point Pleasant Beach/Ocean
Reel Life Bait & Tackle 2505 Bridge Ave.	Point Pleasant/Ocean
The Bait 'N' Tackle Shop Highway 35 North	Normandy Beach/Ocean
Betty & Nick's Bait & Tackle 64-66 Grand Central Ave.	Lavallette/Ocean
Betty & Nick's Bait & Tackle 807 Southwest Central Ave.	Seaside Park/Ocean
Hook House Bait & Tackle 2308 Route 37 East	Toms River/Ocean
Forked River Bait & Tackle 244 Route 9	Forked River/Ocean
Bruce & Pat's Bait & Tackle 317 Long Beach Blvd.	Surf City/Ocean
Fisherman's Headquarters 280 West 9th Street	Ship Bottom/Ocean
Jingles Bait & Tackle Shop 1214 Bay Ave.	Beach Haven/Ocean
Clarke's Marine Supply 227 East Main Street Rt 9	Tuckerton/Ocean
Scott's Bait & Tackle 28-4 Radio Road	Mystic Islands/Ocean
Chestnut Neck Boat Yard Route 9, and Garden State Parkway, Exit 48	Port Republic/Atlantic
Jersey State Marine Inc. 601 Bayshore Ave.	Brigantine/Atlantic
Atlantic City Fishing Center 433 North Maryland Ave.	Atlantic City/Atlantic
Absecon Bay Sportman Center 81 Natalie Terrace	Absecon/Atlantic
Ray's Sports Marine Center 1300 White Horse Pike	Egg Harbor/Atlantic
Campbell's Margate Bridge Road	Northfield/Atlantic
Fishin' Stuff Tackle Shop Inc. 621 Bay Ave.	Ocean City/Cape May
Red Dog Bait & Tackle 367 43rd Place	Sea Isle City/Cape May
Moran's Dockside Bait & Tackle 14th and Ocean Drive	Avalon/Cape May

Rodia's Bait & Tackle Route 47	Rio Grande/Cape May
Jim's Bait & Tackle 1208 Route 109	Cape May/Cape May

(a)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Cape May County Water Quality Management Plan
Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Cape May County Water Quality Management (WQM) Plan. This amendment proposal has been submitted by the Cape May County Planning Department. The amendment updates the Lower Township Wastewater Management Plan (WMP) in regard to Cold Spring Village. The sewer service area to the Lower Township Municipal Utilities Authority (LTMUA) Sewage Treatment Plant (STP) as delineated in the Lower Township WMP will be expanded to include the existing, historic Cold Spring Village in Lower Township. The discharge to ground water from the existing on-site ground water disposal system serving this Village will be eliminated upon connection of the Village to the LTMUA STP.

This notice is being given to inform the public that a plan amendment has been proposed for the Cape May County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the Cape May County Health Department, CN 601, Central Mail Room, 4 Moore Road, Cape May Court House, New Jersey 08210, and the NJDEPE, 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 Cape May County Health Department at (609) 465-6835 or the Office of Land and Water Planning at (609) 633-1179.

Interested persons may submit written comments on the amendment to Mr. Grover Webber, Cape May County Health Department at the address cited above. A copy of the comments should be sent to Dr. Daniel J. Van Abs of the Office of Land and Water Planning, at the NJDEPE address cited above. 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 also be considered by NJDEPE with respect to the amendment request.

Any interested persons may request in writing that the Cape May Planning Board hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Webber at the Cape May County Health Department address cited above with a copy sent to Dr. Van Abs at the NJDEPE 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 Northeast Water Quality Management Plan
Public Notice

Take notice that on June 30, 1993, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management (WQM) Plan was adopted by the Department. This amendment, which was submitted by the Bergen County Utilities Authority (BCUA), adopts a Wastewater Management Plan (WMP) for BCUA. The WMP delineates the existing and proposed sewer service areas to the BCUA sewage treatment plant (STP). The BCUA STP will be expanded to serve the projected annual average flow of 84.106 million gallons per day. The Wood-Ridge Borough STP will be abandoned with flow conveyed to the BCUA STP. The WMP delineates the portions of Cliffside Park and Fort Lee served by the Edgewater Borough STP, the portions of Washington Township served by the Northwest Bergen County Utilities Authority STP, and the portions of Rockleigh and Old Tappan Boroughs served by the Orangetown STP. The BCUA WMP also delineates the service area for ground water disposal facilities with a design capacity of less than 20,000 gallons per day.

This amendment was noticed in the New Jersey Register on October 19, 1992. Comments on this amendment were received during the comment period and are summarized below with the Department's response.

COMMENT: The Hackensack Meadowlands Development Commission (HMDC) made the following comments:

1. The WMP states that the HMDC will abandon the Baler Wastewater Treatment Facility during 1991/1992. The HMDC has no plans to abandon this facility at this time.

2. The WMP states that flow from the Kingsland Park Landfill is the only waste flow the BCUA STP will receive from Lyndhurst Township. However, the BCUA STP is currently receiving the wastewater from the HMDC Office Complex and should continue to do so.

RESPONSE: The WMP has been revised as follows in consideration of the above:

1. The WMP has been revised to delete reference to abandonment of the Baler Wastewater Treatment Facility and include reference to it as a future facility.

2. The WMP has been revised to indicate that the BCUA STP also treats flow from the HMDC Office Complex in Lyndhurst.

In addition to the above revisions, the existing service areas map has been revised to correctly delineate the portions of Old Tappan currently served by the Orangetown STP, and the future service areas map has been revised to expand the BCUA STP sewer service area to include portions of Old Tappan which were permitted to be served by the BCUA STP as per sewer extension permits issued by the Department (No. 88-1311-4 and No. 89-3221-4). These future service areas were inadvertently excluded from the WMP. The projected populations and wastewater flows for Old Tappan are also revised to address these areas.

(c)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Sussex County Water Quality Management Plan
Public Notice

Take notice that on June 30, 1993, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Sussex County Water Quality Management Plan was adopted by the Department. This amendment, proposed by Sussex Borough and the Sussex County Municipal Utilities Authority (SCMUA), updates the Sussex Borough Wastewater Management Plan (WMP). The amended Sussex Borough WMP allows for decommissioning the existing Sussex Borough sewage treatment plant with conveyance of Sussex Borough wastewater flows to the SCMUA Upper Wallkill Valley Water Pollution Control Plant (SCMUA plant) in Hardyston Township, Sussex County. This amendment to the Sussex Borough WMP will also amend the Hardyston Township WMP to specify that the SCMUA plant will be expanded from 2.5 million gallons per day (mgd) to 3.0 mgd to address the flow from Sussex Borough.

HEALTH

(d)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Notice of Action on Petition for Rulemaking
Hospital Licensing Standards
N.J.A.C. 8:43G-15.2(g)

Petitioner: Louis P. Scibetta, representing the New Jersey Hospital Association.

Take notice that on November 20, 1992 the New Jersey Department of Health received a petition from Louis P. Sibetta, representing the New Jersey Hospital Association, requesting that the Department amend its hospital licensing standards at N.J.A.C. 8:43G-15.2 to include the use of electronic imaging technology as an acceptable means of storage and retrieval of medical records (see 24 N.J.R. 4591(a) and 25 N.J.R. 373(b)). The petitioner stated that the use of new technology would reduce expenses associated with record storage and retrieval and would reduce data loss. The petitioner also delineated problems of inefficiency and poor quality with current storage of records on microfilm and microfiche, and has recommended the following amendment to N.J.A.C. 8:43G-15.2(g): "Medical records **or the reproduction thereof on film or in any other acceptable form as determined by the Department of Health (including but not limited to photograph, photostat, microfilm, or optical or electronic medium)** shall be retained ..."

In response, the Department acknowledges the necessity of permitting hospitals to move towards the use of electronic media for storage of medical records for reasons of efficiency and cost. However, this need must be balanced against the importance of assuring the security, confidentiality, accuracy, and accessibility of patient treatment records.

To address these potentially conflicting values, the Department has met with the New Jersey Medical Record Association and is conducting research both on new technology and on the ways in which other states and the Federal government have addressed this issue. To the Department's knowledge, with few exceptions, state licensing authorities in the United States have not permitted hospitals to shift to electronic storage media for patient medical records.

The Department is unable to publish amendments to regulations at this time since the issue is complex and requires additional time to complete research and to develop new standards. For example, the Department cannot accept the language suggested by the petitioner without revisions ensuring the confidentiality and security of patient records. The rule suggested by the petitioner is also not sufficiently specific in providing guidance to the industry regarding the types of record retention which would reasonably meet both the need for confidentiality and security as well as practically and technically translate to electronic media for storage. As the Department does not have adequate technical expertise at this time to make such determinations, it will defer publication of new rules until these issues are clarified.

The Department prefers that a new, comprehensive rule specify acceptable methods of electronic storage of records rather than to address this issue on a case by case basis in the more than 100 hospitals in New Jersey, as suggested by the proposed amendment. The Department's mandate to protect the public interest by ensuring the safety and confidentiality of records overrides the industry's need at this time to improve the efficiency of record-keeping systems. The petition is therefore denied.

HUMAN SERVICES

(a)

DIVISION OF FAMILY DEVELOPMENT

Notice of Availability of Grant Funds Title of Grant: Family Development Program

Take notice that in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services, acting under the authority of Public Law 1991, Chapter 523, hereby announces the availability of the following grant program funds.

A. Name of program: General Assistance Family Development Program.

B. Purpose: To establish a work/training program that offers intensified and coordinated services to address the educational, vocational and other employment-related needs of those employable clients served by the General Assistance program in the county of Camden and in the City of Camden; in the county of Essex in the municipalities of Newark and East Orange; and in the county of Hudson in the municipality of Jersey City.

C. Amount of available funding for the program: $4.2 million in funding will be provided for the reasonable costs associated with the administration of the program and for core program services.

D. Organizations which may apply for funding under this program: Public or private-for-profit or not-for-profit agencies that can provide trained personnel to accomplish the various service components of the General Assistance Family Development Program in municipalities in the counties of Camden, Essex and Hudson with General Assistance employable caseloads of 500 or more cases. Agency proposals must serve the employable GA population in the designated municipalities in the aforementioned counties. The service components of the program include, but are not limited to:

1. Case management;
2. Individual client assessments;
3. Job development;
4. Co-location of program components;
5. Employability plans;
6. Referral services:
   Training;
   Educational programs;
   Community work experience;
   Job search;
   Social or rehabilitative services, as appropriate;
   Other employment-oriented activities; and
7. Linkages with other community programs to secure and coordinate resources in the community.

E. Procedure for eligible organizations to apply: Request for Proposal (RFP) packages will be available on **August 2, 1993.** Interested applicants may request an RFP, in writing, from:

Department of Human Services
Division of Family Development
Office of the Director
CN 716
Trenton, New Jersey 08625
Or, by telephone: (609) 588-2401

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 9, Third Floor, Conference Room, Trenton, New Jersey, on August 9, 1993 at 10:00 A.M.

Request for Proposal packages will be available, upon request, at the Bidders Conference.

F. 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:

Department of Human Services
Division of Family Development
Office of the Director
CN 716
Trenton, New Jersey 08625

G. Deadline by which applications must be submitted: The completed RFP document and all required supporting material must be received by the Office of the Director, at the above address, by **4:00 P.M. on Wednesday, September 15, 1993.**

H. Date the applicant is to be notified of acceptance or rejection: September 27, 1993.

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Availability of Grant Funds Refugee Resettlement Social Services Program

Take notice that in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds:

A. Name of grant program: Division of Youth and Family Services Refugee Resettlement Social Services Program.

B. Purpose for which the grant funds shall be used: The purpose of this program is to assist refugees to achieve self sufficiency and effective resettlement as quickly as possible relative to Section 412(a)(6)B of the Immigration and Nationality Act, as amended by the provisions of the Refugee Act of 1980 and its amendments, Public Law 96-212, 8 U.S.C. 1522(c). Services are for a broad range of activities including, but not limited to: employment, vocational training, language instruction, and support.

C. Amount of money in grant program: Funding in the amount of $1,377,720 from the Refugee Resettlement Program Social Service Grant

is available. These are annualized Federal Fiscal Year 1994 (October 1, 1993-September 30, 1994) funds and no matching funds are required. These funds will be awarded to contracted entities to provide a Statewide program. Of the total funds available, $77,720 is reserved for the Mutual Assistance Associations (MAA). Eligible MAAs are legally incorporated as not-for-profit organizations with 51 percent of their Board of Directors comprised of refugees or former refugees.

D. Organizations which may apply for funding under this program: Any public, non-profit or for-profit organization with the ability to provide these services and which possesses legal status may apply. The applicant is responsible for the provision of services and management of the program both fiscally and programmatically.

E. Qualifications needed by an applicant to be considered for funding: Through written proposals, agencies must demonstrate the capacity to carry out the purposes of the proposal and the ability to evaluate the success of their program. Applicants must demonstrate their ability to understand the program and to successfully develop and implement their proposal.

F. Procedure for eligible organizations to apply: Interested applicants may request a copy of the Request for Proposal by contacting Jane Burger, at (609) 633-7781 or writing or visiting the Office of Immigrant and Refugee Services of the Division of Youth and Family Services at Capital Center 7th floor, 50 East State Street, Trenton, New Jersey 08625. A **bidders conference** is scheduled for August 10, 1993 at 10:00 A.M. at the Central Office of the Division in Room 536 at this same address.

G. Address to which applications must be submitted: Agencies interested in applying for these funds should submit one signed original and six copies of the completed Request for Proposal and all required supporting materials and copies by mail or in person to:

Jane Burger
Office of Refugee and Immigrant Services
Division of Youth and Family Services
Capital Center 7th Floor
50 East State Street
CN 717
Trenton, N.J. 08625-0717

H. Deadline by which applications must be submitted: Completed proposals shall be delivered or mailed to the Office of Refugee and Immigrant Services at the address listed above not later than 5:00 P.M. September 7, 1993. Mailed proposals must be posted in a timely manner to assure they are received in that Office by 5:00 P.M. September 7, 1993.

I. Date by which applicants shall be notified of acceptance or rejection: October 15, 1993.

(a)

DEVELOPMENTAL DISABILITIES COUNCIL

Notice of Request for Proposals
The Economics of Deinstitutionalization in New Jersey: Research Project Award

Take notice that the New Jersey Developmental Disabilities Council announces "The Economics of Deinstitutionalization in New Jersey: Research Project Award." This is an announcement of Request for Proposals. This descriptive analysis, to be conducted on behalf of people with developmental disabilities, is intended to gauge the financial impact of closing New Jersey institutions.

To request a copy of the RFP package, write on your organization's letterhead to:

Rachel A. Hickson, Contract Manager
New Jersey Developmental Disabilities Council
CN 700, 32 West State Street
Trenton, NJ 08625

Telephone requests cannot be accepted. The RFP package is available July 9, 1993. Proposals are due August 16, 1993.

(b)

DEVELOPMENTAL DISABILITIES COUNCIL

Notice of Request for Proposals to Produce a Newsletter for Informing and Mobilizing Affected Families and Others Around Educational Issues

Take notice that in order to encourage parents, students, and the lawmakers representing them to support effective education policy for students with disabilities, New Jersey needs an effective communications vehicle—a newsletter—for informing and mobilizing affected families and others around education issues.

The New Jersey Developmental Disabilities Council, a Federally mandated planning and advisory agency, wishes to contract with an individual or firm to create, produce, and disseminate such a newsletter for the fiscal year beginning October 1, 1993.

Proposals are due August 30, 1993. **To request a copy of the RFP package,** write on your organization's letterhead to:

Inclusive Education Newsletter
c/o Rachel A. Hickson
New Jersey Developmental Disabilities Council
CN 700, 32 West State Street
Trenton, NJ 08625

(c)

DEVELOPMENTAL DISABILITIES COUNCIL

Notice of Seminar on "Effective Planning For Disability"

Take notice that a seminar entitled "Effective Planning for Disability," designed for professional planners at the county and municipal level, will be held on Tuesday, September 28, 1993, at the Ramada Hotel in Kingston, New Jersey.

The seminar, which lasts from 8:30 A.M. to 1:30 P.M., will focus on sources of quality data on disability in New Jersey and how to use them when planning for the needs of persons with disabilities.

The conference is sponsored jointly by New Jersey Developmental Disabilities Council, Rutgers Bureau of Economic Research, the New Jersey Association of County Offices for the Disabled, and Alliance for Disabled in Action.

Pre-registration is required; the seminar fee is $30.00 and includes breakfast and lunch. Registration is on a first-come, first-served basis. Registration deadline is September 10, 1993. **To receive a registration package,** please call Carol Harvey at (908) 932-7891.

(d)

DEVELOPMENTAL DISABILITIES COUNCIL

Notice of Availability of Grants to Encourage Voting by People With Developmental Disabilities

Take notice that the New Jersey Developmental Disabilities Council announces a $50,000 challenge grant for State, county and local organizations interested in getting out the vote in November 1993. The grant is intended to encourage the vote by people with developmental disabilities and their families. Developmental disabilities include autism, cerebral palsy, mental retardation, spina bifida, epilepsy, and head injury.

The approach to encouraging the vote is up to the applicant. Pairs or groups of organizations are welcome to apply jointly. Up to five applicants will share the funds. The deadline for application submission is August 16, 1993, and the award(s) will be made by the end of August. To request a copy of the grant application, write on your organization's letterhead to:

Election Challenge Grant
c/o Rachel A. Hickson
New Jersey Developmental Disabilities Council
CN 700, 32 West State Street
Trenton, NJ 08625

HEALTH

(a)

HOSPITAL REIMBURSEMENT
Notice of Administrative Correction
Hospital Financing
Proposed Repeals: N.J.A.C. 8:31B

Take notice that the Department of Health has discovered four errors in the notice of proposed amendments to and repeals at N.J.A.C. 8:31B published in the July 19, 1993 New Jersey Register at 25 N.J.R. 3117(a).

The listing of N.J.A.C. 8:31B-3.76 as a proposed repeal in the heading of the proposal notice was the result of an inadvertent error in processing the notice for publication, as reflected in the repeal of that section not being mentioned in the proposal Summary or in the reference listing of sections proposed for repeal found after the proposal statements. N.J.A.C. 8:31B-3.76 is not proposed for repeal.

The proposed repeal of N.J.A.C. 8:31B-3.71, while mentioned in the second paragraph of the proposal Summary under the "final reconciliation" grouping of proposed repeals, was not listed in either the notice heading or the reference listing. N.J.A.C. 8:31B-3.71 is proposed for repeal.

N.J.A.C. 8:31B-8.72 was included as a proposed repeal in the original notice of adoption document (PRN 1993-381) filed with OAL. However, in the processing of the notice for publication, reference to the repeal of the section was inadvertently not included in the notice heading, the reference listing or in the Summary, where it should have appeared in the second paragraph under the "schedule of rates" grouping of repeals. N.J.A.C. 8:31B-3.72 is proposed for repeal.

In the proposed text of N.J.A.C. 8:31B-1.1, a closing bracket for the deletion of "P.L. 1978, c.83" was omitted from the proposal.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the proposed repeals heading, Summary second paragraph, repeals reference listing and proposed text of N.J.A.C. 8:31B-1.1 follows, as they should have appeared in the published notice of proposal:

...

Proposed Repeals: N.J.A.C. 8:31B-3.2, 3.4, 3.5, 3.6, 3.7, 3.9, 3.10, 3.15, 3.18, 3.19, 3.20, 3.21, 3.22, 3.23, 3.27, 3.28, 3.29, 3.30, 3.31, 3.32, 3.33, 3.34, 3.37, 3.38, 3.39, 3.40, 3.41, 3.42, 3.44, 3.45, 3.51, 3.52, 3.55, 3.57, 3.63, 3.64, 3.65, 3.71, 3.72, 3.73, 3.74, 3.75, 3.87; N.J.A.C. 8:31B-5; Appendices I, III, IV, V, VI, VII, VIII, and XI

...

This proposal deletes the rules which described the calculation of hospital's schedule of rates (N.J.A.C. 8:31B-3.2, 3.10, 3.21, 3.28, 3.29, 3.32, 3.33, 3.40 and 3.57), standards (N.J.A.C. 8:31B-3.5, 3.6 and 3.22), reasonable costs (N.J.A.C. 8:31B-3.23), costs per case (N.J.A.C. 8:31B-3.4), preliminary cost bases (N.J.A.C. 8:31B-3.7, 3.20 and 3.30), certified revenue bases (N.J.A.C. 8:31B-3.15), capital facilities allowance (N.J.A.C. 8:31B-3.27 and 3.55), Medicare cost shift (N.J.A.C. 8:31B-3.34), definition for direct and indirect cost (N.J.A.C. 8:31B-3.18 and 3.19), payer differential (N.J.A.C. 8:31B-3.39), rate implementation (N.J.A.C. 8:31B-3.9 and 3.51), final reconciliation (N.J.A.C. 8:31B-3.44, 3.45, 3.57, 3.71, 3.73 through 3.75), full rate review (N.J.A.C. 8:31B-3.52), uncompensated care (N.J.A.C. 8:31B-41), schedule of rates (N.J.A.C. 8:31B-3.37, 3.38, 3.42 and 3.72). Regulations governing procedures relating to the Hospital Rate Setting Commission rate adjustments (N.J.A.C. 8:31B-3.31 and 3.63 through 3.65 and 3.87) and the subchapter defining Diagnosis Related Groups (N.J.A.C. 8:31B-5) are also deleted.

...

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 8:31B-3.2, 3.4, 3.5, 3.6, 3.7, 3.9, 3.10, 3.15, 3.18, 3.19, 3.20, 3.21, 3.22, 3.23, 3.27 through 3.34, 3.37 through 3.42, 3.44, 3.45, 3.51, 3.52, 3.55, 3.57, 3.63, 3.64, 3.65, 3.71 through 3.75, 3.87, 8:31B-5, and Appendices I and III through XI.

...

8:31B-1.1 Purpose and scope

The purpose of this chapter is to satisfy the requirements of [P.L. 1978, c.83] **the Health Care Facilities Planning Act, P.L. 1971, c.136 as amended by P.L. 1978, c.83; P.L. 1991, c.187; and P.L. 1992, c.160,** and support the public policy of the State that hospital and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost, be available to inhabitants of the State. [The rules in this chapter provide the procedures and methods by which the Department of Health and the Hospital Rate Setting Commission establish and maintain a fair and equitable system for determining hospital payments.]

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the June 7, 1993 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1993 d.1 means the first rule filed for 1993.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT MAY 17, 1993

NEXT UPDATE: SUPPLEMENT JUNE 21, 1993

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
24 N.J.R. 2651 and 2752	August 3, 1992	25 N.J.R. 619 and 736	February 16, 1993
24 N.J.R. 2753 and 2970	August 17, 1992	25 N.J.R. 737 and 1030	March 1, 1993
24 N.J.R. 2971 and 3202	September 8, 1992	25 N.J.R. 1031 and 1308	March 15, 1993
24 N.J.R. 3203 and 3454	September 21, 1992	25 N.J.R. 1309 and 1620	April 5, 1993
24 N.J.R. 3455 and 3578	October 5, 1992	25 N.J.R. 1621 and 1796	April 19, 1993
24 N.J.R. 3579 and 3784	October 19, 1992	25 N.J.R. 1797 and 1912	May 3, 1993
24 N.J.R. 3785 and 4144	November 2, 1992	25 N.J.R. 1913 and 2150	May 17, 1993
24 N.J.R. 4145 and 4306	November 16, 1992	25 N.J.R. 2151 and 2620	June 7, 1993
24 N.J.R. 4307 and 4454	December 7, 1992	25 N.J.R. 2621 and 2794	June 21, 1993
24 N.J.R. 4455 and 4606	December 21, 1992	25 N.J.R. 2795 and 3050	July 6, 1993
25 N.J.R. 1 and 218	January 4, 1993	25 N.J.R. 3051 and 3276	July 19, 1993
25 N.J.R. 219 and 388	January 19, 1993	25 N.J.R. 3277 and 3582	August 2, 1993
25 N.J.R. 389 and 616	February 1, 1993		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:13A-1.1, 14.2, 14.4, 18.1, 18.3	Lemon Law hearings	25 N.J.R. 2625(a)		
1:13A-1.2, 18.1, 18.2	Lemon Law hearings: exceptions to initial decision	24 N.J.R. 1843(a)	R.1993 d.289	25 N.J.R. 2247(a)
Most recent update to Title 1: TRANSMITTAL 1992-5 (supplement November 16, 1992)				
AGRICULTURE—TITLE 2				
2:1-4	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1314(a)	R.1993 d.274	25 N.J.R. 2247(b)
2:1-4	Disability discrimination grievance procedure: administrative correction	———	———	25 N.J.R. 2859(a)
2:6	Animal health: biological products for diagnostic or therapeutic purposes	24 N.J.R. 2974(a)		
2:6	Animal health: extension of comment period regarding biological products for diagnostic or therapeutic purposes	24 N.J.R. 3981(a)		
2:23	Gypsy moth suppression program	25 N.J.R. 1627(a)	R.1993 d.305	25 N.J.R. 2686(a)
2:34-2.1, 2.2	Equine Advisory Board rules	25 N.J.R. 740(a)	R.1993 d.252	25 N.J.R. 2247(c)
2:71	Grades and standards	25 N.J.R. 1801(a)	R.1993 d.379	25 N.J.R. 3453(a)
2:71-2.26	Grades and standards: administrative correction	———	———	25 N.J.R. 3453(b)
2:72	Bonding requirement of commission merchants, dealers, brokers, agents	25 N.J.R. 1802(a)	R.1993 d.378	25 N.J.R. 3453(c)
2:74	Controlled atmosphere storage apples	25 N.J.R. 1803(a)	R.1993 d.377	25 N.J.R. 3453(d)
2:76-6.2-6.11, 6.13, 6.16, 6.17	Farmland Preservation Program: acquisition of development easements	25 N.J.R. 1804(a)	R.1993 d.392	25 N.J.R. 3453(e)
2:76-10	Farmland Appraisal Handbook Standards	25 N.J.R. 1811(a)	R.1993 d.391	25 N.J.R. 3461(a)
Most recent update to Title 2: TRANSMITTAL 1993-3 (supplement May 17, 1993)				
BANKING—TITLE 3				
3:1-2.3, 2.5, 2.21	Depository charter applications and branch applications	25 N.J.R. 1033(a)	R.1993 d.258	25 N.J.R. 2248(a)
3:1-12.4	Multiple party deposit accounts: administrative correction	———	———	25 N.J.R. 2860(a)
3:1-16.2, 16.3	Fees; mortgage banker non-servicing	25 N.J.R. 2625(b)		
3:2-1.4	Mortgage banker non-servicing	25 N.J.R. 1035(a)	R.1993 d.295	25 N.J.R. 2687(a)
3:2-1.4	Mortgage banker non-servicing	25 N.J.R. 2625(b)		
3:3-3	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1314(b)	R.1993 d.321	25 N.J.R. 2860(a)
3:32	Conversion of associations and savings banks	25 N.J.R. 2799(a)		
3:38-1.3, 4.1	Mortgage banker—mortgage banker non-servicing conversion; fees	25 N.J.R. 2625(b)		
3:38-1.1, 1.10, 5.1	Mortgage banker non-servicing	25 N.J.R. 1035(a)		
3:41-2.1, 11	Cemetery Board: location of interment spaces and path access	25 N.J.R. 623(a)		
Most recent update to Title 3: TRANSMITTAL 1993-4 (supplement May 17, 1993)				
CIVIL SERVICE—TITLE 4				
Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)				

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PERSONNEL—TITLE 4A				
4A:1-5	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1314(c)		
4A:3	Classification, services and compensation	25 N.J.R. 1916(a)		
4A:4	Selection and appointment	25 N.J.R. 1085(b)	R.1993 d.270	25 N.J.R. 2509(a)
	Most recent update to Title 4A: TRANSMITTAL 1993-3 (supplement April 19, 1993)			
COMMUNITY AFFAIRS—TITLE 5				
5:3	Department records	25 N.J.R. 2157(a)		
5:5	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA))	25 N.J.R. 1315(a)	R.1993 d.373	25 N.J.R. 3509(a)
5:10	Maintenance of hotels and multiple dwellings	25 N.J.R. 2627(a)		
5:18-3.2, 3.3, 3.13, 3.19, App. 3A	Fire Prevention Code: junk yards, recycling centers, and other exterior storage sites	25 N.J.R. 1315(b)		
5:18-3.3	Uniform Fire Code: administrative correction regarding general precautions in rooming and boarding houses	————	————	25 N.J.R. 2519(a)
5:18-4.3, 4.7	Fire Safety Code: fire suppression systems in hospitals and nursing homes	25 N.J.R. 1316(a)		
5:18C-4.2, 5.2, 5.3, 5.4	Fire service training and certification	25 N.J.R. 1846(a)		
5:23-1.4, 2.16, 2.17	Uniform Construction Code: prior approvals; abandoned wells	25 N.J.R. 2158(a)		
5:23-1.6, 2.15, 4.18	Uniform Construction Code: prototype plan review	25 N.J.R. 1629(a)	R.1993 d.353	25 N.J.R. 3147(a)
5:23-2.7, 9.3	Uniform Construction Code: ordinary repairs; interpretation	25 N.J.R. 2159(a)		
5:23-2.17, 8	Asbestos Hazard Abatement Subcode	24 N.J.R. 1422(a)	R.1993 d.198	25 N.J.R. 2519(b)
5:23-2.23	Uniform Construction Code: ventilation system requirements in Class I and II business and education buildings	25 N.J.R. 2161(a)		
5:23-4.4, 4.5, 4.5A, 4.12, 4.14, 4.18, 4.20	Uniform Construction Code: private on-site inspection agencies	25 N.J.R. 2162(a)		
5:23-8	Asbestos Hazard Abatement Subcode: administrative corrections	————	————	25 N.J.R. 2862(a)
5:25-2.5, 5.4	New home warranties and builders' registration: administrative corrections	————	————	25 N.J.R. 2545(a)
5:30	Local Finance Board rules	25 N.J.R. 1630(a)	R.1993 d.297	25 N.J.R. 2688(a)
5:51	Handicapped persons recreational opportunities	25 N.J.R. 2633(a)		
5:70-6.3	Congregate Housing Services Program: service subsidy formula	25 N.J.R. 2634(a)		
5:80-23	Housing and Mortgage Finance Agency: Housing Incentive Note Purchase Program	25 N.J.R. 1847(a)	R.1993 d.370	25 N.J.R. 3148(a)
5:80-23.9	Housing and Mortgage Finance Agency: Housing Incentive Note Purchase Program fees	25 N.J.R. 3053(a)		
5:91-14	Council on Affordable Housing: interim procedures	25 N.J.R. 1118(a)		
5:92-1.1	Council on Affordable Housing: substantive rules	25 N.J.R. 1118(a)		
5:93	Council on Affordable Housing: substantive rules	25 N.J.R. 1118(a)		
	Most recent update to Title 5: TRANSMITTAL 1993-5 (supplement May 17, 1993)			
MILITARY AND VETERANS' AFFAIRS—TITLE 5A				
5A:7-1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1317(a)		
	Most recent update to Title 5A: TRANSMITTAL 1992-2 (supplement September 21, 1992)			
EDUCATION—TITLE 6				
6:3	School districts	25 N.J.R. 1095(a)	R.1993 d.272	25 N.J.R. 2249(a)
6:3-9	School Ethics Commission	25 N.J.R. 1924(a)	R.1993 d.394	25 N.J.R. 3511(a)
6:11-3.2	Professional licensure and standards: fees	25 N.J.R. 1111(a)	R.1993 d.266	25 N.J.R. 2263(a)
6:21-12	Use of school buses	25 N.J.R. 1095(a)	R.1993 d.272	25 N.J.R. 2249(a)
6:28-1.1, 1.3, 2.3, 2.6, 2.7, 3.2, 3.7, 4.1–4.4, 7.5, 8.4, 9.2, 10.1, 10.2, 11.2, 11.4, 11.9	Special education	25 N.J.R. 1318(a)	R.1993 d.393	25 N.J.R. 3515(a)
6:29-1.7, 9, 10	Eye protection in schools; reporting of child abuse allegations; safe and drug free schools	25 N.J.R. 1095(a)	R.1993 d.272	25 N.J.R. 2249(a)
6:30	Adult education programs	25 N.J.R. 1112(a)	R.1993 d.267	25 N.J.R. 2264(a)
	Most recent update to Title 6: TRANSMITTAL 1993-4 (supplement May 17, 1993)			

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ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7				
7:0	Well construction and sealing: request for public comment regarding comprehensive rules	24 N.J.R. 3286(a)		
7:0	Green glass marketing and recycling: request for public input on feasibility study	25 N.J.R. 1654(a)		
7:0	Regulated Medical Waste Management Plan: public hearing and opportunity for comment	25 N.J.R. 1654(b)		
7:1D	Allocation of water supply costs for emergency water projects	25 N.J.R. 2635(a)		
7:1E	Discharges of petroleum and other hazardous substances: request for public comment on draft amendments	25 N.J.R. 2636(a)		
7:1F-2.2, App. A	Environmental Hazardous Substances and Industrial Survey lists: copper phthalocyanine compounds; confidentiality	25 N.J.R. 2166(a)		
7:1G-1–5, 7	Worker and Community Right to Know	25 N.J.R. 1631(a)		
7:1G-1.2, 6.1–6.11, 6.13-6.16	Worker and Community Right to Know Act: trade secrets and definitions	25 N.J.R. 858(a)	R.1993 d.386	25 N.J.R. 3537(a)
7:1G-2.1, 6.4	Environmental Hazardous Substances and Industrial Survey lists: copper phthalocyanine compounds; confidentiality	25 N.J.R. 2166(a)		
7:1I	Processing of damage claims under Sanitary Landfill Facility Contingency Fund Act	25 N.J.R. 741(a)	R.1993 d.303	25 N.J.R. 2715(a)
7:1K-1.5, 3.1, 3.4, 3.9-3.11, 4.3, 4.5, 4.7, 5.1, 5.2, 6.1, 6.2, 7.2, 7.3, 9.2-9.5, 9.7, 12.6-12.9	Pollution Prevention Program requirements	25 N.J.R. 1849(a)		
7:2-2.20, 3.6, 6.4, 8.4, 8.6, 10.2, 16.5, 17.1, 17.3, 17.4, 17.5	State Park Service Code	25 N.J.R. 2799(b)		
7:3	Bureau of Forestry rules	25 N.J.R. 1348(a)	R.1993 d.304	25 N.J.R. 2704(a)
7:4B	Historic Preservation Revolving Loan Program	25 N.J.R. 748(a)		
7:5A	Natural Areas System	25 N.J.R. 1350(a)	R.1993 d.350	25 N.J.R. 3150(a)
7:5B	Open lands management	25 N.J.R. 1354(a)	R.1993 d.359	25 N.J.R. 3153(a)
7:7A-1.4, 2.7	Freshwater Wetlands Protection Act rules: definition of project	25 N.J.R. 1642(a)		
7:7E-7.4	Coastal zone management: Outer Continental Shelf oil and gas exploration and development	25 N.J.R. 5(a)		
7:9-4	Surface water quality standards: request for public comment on draft Practical Quantitation Levels	24 N.J.R. 4008(a)		
7:9-4 (7:9B)	Surface water quality standards; draft Practical Quantitation Levels; total phosphorus limitations and criteria: extension of comment periods and notice of roundtable discussion	25 N.J.R. 404(a)		
7:9-4 (7:9B-1), 6.3	Surface water quality standards	24 N.J.R. 3983(a)		
7:9-4.5, 4.14, 4.15	Surface water quality standards	25 N.J.R. 405(a)		
7:9-4.14 (7:9B-1.14)	NJPDES program and surface water quality standards: request for public comment regarding total phosphorous limitations and criteria	24 N.J.R. 4008(b)		
7:9-4.14, 4.15 (7:9B-1.14, 1.15)	Surface water quality standards: administrative corrections to proposal	24 N.J.R. 4471(a)		
7:9A-1.1, 1.2, 1.6, 1.7, 2.1, 3.3, 3.4, 3.5, 3.7, 3.9, 3.10, 3.12, 3.14, 3.15, 5.8, 6.1, 8.2, 9.2, 9.3, 9.5, 9.6, 9.7, 10.2, 12.2–12.6, App. A, B	Individual subsurface sewage disposal systems	24 N.J.R. 1987(a)	R.1993 d.294	25 N.J.R. 2704(b)
7:11	New Jersey Water Supply Authority: policies and procedures	25 N.J.R. 1036(a)	R.1993 d.239	25 N.J.R. 2267(a)
7:11-2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: rates for sale of water	24 N.J.R. 4472(a)	R.1993 d.240	25 N.J.R. 2267(b)
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: rates for sale of water	24 N.J.R. 4474(a)	R.1993 d.241	25 N.J.R. 2269(a)
7:14-8.4	Request for adjudicatory hearing on penalty assessment for violations of Water Pollution Control Act: administrative correction	————	————	25 N.J.R. 2862(b)
7:14A	NJPDES Program: opportunity for interested party review of permitting system	25 N.J.R. 411(a)		
7:14A	NJPDES Program: extension of comment period for interested party review of permitting system	25 N.J.R. 1863(a)		

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7:14A-1.8	NJPDES Program fees	25 N.J.R. 1358(a)		
7:14A-1.9, 3.14	Surface water quality standards	24 N.J.R. 3983(a)		
7:14A-4.7	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)	R.1993 d.300	25 N.J.R. 2718(a)
7:14B-1.6, 2.2, 2.6, 2.7, 2.8, 3.1–3.8	Underground Storage Tanks Program fees	25 N.J.R. 1363(a)		
7:22-3.4, 3.7, 3.8, 3.9, 3.11, 3.17, 3.20, 3.26, 3.27, 3.32, 3.34, 3.37, 4.4, 4.7, 4.8, 4.9, 4.11, 4.13, 4.17, 4.20, 4.26, 4.29, 4.32, 4.34, 4.37, 4.46, 5.4, 5.11, 5.12, 6.17, 6.27, 10.2, 10.3, 10.8, 10.9, 10.11, 10.12	Financial assistance programs for wastewater treatment facilities	24 N.J.R. 4310(b)	R.1993 d.242	25 N.J.R. 2271(a)
7:22-9.1, 9.2, 9.4, 9.11–9.15, 10.1, 10.2, 10.4, 10.5, 10.6	Sewage Infrastructure Improvement Act grants: interconnection and cross-connection abatement	25 N.J.R. 1643(a)		
7:22A-1.4, 1.5, 1.7, 1.12, 1.15, 1.16, 2.4, 2.5, 2.6, 2.8, 3.4, 4.2, 4.5, 4.8, 4.11, 6.1–6.9, 6.11, 6.12, 6.14, 6.15, 7	Sewage Infrastructure Improvement Act grants: interconnection and cross-connection abatement	25 N.J.R. 1643(a)		
7:25-1.5	Fish and Game Council: license, permit and stamp fees	25 N.J.R. 1928(a)	R.1993 d.360	25 N.J.R. 3154(a)
7:25-5	1993-94 Game Code	25 N.J.R. 1930(a)	R.1993 d.390	25 N.J.R. 3519(a)
7:25-6	1994-95 Fish Code	25 N.J.R. 3053(b)		
7:25-7.13, 14.1, 14.2, 14.4, 14.6, 14.7, 14.8, 14.11, 14.12, 14.13	Crab management	25 N.J.R. 1371(a)		
7:25-11	Introduction of imported or non-native shellfish or finfish into State's marine waters	24 N.J.R. 3660(a)		
7:25-18.1, 18.14	Summer flounder permit conditions	25 N.J.R. 2167(a)		
7:25-18.12	Weakfish management: administrative correction	———	———	25 N.J.R. 2281(a)
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	25 N.J.R. 754(a)		
7:26-1.4, 9.3	Hazardous waste management: satellite accumulation areas	25 N.J.R. 1864(a)		
7:26-2.11, 2.13, 2B.9, 2B.10, 6.2, 6.8	Solid waste flow through transfer stations and materials recovery facilities	24 N.J.R. 3286(c)		
7:26-4A.6	Hazardous waste program fees: annual adjustment	24 N.J.R. 2001(a)	R.1993 d.302	25 N.J.R. 2719(a)
7:26-6.6	Procedure for modification of waste flows	25 N.J.R. 991(a)		
7:26-7.7, 8.20	Used motor oil recycling	24 N.J.R. 2383(a)	R.1993 d.342	25 N.J.R. 2863(a)
7:26-8.8, 8.12, 8.19	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)		
7:26-8.13, 8.16, 8.19	Hazardous waste listings: F024 and F025	25 N.J.R. 755(a)	R.1993 d.351	25 N.J.R. 3155(a)
7:26-12.3	Hazardous waste management: interim status facilities	24 N.J.R. 4253(a)		
7:26A-6	Used motor oil recycling	24 N.J.R. 2383(a)	R.1993 d.342	25 N.J.R. 2863(a)
7:26B-1.3, 1.5, 1.6, 1.8, 1.9	Environmental Cleanup Responsibility Act (ECRA) rules: operative date of amendments	———	———	25 N.J.R. 3155(b)
7:26B-1.3, 1.10, 1.11, 1.12	Environmental Cleanup Responsibility Act Program fees	25 N.J.R. 1375(a)		
7:26E	Technical requirements for contaminated site remediation	24 N.J.R. 1695(a)	R.1993 d.245	25 N.J.R. 2281(b)
7:27-8.1, 8.3, 8.27	Air pollution control: requirements and exemptions under facility-wide permits	24 N.J.R. 4323(a)		
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	25 N.J.R. 631(a)		
7:27-25.9	Oxygenated fuels program: variance for contemporaneous averaging provision	———	———	25 N.J.R. 2720(a)
7:27-26	Low Emissions Vehicle Program	25 N.J.R. 1381(a)		
7:27A-3.5, 3.10	Control and prohibition of air pollution from oxides of nitrogen: civil administrative penalties	25 N.J.R. 631(a)		
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations	25 N.J.R. 7(a)		
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations; extension of comment period	25 N.J.R. 1039(a)		
7:29-1.1, 1.2, 2	Determination of noise from stationary sources: extension of comment period	25 N.J.R. 1425(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:29-1.1, 1.5, 2	Determination of noi ie from stationary sources	25 N.J.R. 1040(a)	R.1993 d.301	25 N.J.R. 2721(a)
7:31	Toxic Catastrophe Pr evention Act Program	25 N.J.R. 1425(b)	R.1993 d.358	25 N.J.R. 3156(a)
7:32	Energy conservation n State buildings	25 N.J.R. 1655(a)	R.1993 d.347	25 N.J.R. 2868(a)
7:36	Green Acres Progran : opportunity to review draft rule revisions	25 N.J.R. 1473(a)		
7:36-9	Green Acres Progran : nonprofit land acquisition	24 N.J.R. 2405(a)	R.1993 d.265	25 N.J.R. 2472(a)
7:61	Commissioners of Pil otage: licensure of Sandy Hook pilots	24 N.J.R. 3477(a)	R.1993 d.385	25 N.J.R. 3534(a)

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8:2	Creation of birth recc rd: reopening of comment period	25 N.J.R. 660(a)		
8:2A-1	Access to death recor ls	25 N.J.R. 3115(a)		
8:18	Catastrophic Illness i Children Relief Fund Program	25 N.J.R. 2169(a)		
8:21-3.13	Repeal (see 8:21-3A)	24 N.J.R. 3100(a)		
8:21-3A	Registration of manu acturers and wholesale distributors of non- prescription drugs, and manufacturers and wholesale distributors of devices	24 N.J.R. 3100(a)		
8:23-6	Pilot low-cost spaying and neutering clinic surgery fees	25 N.J.R. 3116(a)		
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8:24-8, 9	Temporary and mobil e retail food establishments and agricultural market	25 N.J.R. 1965(b)	R.1993 d.345	25 N.J.R. 2872(a)
8:25	Youth Camp Safety A ct standards	25 N.J.R. 756(a)	R.1993 d.264	25 N.J.R. 2546(b)
8:31B-1.1	Hospital financing	25 N.J.R. 3117(a)		
8:31B-2, 3.70	Hospital reimburseme nt: bill-patient data submissions; revenue cap monitc ring	25 N.J.R. 1660(a)	R.1993 d.362	25 N.J.R. 3205(a)
8:31B-3.41, 4.38, 4.39, 4.40, 7	Hospital reimburseme nt: uncompensated care	25 N.J.R. 3125(a)		
8:33	Certificate of Need: a plication and review process	25 N.J.R. 2171(a)		
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8:33A-1.2, 1.16	Hospital Policy Manu l: applicant preference; equity requirement	24 N.J.R. 4476(a)		
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8:39	Long-term care facilit es: licensing standards	25 N.J.R. 1474(a)	R.1993 d.341	25 N.J.R. 2878(a)
8:39-13.4, 27.1, 27.8, 29.4, 33.2, 45, 46	Long-term care facilit es: use of restraints and psychoactive drugs; pharmacy supplies; Alzheimer's and dementia care s ervices	24 N.J.R. 4228(a)	R.1993 d.230	25 N.J.R. 2548(a)
8:40-1.1, 2.3, 2.7, 3.1, 4.12, 5.23, 6.26	Invalid coach and amb ulance services: licensure; street EMS	25 N.J.R. 2663(a)		
8:41	Mobile intensive care programs	24 N.J.R. 3255(b)	R.1993 d.202	25 N.J.R. 2721(b)
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8:42B	Drug treatment facilit es: standards for licensure	25 N.J.R. 1476(a)	R.1993 d.340	25 N.J.R. 2879(a)
8:43	Licensure of residenti l health care facilities	25 N.J.R. 25(a)		
8:43	Licensure of residenti l health care facilities: public hearing	25 N.J.R. 757(a)		
8:43A	Ambulatory care facili ies: public meeting and request for comments regar ling Manual of Standards for Licensure	24 N.J.R. 3603(a)		
8:43A	Licensure of ambulato y care facilities	25 N.J.R. 757(b)		
8:43G-5.10	Hospital payments to maternal and child health consortia	25 N.J.R. 1295(a)	R.1993 d.236	25 N.J.R. 2555(a)
8:43G-5.10, 19.1, 19.20	Hospital licensing stan lards: funding for regionalized services; obstetric se vices structural organization	25 N.J.R. 1117(a)	R.1993 d.286	25 N.J.R. 2554(a)
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8:57-3.2	Physician reporting of occupational and environmental diseases and injuries	25 N.J.R. 2186(a)		
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8:59-App. A, B	Worker and Communi y Right to Know Act: preproposal concern ng Hazardous Substance List and Special Health Hazard Substance List	25 N.J.R. 792(a)		
8:70	List of Interchangeable Drug Products: evaluation and acceptance criteria	25 N.J.R. 1814(a)	R.1993 d.333	25 N.J.R. 2879(b)
8:71	Interchangeable drug p roducts (see 24 N.J.R. 2557(b), 3173(a), 4260(b); 25 N.J.R. 582(a))	24 N.J.R. 1674(a)	R.1993 d.226	25 N.J.R. 1970(b)

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8:71	Interchangeable drug products (see 24 N.J.R. 3174(c), 3728(a), 4262(a); 25 N.J.R. 583(a))	24 N.J.R. 2414(b)	R.1993 d.338	25 N.J.R. 2882(b)
8:71	Interchangeable drug products (see 24 N.J.R. 4261(a); 25 N.J.R. 582(b))	24 N.J.R. 2997(a)	R.1993 d.225	25 N.J.R. 1970(a)
8:71	Interchangeable drug products (see 25 N.J.R. 580(b))	24 N.J.R. 4009(a)	R.1993 d.339	25 N.J.R. 2883(a)
8:71	Interchangeable drug products (see 25 N.J.R. 1221(a), 1969(c))	25 N.J.R. 55(a)	R.1993 d.337	25 N.J.R. 2882(a)
8:71	Interchangeable drug products (see 25 N.J.R. 1970(c))	25 N.J.R. 875(a)	R.1993 d.336	25 N.J.R. 2881(b)
8:71	Interchangeable drug products	25 N.J.R. 1814(b)	R.1993 d.335	25 N.J.R. 2881(a)
8:71	Interchangeable drug products	25 N.J.R. 1815(a)	R.1993 d.334	25 N.J.R. 2879(c)
8:71	Interchangeable drug products list	25 N.J.R. 2802(a)		
8:71	Interchangeable drug products	25 N.J.R. 2802(b)		
8:100	State Health Planning Board: public hearings on draft chapters of State Health Plan	24 N.J.R. 3788(a)		
8:100	State Health Plan: draft chapters	24 N.J.R. 3789(a)		
8:100	State Health Plan: draft chapters on AIDS, and preventive and primary care	24 N.J.R. 4151(a)		

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9:2-11	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(a)		
9:7-2.6	Student assistance programs: independent student status	25 N.J.R. 1945(a)	R.1993 d.388	25 N.J.R. 3464(a)
9:9	NJHEAA student loan programs	25 N.J.R. 2187(a)		
9:11-1.1, 1.2, 1.4, 1.6, 1.10, 1.22, 1.23	Educational Opportunity Fund: student eligibility for undergraduate grants	25 N.J.R. 1663(a)		
9:11-1.5	Educational Opportunity Fund Program: financial eligibility for undergraduate grants	25 N.J.R. 1946(a)		

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10:4	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(b)		
10:8	Patient advance directives; DNR orders; declaration of death	25 N.J.R. 2669(a)		
10:14	Statewide Respite Care Program Manual	25 N.J.R. 876(a)	R.1993 d.256	25 N.J.R. 2557(b)
10:15-1.2	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:15A-1.2	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:15B-1.2, 2.1	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:15C-1.1	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
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10:37-5.37–5.43	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
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10:37A	Community residences for mentally ill adults	25 N.J.R. 2672(a)		
10:37B	Psychiatric community residences for youth	25 N.J.R. 2197(a)		
10:38A	Pre-Placement Program for patients at State psychiatric facilities	24 N.J.R. 4326(a)	R.1993 d.356	25 N.J.R. 3213(a)
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10:51	Pharmaceutical Services Manual	24 N.J.R. 3053(a)		
10:52-1.1	Hospital services reimbursement methodology	25 N.J.R. 1582(a)	R.1993 d.263	25 N.J.R. 2560(a)
10:52-1.9, 1.13	Reimbursement methodology for distinct units in acute care hospitals and for private psychiatric hospitals	24 N.J.R. 4477(a)		
10:52-1.23	Inpatient hospital services: adjustments to Medicaid payer factors	24 N.J.R. 4478(a)		
10:52-5, 6, 7, 8, 9	Hospital services reimbursement methodology	25 N.J.R. 1582(a)	R.1993 d.263	25 N.J.R. 2560(a)
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10:60-1.1–1.17, 2.2, 2.4, 2.5, 2.8, 2.9, 2.10, 2.12, 2.14, 2.15, 2.16, 3.2, 3.3, 3.6, 4.2, 6, App. A, H	Home Care Services Manual	25 N.J.R. 2803(a)		
10:63-3.3, 3.8	Long-term care services: elimination of salary regions	25 N.J.R. 433(a)	R.1993 d.371	25 N.J.R. 3215(a)
10:66-1.2, 1.6, 1.7	Independent clinic services: ambulatory care/family planning/surgical facility	25 N.J.R. 2683(a)		
10:66-1.5, 1.6, 3	Independent mental health clinics: personal care assistant services	25 N.J.R. 3058(a)		
10:69	Hearing Aid Assistance to the Aged and Disabled Eligibility Manual	25 N.J.R. 228(a)	R.1993 d.281	25 N.J.R. 2589(a)
10:69-5.8; 69A-5.4, 5.6, 6.12, 7.2; 69B-4.13	HAAAD, PAAD, and Lifeline programs: fair hearing requests, prescription reimbursement, benefits recovery	24 N.J.R. 4329(a)	R.1993 d.368	25 N.J.R. 3216(a)
10:71-4.8, 5.4, 5.5, 5.6, 5.9	Medicaid Only: eligibility computation amounts	25 N.J.R. 1818(a)		
10:72-1.1, 4.1, 4.5	New Jersey Care—Special Medicaid Manual: specified low-income Medicare beneficiaries	25 N.J.R. 1042(b)	R.1993 d.369	25 N.J.R. 3217(a)
10:81-8.22	Medicaid eligibility of dependent child of adolescent parent	25 N.J.R. 2815(a)		
10:81-11.4, 11.16A, 11.20	Public Assistance Manual: closing criteria for IV-D cases; application fee for non-AFDC applicants	25 N.J.R. 881(a)		
10:81-11.5, 11.7, 11.9, 11.20, 11.21	Public Assistance Manual: child support and paternity services	24 N.J.R. 2328(a)	R.1993 d.282	25 N.J.R. 2589(b)
10:81-11.7, 11.9	Non-AFDC child support orders	25 N.J.R. 2816(a)		
10:81-11.21	Review and adjustment of child support orders in AFDC, foster care, and Medicaid Only cases	25 N.J.R. 2818(a)		
10:81-14.18A	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:82-3.14	Deeming income of parents or guardians of adolescent parent	25 N.J.R. 2819(a)		
10:82-5.3	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:84	Administration of public assistance programs: agency action on public hearing	24 N.J.R. 4480(a)		
10:84-1	Administration of public assistance programs	24 N.J.R. 4480(b)		
10:85-1.1, 3.1, 3.2, 4.2, 7.2	Eligibility for employable GA recipients	25 N.J.R. 1714(a)	R.1993 d.382	25 N.J.R. 3466(a)
10:86-10.2, 10.6	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:121A-1.5, 2.7	Manual of Requirements for Adoption Agencies: administrative correction and changes	————	————	25 N.J.R. 2591(a)
10:121A-1.5, 3.4, 5.4, 5.5, 5.6, 5.18, 5.10	Manual of Requirements for Adoption Agencies: administrative corrections	————	————	25 N.J.R. 2883(b)
10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses	25 N.J.R. 2684(a)		
10:127	Residential child care facilities: manual of requirements	25 N.J.R. 1716(a)		
10:133C-4	Division of Youth and Family Services: case goals	25 N.J.R. 1947(a)		
10:133D-2	DYFS case management: case plan	25 N.J.R. 2209(a)		
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10:140	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(a)		
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10A:1-2.2	"Division of Operations", "indigent inmate" defined	25 N.J.R. 1043(a)	R.1993 d.246	25 N.J.R. 2591(b)
10A:1-3	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(b)		
10A:2-6.2, 6.3, 6.4	Investigation of adult and juvenile inmate property claims: administrative changes	————	————	25 N.J.R. 3218(a)
10A:3-9.6	Recall of inmate to court	25 N.J.R. 2820(a)		
10A:31-5.1, 5.2, 5.3	Adult county correctional facilities: staff training	25 N.J.R. 1817(a)	R.1993 d.324	25 N.J.R. 2884(a)
10A:71-3.2, 3.21	State Parole Board: calculation of parole eligibility terms	25 N.J.R. 1665(a)		
10A:71-3.47	Inmate parole hearing: victim testimony process	24 N.J.R. 4483(a)		
10A:71-6.4, 7.3	State Parole Board: conditions of parole	25 N.J.R. 435(a)		
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11:1-7	New Jersey Property-Liability Insurance Guaranty Association: plan of operation	25 N.J.R. 1045(a)		
11:1-31	Surplus lines insurer eligibility	25 N.J.R. 1819(a)		
11:1-32.4	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)	R.1992 d.371	24 N.J.R. 3414(a)
11:1-32.4	Workers' compensation self-insurance: extension of comment period	24 N.J.R. 2708(b)		
11:1-34	Surplus lines: exportable list procedures	24 N.J.R. 4331(a)		
11:2-34	Surplus lines: allocation of premium tax and surcharge	25 N.J.R. 1827(a)		
11:3-2.2, 2.4, 2.5, 2.6, 2.11, 2.12	Personal Automobile Insurance Plan	25 N.J.R. 2212(a)		
11:3-2.8, 33.2, 34.4, 44	Automobile insurance: provision of coverage to all applicants who qualify as eligible persons	25 N.J.R. 1290(a)	R.1993 d.238	25 N.J.R. 2479(a)
11:3-3	Limited assignment distribution servicing carriers	25 N.J.R. 1327(b)		
11:3-16.7	Automobile insurance: rating programs for physical damage coverages	24 N.J.R. 3604(a)		
11:3-20.5, 20A.1	Automobile insurers: reporting apportioned share of MTF losses in excess profits reports; ratio limiting the effect of negative excess investment income	25 N.J.R. 1829(a)		
11:3-28.1, 28.2, 28.4, 28.6, 28.10-28.13, App. A, B	Reimbursement of excess medical expense benefits paid by automobile insurers	25 N.J.R. 2636(b)		
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11:3-29.6	Automobile PIP coverage: physical therapy services	24 N.J.R. 2998(a)		
11:3-42.2, 42.9	Producer Assignment Program: request for exemption	25 N.J.R. 2215(a)		
11:5-1.9	Real Estate Commission: transmittal of funds to lenders	24 N.J.R. 4268(a)		
11:5-1.23	Real Estate Commission: transmittal by licensees of written offers on property	24 N.J.R. 3486(a)	R.1993 d.365	25 N.J.R. 3219(a)
11:5-1.38	Real Estate Commission: pre-proposal regarding buyer-brokers	24 N.J.R. 3488(b)		
11:5-1.43	Real Estate Commission: licensee provision of Agency Information Statement	25 N.J.R. 1948(a)		
11:5-1.43	Real Estate Commission: extension of comment period regarding licensee provision of Agency Information Statement	25 N.J.R. 2645(a)		
11:6-2	Workers' compensation managed care organizations	25 N.J.R. 1330(a)	R.1993 d.346	25 N.J.R. 2885(a)
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11:13-8	Commercial lines: prospective loss costs filing procedures	25 N.J.R. 1047(a)		
11:15-3	Joint insurance funds for local government units providing group health and term life benefits	25 N.J.R. 436(a)	R.1993 d.354	25 N.J.R. 3220(a)
11:17-1.2, 2.3–2.15, 5.1–5.6	Insurance producer licensing	24 N.J.R. 3216(a)		
11:17A-1.2, 1.7	Automobile insurance: provision of coverage to all applicants who qualify as eligible persons	25 N.J.R. 1290(a)	R.1993 d.238	25 N.J.R. 2479(a)
11:19-2.2, 2.3, 2.5, App. B	Data submission requirements for all domestic insurers	25 N.J.R. 2820(b)		
11:20	Individual Health Coverage Program	Emergency (expires 8-13-93)	R.1993 d.344	25 N.J.R. 2945(a)

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12:7	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA): extension of comment period	25 N.J.R. 2216(a)		
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12:23	Workforce Development Partnership Program: application and review process for customized training services	25 N.J.R. 449(a)		
12:23-3	Workforce Development Partnership Program: application and review process for individual training grants	25 N.J.R. 884(a)		
12:23-4	Workforce Development Partnership Program: application and review process for approved training	25 N.J.R. 886(a)		
12:23-5	Workforce Development Partnership Program: application and review process for additional unemployment benefits during training	25 N.J.R. 887(a)		

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12:23-6	Workforce Development Partnership Program: application and review process for employment and training grants for services to disadvantaged workers	25 N.J.R. 1054(a)		
12:45	Vocational Rehabilitation Services: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 2216(b)		
12:60-3.2, 4.2	Prevailing wages on public works contracts: telecommunications worker	24 N.J.R. 2689(a)		
12:60-3.2, 4.2	Prevailing wages on public works contracts: extension of comment period	24 N.J.R. 3015(b)		
12:60-3.2, 4.2	Prevailing wages for public works: extension of comment period	24 N.J.R. 3607(a)		
12:100-4.2	Public employee safety and health: occupational exposure to bloodborne pathogens	24 N.J.R. 3607(b)	R.1993 d.323	25 N.J.R. 2894(a)
12:100-4.2	Public employee safety and health: exposure to hazardous chemicals in laboratories	25 N.J.R. 453(b)	R.1993 d.308	25 N.J.R. 2688(b)
12:112	Occupational Safety and Health Review Commission	25 N.J.R. 3059(a)		
12:195	Carnival-amusement rides safety	25 N.J.R. 1832(a)	R.1993 d.343	25 N.J.R. 2896(a)
12:195-2.1, 3.22, 6.1, 7	Carnival and amusement rides: bungee jumping	25 N.J.R. 2128(a)	R.1993 d.374	25 N.J.R. 3500(a)

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12A:9	Development of small businesses and women and minority businesses: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 1335(c)		
12A:9	Development of small businesses and women and minority businesses	25 N.J.R. 1752(a)	R.1993 d.309	25 N.J.R. 2689(a)
12A:11	Certification of women-owned and minority-owned businesses	25 N.J.R. 1056(a)	R.1993 d.237	25 N.J.R. 2484(a)
12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses: extension of comment period	25 N.J.R. 2216(c)		
12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses	25 N.J.R. 2484(a)		
12A:31-1.4	New Jersey Development Authority: interest rate on direct loans	25 N.J.R. 891(a)	R.1993 d.243	25 N.J.R. 2484(b)
12A:120	Urban Enterprise Zone Program and business certification	25 N.J.R. 2645(b)		

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13:1	Police Training Commission rules	25 N.J.R. 1336(a)	R.1993 d.325	25 N.J.R. 2897(a)
13:1C	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1338(a)		
13:2-14.2, 14.7, 20.6, 21.4	Alcoholic beverage control: permits, insignia, and fees	25 N.J.R. 1340(a)	R.1993 d.288	25 N.J.R. 2485(a)
13:3	Amusement games control: effective date of readopted rules	————	————	25 N.J.R. 2689(b)
13:19-1.1, 1.7	Driver Control Service: administrative hearings applicability	25 N.J.R. 893(a)	R.1993 d.389	25 N.J.R. 3503(a)
13:19-10.1	Operating motorcycle or motorized bicycle without protective helmet	25 N.J.R. 2646(a)		
13:20-37	Motor vehicles with modified chassis height	24 N.J.R. 3662(a)		
13:20-37	Motor vehicles with modified chassis height: extension of comment period	24 N.J.R. 4333(b)		
13:20-38	Dimensional standards for automobile transporters	25 N.J.R. 1342(a)	R.1993 d.380	25 N.J.R. 3504(a)
13:26	Transportation of bulk commodities	25 N.J.R. 1343(a)		
13:28	Board of Cosmetology and Hairstyling rules	25 N.J.R. 893(b)	R.1993 d.287	25 N.J.R. 2485(b)
13:29-1.13	Board of Accountancy: biennial renewal fee for inactive or retired licensee	25 N.J.R. 1665(b)		
13:30-1.1	Board of Dentistry: qualifications of applicants for licensure to practice	25 N.J.R. 2216(d)		
13:30-8.5	Board of Dentistry: complaint review procedures	24 N.J.R. 2800(a)		
13:30-8.6	Board of Dentistry: professional advertising	24 N.J.R. 2801(a)	R.1993 d.332	25 N.J.R. 2898(a)
13:30-8.6	Board of Dentistry: professional advertising	25 N.J.R. 2823(a)		
13:30-8.7	Board of Dentistry: patient records	25 N.J.R. 1833(a)		
13:30-8.18	Continuing dental education	25 N.J.R. 1344(a)		
13:33-1.35, 1.36	Ophthalmic dispensers and technicians: referrals; space rental agreements	24 N.JR. 4010(a)		
13:34	Board of Marriage Counselor Examiners rules	25 N.J.R. 3060(a)		
13:35-6.10	Board of Medical Examiners: request for comment regarding advertising of specialty certification	25 N.J.R. 2824(a)		

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13:35-6.13, 9	Acupuncture Examining Board: practice of acupuncture	24 N.J.R. 4013(a)	R.1993 d.299	25 N.J.R. 2689(c)
13:35-6.13, 10.9	Board of Medical Examiners: fee schedule; athletic trainer registration fee	25 N.J.R. 1058(a)	R.1993 d.260	25 N.J.R. 2487(a)
13:35-6.18	Board of Medical Examiners: control of anabolic steroids	24 N.J.R. 4012(a)		
13:35-10	Practice of athletic trainers	25 N.J.R. 265(a)		
13:35-11	Board of Medical Examiners: Alternative Resolution Program	25 N.J.R. 2824(b)		
13:37	Board of Nursing rules	25 N.J.R. 455(b)		
13:37-7	Certification of nurse practitioners/clinical nurse specialists	25 N.J.R. 2829(a)		
13:37-12.1, 14	Board of Nursing: certification of homemaker-home health aides	25 N.J.R. 1950(a)		
13:37-13.1, 13.2	Nurse anesthetist: conditions for practice	24 N.J.R. 4020(a)	R.1993 d.306	25 N.J.R. 2695(a)
13:38-1.2, 1.3, 2.5	Practice of optometry: permissible advertising	24 N.J.R. 4237(a)	R.1993 d.357	25 N.J.R. 3232(a)
13:39-1.3	Board of Pharmacy: fee schedule	25 N.J.R. 1666(a)		
13:39-5.2	Board of Pharmacy: information on prescription labels	25 N.J.R. 1667(a)		
13:39-7.14	Board of Pharmacy: patient profile record system and patient counseling by pharmacist	25 N.J.R. 266(a)	R.1993 d.307	25 N.J.R. 2697(a)
13:41-2.1	Board of Professional Planners: professional misconduct	24 N.J.R. 3221(a)		
13:42	Board of Psychological Examiners rules	25 N.J.R. 3062(a)		
13:43	State Board of Shorthand Reporting rules	25 N.J.R. 3079(a)		
13:44C	Audio and Speech-Language Pathology Advisory Committee rules	25 N.J.R. 1668(a)	R.1993 d.383	25 N.J.R. 3504(b)
13:44G-1–5, 7, 8	Board of Social Work Examiners rules	25 N.J.R. 3081(a)		
13:45A-21, 22	Kosher Enforcement Bureau: sale of food represented as kosher	25 N.J.R. 3086(a)		
13:45A-24	Toy and bicycle safety	24 N.J.R. 3019(b)	R.1993 d.372	25 N.J.R. 3235(a)
13:45A-24	Toy and bicycle safety: extension of comment period	24 N.J.R. 3666(a)		
13:46-23.5, 23A	State Athletic Control Board: standards of ethical conduct	24 N.J.R. 4489(a)		
13:60	Motor carrier safety	25 N.J.R. 3091(a)		
13:70-3.40	Thoroughbred racing: minimum age for admittance to racetrack	25 N.J.R. 2647(a)		
13:70-12.4	Thoroughbred racing: claimed horse	25 N.J.R. 1059(a)		
13:70-14A.1	Thoroughbred racing: intent of medication rules	25 N.J.R. 3099(a)		
13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	25 N.J.R. 1060(a)	R.1993 d.262	25 N.J.R. 2488(a)
13:70-14A.9	Thoroughbred racing: administering medication to respiratory bleeders	25 N.J.R. 3100(a)		
13:70-20.11	Thoroughbred racing: limitations on entering or starting	25 N.J.R. 3101(a)		
13:70-21.4	Thoroughbred racing: medication	25 N.J.R. 3102(a)		
13:70-29.50	Thoroughbred racing: daily triple payoff in dead heat for win	25 N.J.R. 1671(a)	R.1993 d.366	25 N.J.R. 3238(a)
13:70-29.53	Thoroughbred racing: trifecta	25 N.J.R. 3103(a)		
13:71-2.3	Harness racing: suspension from driving	25 N.J.R. 2647(b)		
13:71-5.18	Harness racing: minimum age for admittance to racetrack	25 N.J.R. 2648(a)		
13:71-23.1	Harness racing: intent of medication rules	25 N.J.R. 3104(a)		
13:71-23.8	Harness racing: administering medication to respiratory bleeders	25 N.J.R. 3105(a)		
13:71-23.9	Harness racing: possession of drugs or drug instruments	25 N.J.R. 1061(a)	R.1993 d.261	25 N.J.R. 2488(b)
13:71-27.50	Harness racing: trifecta	25 N.J.R. 3106(a)		
13:75-1.7	Violent Crimes Compensation Board: reimbursement for funeral expenses	25 N.J.R. 674(a)	R.1993 d.250	25 N.J.R. 2488(c)
13:75-1.12	Violent Crimes Compensation Board: attorney's fees requiring affidavit of service	25 N.J.R. 674(b)	R.1993 d.251	25 N.J.R. 2489(a)

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14:3-3.6	Discontinuance of service to multi-family dwellings	25 N.J.R. 1346(a)		
14:3-5.1	Relocation or closing of utility office	24 N.J.R. 2132(a)	R.1993 d.298	25 N.J.R. 2699(a)
14:3-6.5	Public records	24 N.J.R. 1966(a)	R.1993 d.273	25 N.J.R. 2489(b)
14:3-7.15	Discontinuance of services to customers: notification of municipalities and others	24 N.J.R. 3023(a)		
14:3-10.15	Solid waste collection: customer lists	24 N.J.R. 3286(c)		
14:6-5	Natural gas service: inspection and operation of master meter systems	24 N.J.R. 4494(a)	R.1993 d.247	25 N.J.R. 2490(a)
14:10-5	Competitive telecommunications services	24 N.J.R. 1868(a)	R.1993 d.248	25 N.J.R. 2492(a)
14:11-7.10	Solid waste disposal facilities: initial tariff for special in lieu payment	24 N.J.R. 3286(c)		
14:11-8	Natural gas pipelines	25 N.J.R. 897(a)		
14:18-2.11	Cable television: pre-proposal regarding disposition of on-premises wiring	24 N.J.R. 4496(a)		

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14:18-2.11	Cable television: change in hearing date and comment period for pre-proposal regarding disposition of on-premises wiring	25 N.J.R. 270(a)		
14:18-9.2, 10.1–10.4	Cable television: testing of service and technical standards for system operation	24 N.J.R. 4497(a)	R.1993 d.234	25 N.J.R. 2700(a)
14:18-10.5	Cable television: performance monitoring	25 N.J.R. 2700(a)		

Most recent update to Title 14: TRANSMITTAL 1993-2 (supplement May 17, 1993)

ENERGY—TITLE 14A

Most recent update to Title 14A: TRANSMITTAL 1993-1 (supplement February 16, 1993)

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15:1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1347(a)		

Most recent update to Title 15: TRANSMITTAL 1993-2 (supplement May 17, 1993)

PUBLIC ADVOCATE—TITLE 15A

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16:1B	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1478(a)		
16:25	Utility accommodation	25 N.J.R. 2217(a)		
16:25A	Soil erosion and sediment control standards	25 N.J.R. 1479(a)	R.1993 d.276	25 N.J.R. 2496(a)
16:28	Speed limits for State highways	25 N.J.R. 1479(b)	R.1993 d.257	25 N.J.R. 2496(b)
16:28-1.33	Speed limit zones along Route 41 in Gloucester, Camden, and Burlington counties	25 N.J.R. 2833(a)		
16:28-1.41	Speed limit zones along U.S. 9 in Berkeley Township and Pine Beach Borough	25 N.J.R. 1834(a)	R.1993 d.327	25 N.J.R. 2913(c)
16:28-1.48, 1.93	Speed rates along Route 167 in Port Republic and Route 44 in Greenwich and West Deptford	25 N.J.R. 2225(a)		
16:28-1.92	Speed limit zones along Route 169 in Bayonne and Jersey City	25 N.J.R. 2834(a)		
16:28A-1.1, 1.7, 1.17, 1.23, 1.32, 1.36	Restricted parking and stopping along U.S. 1 Business in Mercer County, U.S. 9 in Ocean and Monmouth counties, Routes 25 and 33 in Middlesex County, U.S. 46 in Warren and Morris counties, and Route 57 in Warren County	25 N.J.R. 2226(a)		
16:28A	Restricted parking and stopping	25 N.J.R. 1479(b)	R.1993 d.257	25 N.J.R. 2496(b)
16:28A-1.6, 1.7, 1.33, 1.41, 1.52, 1.57	Restricted parking and stopping on Route 7 in Nutley, U.S. 9 in Galloway Township, Route 47 in Vineland, Route 77 in Bridgeton, Route 173 in Bethlehem, and U.S. 206 in Lawrence Township	25 N.J.R. 2649(a)		
16:28A-1.19, 1.98	Parking restrictions along Route 28 in Somerville and Route 56 in Pittsgrove Township	25 N.J.R. 1836(a)	R.1993 d.328	25 N.J.R. 2914(a)
16:28A-1.20, 1.25, 1.31, 1.41	Restricted parking and stopping along Route 29 in Lambertville, Route 35 in Berkeley Township, Route 45 in Woodbury, and Route 77 in Bridgeton	25 N.J.R. 3127(a)		
16:28A-1.36	Restricted parking along Route 57 in Washington Borough	25 N.J.R. 2834(b)		
16:28A-1.36, 1.41	Parking restrictions along Route 57 in Warren County and Route 77 in Bridgeton	25 N.J.R. 1835(a)	R.1993 d.329	25 N.J.R. 2915(a)
16:29	No passing	25 N.J.R. 1479(b)	R.1993 d.257	25 N.J.R. 2496(b)
16:30	Miscellaneous traffic rules	25 N.J.R. 1479(b)	R.1993 d.257	25 N.J.R. 2496(b)
16:30-3.8	Shoulder use lane along I-195 in Millstone Township	25 N.J.R. 2651(a)		
16:30-6.3	Weight limit restriction for trucks using Route 173 in Bloomsbury, Hunterdon County	25 N.J.R. 1838(a)	R.1993 d.330	25 N.J.R. 2916(a)
16:30-10.1	Midblock crosswalk on Route 28 in Somerville	25 N.J.R. 1838(b)	R.1993 d.331	25 N.J.R. 2916(b)
16:30-10.15	Midblock crosswalk along Route 27 in Franklin Township and North Brunswick	25 N.J.R. 3128(a)		
16:31	Turns	25 N.J.R. 1479(b)	R.1993 d.257	25 N.J.R. 2496(b)
16:31-1.10, 1.17, 1.22, 1.32	Turn restrictions along U.S. 30 in Waterford Township, Route 73 in Winslow Township, U.S. 130 in Mercer County, and Route 36 in Sea Bright	25 N.J.R. 2835(a)		
16:31A	Prohibited right turns on red	25 N.J.R. 1479(b)	R.1993 d.257	25 N.J.R. 2496(b)
16:41D	Motorist service signs on non-urban interstate and limited access highways	25 N.J.R. 2836(a)		
16:44	Construction services	25 N.J.R. 1954(a)		
16:44	Construction Services: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 2227(a)		
16:47-1.1, 4.1, 4.3–4.6, 4.13, 4.32, 4.35, App. B	State Highway Access Management Code	25 N.J.R. 3129(a)		

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16:47-4.4	State Highway Access Management Code: administrative correction	———	———	25 N.J.R. 3238(b)
16:49-1.3, 1.5, 2.1, App.	Transportation of hazardous materials	25 N.J.R. 1065(a)	R.1993 d.235	25 N.J.R. 2497(a)
16:50	Employer Trip Reduction Program (ETRP)	25 N.J.R. 3132(a)		
16:53C	Rail freight program	25 N.J.R. 1481(a)	R.1993 d.277	25 N.J.R. 2503(a)
16:54	Licensing of aeronautical and aerospace facilities	24 N.J.R. 2542(a)	R.1993 d.348	25 N.J.R. 2916(c)
16:54	Licensing of aeronautical and aerospace facilities: extension of comment period	24 N.J.R. 3026(a)		
16:54	Licensing of aeronautical and aerospace facilities: extension of comment period	24 N.J.R. 4025(a)		
16:55	Licensing of aeronautical activities	25 N.J.R. 1483(a)	R.1993 d.278	25 N.J.R. 2505(a)
16:60	Office of Aviation: issuance of summons and designation of law enforcement officer	25 N.J.R. 1484(a)	R.1993 d.279	25 N.J.R. 2505(b)
16:61	Aircraft accidents	25 N.J..R 1485(a)	R.1993 d.280	25 N.J.R. 2505(c)
16:80	NJ TRANSIT: Section 16(b)(2) Capital Assistance Program	25 N.J.R. 3142(a)		
16:81	NJ TRANSIT: Small Urban and Rural Area Public Transportation Program	25 N.J.R. 3144(a)		
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17:1	Division of Pensions and Benefits: administration of public employee retirement systems and benefit programs	25 N.J.R. 1955(a)	R.1993 d.376	25 N.J.R. 3506(a)
17:1-10, 11	State Prescription Drug Program; Dental Expenses Program (recodify to 17:9-8, 9)	25 N.J.R. 675(b)	R.1993 d.268	25 N.J.R. 3506(b)
17:2-4.3	Public Employees' Retirement System: school year members	25 N.J.R. 908(a)	R.1993 d.296	25 N.J.R. 2701(a)
17:9	State Health Benefits Program	25 N.J.R. 2651(b)		
17:9-1.5	State Health Benefits Program: local employer reentry	25 N.J.R. 460(a)	R.1993 d.269	25 N.J.R. 2505(d)
17:9-2.3	State Health Benefits Program: annual enrollment periods	24 N.J.R. 4025(b)	R.1993 d.259	25 N.J.R. 2506(a)
17:9-2.4	State Health Benefits Program: retirement or COBRA enrollment	24 N.J.R. 4025(c)	R.1993 d.249	25 N.J.R. 2506(b)
17:9-2.4	State Health Benefits Program: reinstatement of prior coverage after return from approved leave of absence	25 N.J.R. 1671(b)	R.1993 d.349	25 N.J.R. 2899(a)
17:9-4.1, 4.5	State Health Benefits Program: "appointive officer" eligibility	24 N.J.R. 3493(a)		
17:10	Judicial Retirement System	25 N.J.R. 1956(a)	R.1993 d.375	25 N.J.R. 3507(a)
17:16-61.5	State Investment Council: Cash Management Fund investments	25 N.J.R. 2839(a)		
17:20	Lottery Commission rules	25 N.J.R. 1347(b)	R.1993 d.310	25 N.J.R. 2701(b)
17:32-7	State Development and Redevelopment Plan: voluntary submission of municipal and county plans for consistency review	25 N.J.R. 1839(a)	R.1993 d.367	25 N.J.R. 3238(c)
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18:2-3	Payment of taxes by electronic funds transfer	25 N.J.R. 1078(a)		
18:7-1.16	Corporation Business Tax: financial businesses	25 N.J.R. 1841(a)	R.1993 d.364	25 N.J.R. 3239(a)
18:7-13.8	Corporation Business Tax: claims for refund	25 N.J.R. 1842(a)		
18:9	Business Personal Property Tax	25 N.J.R. 1485(a)	R.1993 d.312	25 N.J.R. 2899(b)
18:12	Local property tax rules: preparation of tax lists; revaluation; appeals; homestead rebate; exemptions	25 N.J.R. 2652(a)		
18:12-10.1, 10.2, 10.3	Local property tax: classification of real and personal property	25 N.J.R. 61(a)		
18:12A-18:17	Local property taxation: county boards; senior citizens' deduction; farmland assessment; realty transfer fee; assessor qualification	25 N.J.R. 2653(a)		
18:24	Sales and Use Tax	25 N.J..R 1486(a)	R.1993 d.313	25 N.J.R. 2899(c)
18:26	Transfer Inheritance Tax and Estate Tax	25 N.J.R. 1498(a)	R.1993 d.314	25 N.J.R. 2906(a)
18:35	Gross Income Tax; setoff of individual liability	25 N.J.R. 1500(a)	R.1993 d.315	25 N.J.R. 2906(b)
18:35-1.14, 1.25	Gross Income Tax: partnerships; net profits from business	25 N.J.R. 677(a)		
18:35-1.17	Gross income tax: Health Care Subsidy Fund withholding	25 N.J.R. 1957(a)		
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TITLE 19—OTHER AGENCIES				
19:8	Use and administration of Garden State Parkway	25 N.J..R 1500(b)	R.1993 d.290	25 N.J.R. 2701(c)
19:9	Turnpike Authority rules	25 N.J.R. 2839(b)		
19:9-1.9	Turnpike Authority: double bottom trailer permits	25 N.J.R. 684(a)	R.1993 d.311	25 N.J.R. 2906(c)

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19:9-2.7	Turnpike Authority construction contracts: withdrawal of bid for unilateral mistake	25 N.J.R. 62(b)	R.1993 d.326	25 N.J.R. 2906(d)
19:17	PERC Appeal Board rules	25 N.J.R. 1842(b)	R.1993 d.322	25 N.J.R. 2907(a)
19:25-15.17, 15.48	Public financing of general election candidates for Governor	25 N.J.R. 1957(b)	R.1993 d.363	25 N.J.R. 3240(a)
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19:40-2.1	Organization and operation of Commission	Exempt	R.1993 d.352	25 N.J.R. 3240(b)
19:40-2.5	Delegation of Commission authority	24 N.J.R. 2348(a)	R.1993 d.409	25 N.J.R. 3737(b)
19:40-2.6	Post-employment restrictions on former Commission and Division of Gaming Enforcement employees	25 N.J.R. 1501(a)	R.1993 d.291	25 N.J.R. 2702(a)
19:40-5.2	Practice of law before Commission	25 N.J.R. 1672(a)	R.1993 d.316	25 N.J.R. 2907(b)
19:40-6	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1503(a)		
19:41-5, 7.14	Applicant disclosure forms	25 N.J.R. 2655(a)		
19:41-9.1, 9.4	Fee policy	25 N.J.R. 1080(a)	R.1993 d.253	25 N.J.R. 2506(c)
19:42-5.3	Professional practice: multiple party representation	25 N.J.R. 1082(b)	R.1993 d.387	25 N.J.R. 3507(b)
19:43-4.1	Casino bankroll	25 N.J.R. 1672(b)	R.1993 d.317	25 N.J.R. 2907(c)
19:44	Gaming schools	25 N.J.R. 2660(a)		
19:44-3.2	Statement of gaming school proposal	25 N.J.R. 2655(a)		
19:44-8.3	Dealer instruction: administrative correction	_____	_____	25 N.J.R. 2507(a)
19:44-8.3	Poker	25 N.J.R. 2236(a)		
19:45-1.1, 1.2, 1.11, 1.12, 1.14, 1.15, 1.16, 1.20, 1.24, 1.24A, 1.24B, 1.25, 1.25A–1.25I, 1.26, 1.27, 1.27A, 1.28, 1.29, 1.33, 1.34	Authorized financial statements: acceptance and processing	24 N.J.R. 3232(a)		
19:45-1.1, 1.2, 1.11, 1.12, 1.20	Poker	25 N.J.R. 2236(a)		
19:45-1.1, 1.10, 1.32, 1.36, 1.37, 1.38, 1.42, 1.43, 1.44	Use and operation of drop buckets in slot machines	25 N.J.R. 1503(b)	R.1993 d.318	25 N.J.R. 2908(a)
19:45-1.1, 1.34, 1.35, 1.46	Imprest inventory of changepersons	25 N.J.R. 3107(b)		
19:45-1.1, 1.40	Jackpot payouts not paid directly from slot machine	25 N.J.R. 2227(b)		
19:45-1.9, 1.9B	Complimentary services, items, cash, and noncash gifts	25 N.J.R. 3108(a)		
19:45-1.12	Pai gow poker personnel: administrative correction	_____	_____	25 N.J.R. 2507(a)
19:45-1.12, 1.14, 1.15, 1.46	Currency and coupon exchange on casino floor	25 N.J.R. 1673(a)	R.1993 d.319	25 N.J.R. 2911(a)
19:45-1.12A	Minimum and maximum gaming wagers	25 N.J.R. 1958(a)		
19:45-1.19	Acceptance of tips by dealers and pari-mutuel cashiers	25 N.J.R. 1674(a)	R.1993 d.320	25 N.J.R. 2913(a)
19:45-1.19	Card-o-lette	25 N.J.R. 2230(a)		
19:45-1.32, 1.43	Court room requirements and procedure	25 N.J.R. 2855(a)		
19:45-1.40	Jackpot payout slips	25 N.J.R. 917(a)	R.1993 d.292	25 N.J.R. 2702(b)
19:45-1.43	Counting and recording contents of slot drop buckets: administrative correction	_____	_____	25 N.J.R. 2913(b)
19:46-1.1, 1.4, 1.5	Gaming chips	25 N.J.R. 3111(a)		
19:46-1.1, 1.8, 1.9, 1.13F, 1.20	Card-o-lette	25 N.J.R. 2230(a)		
19:46-1.5	Gaming chips not in active use	25 N.J.R. 2233(a)		
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19:48	Exclusion of persons from casino establishments	25 N.J.R. 2661(a)		
19:51-1.2, 1.8	Casino service industry licensure: regular and continuing business criteria	25 N.J.R. 2662(a)		
19:53	Equal employment and business opportunity	25 N.J.R. 1675(a)		

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