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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MAY 16, 1994
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JUNE 20, 1994

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

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

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September 19 issue:
- **Proposals ..... August 19**
- **Adoptions ..... August 26**

NEW JERSEY REGISTER

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

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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF REGULATORY SERVICES

Jersey Fresh Quality Grading Program
Products and Manner of Use
Cut Flowers; Tomatoes
Proposed Amendments: N.J.A.C. 2:71-2.2, 2.4, 2.5 and 2.6

Authorized By: State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Authority: N.J.S.A. 4:10-3, 4:10-13 and 4:10-20.
Proposal Number: PRN 1994-418.

Submit comments by August 17, 1994 to:
Dhun B. Patel, Ph.D., M.P.H., Director
Division of Regulatory Services
N.J. Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-5575

The agency proposal follows:

Summary

Amendments to the regulations of the voluntary "Jersey Fresh Quality Grading Program" are developed to enhance the marketability of products bearing the "Jersey Fresh" logo by requiring that all products marked with the logo meet certain grade standards and to aid packers of those products in marketing a uniformly recognized, high grade product. Uniform, high grade products have greater acceptance by the consumer and ultimately increase the demand for the superior quality of the New Jersey grown products.

The proposed amendment to N.J.A.C. 2:71-2.4(a) adds cut flowers to the list of products which may be packed in the Jersey Fresh Quality Grading Program. Grading, packing, identification and container standards for cut flowers bearing the Jersey Fresh logo are added at N.J.A.C. 2:71-2.5(b)74. Definitions of terms pertinent to the cut flowers standards are added at N.J.A.C. 2:71-2.6 under "cut flowers," specifically, damage, fairly straight, firm, free from, fresh, overmature, stem, strong and well shaped. "Cut flowers" is added to the heading of N.J.A.C. 2:71-2.2 to complete the list of product types.

N.J.A.C. 2:71-2.5(b)67, concerning tomatoes (fresh market), is amended to delete "Maximum Large" as an identification, and the standards therefore, and to add "Medium" and its standards. Container markings are adjusted accordingly. At N.J.A.C. 2:71-2.5(b)68, standards for tomatoes (fresh market, 10 pound count pack) are added.

Social Impact

The people affected by these proposed amendments will be the farmers of cut flowers and tomatoes (fresh market) using the logo and consumers. Such products packed under the logo will enhance the promotion of these uniformly packed high quality New Jersey farm products to the benefit of the packers and consumers. Packers will gain new markets for their products, while consumers have more quality products available.

Economic Impact

The economic impact on voluntary logo farmers will be that since these proposed amendments add new commodities to the program, current farmers in the program will benefit by being able to market more product as "Jersey Fresh," and new growers will be able to enter the program to market their product. Participant costs include an application and fee of $30.00, annual licensure and reports and costs attendant to meeting the Program product standards.

Regulatory Flexibility Analysis

The proposed amendments primarily affect farmers, most of which are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; however, the amendments do not impose any reporting, recordkeeping or other compliance requirements on farmers, unless they voluntarily elect to participate in the "Jersey Fresh Quality Grading Program." Farmers producing cut flowers or tomatoes (market fresh) seeking to participate in the Program must complete an application and submit a $30.00 fee. Once in the Program and participating, annual licensure and reporting is required. Products bearing the Jersey Fresh logo must meet the Program standards. No professional services are required for compliance. Given the preponderance of small business farmers and the Program's purpose to promote uniformly packed, high quality products, no lesser requirements or exceptions are provided based on business size.

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

2:71-2.2 Use of "Jersey Fresh" as the logo for the "Jersey Fresh Quality Grading Program" and "Jersey Fresh Quality Premium Program" (referred to as the "logos") on containers of certain fresh fruits [and], vegetables [and], shell eggs **and cut flowers**

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

2:71-2.4 Agricultural commodities intended to be marketed under the Jersey Fresh Quality Grading Program and Premium Program

(a) Only the following products may be packed in the Quality Grading Program: Sweet anise (fennel), apples, alfalfa sprouts, asparagus, beets (bunched), beets (topped), beet greens, blueberries, broccoli greens, broccoli rabe (rapini), bunched Italian sprouting broccoli, cabbage (domestic, savoy and red), cabbage (Chinese), cantaloupes, cauliflower, celery root, collard greens, green corn, cubanelle peppers, cubanelle peppers (red), cucumbers (cukes), cucumbers (pickling type), cucumbers (slicing type), dandelion greens, egg plants, endive, escarole, herbs (fresh), horseradish roots, kale, kohlrabi, leeks, bibb lettuce, big Boston lettuce, iceberg lettuce, lettuce (green leaf and red leaf), mustard greens, nectarines, okra, common green onions, parsley, parsnips, peaches, fresh peas, cheese peppers, hot peppers (green or red), sweet peppers (green and red, bell type), sweet peppers (yellow, bell type), sweet potatoes, white potatoes, pumpkins, radishes (bunched), raspberries, rhubarb, romaine, rutabagas, shallots (topped), snap beans, spinach (bunched), spinach plants, strawberries, summer squash (yellow or green), fall and winter type squash (butternut, acorn and spaghetti), Swiss chard, tomatoes (fresh market), cherry tomatoes, plum tomatoes, turnips (topped), turnip greens, watermelons (sugar baby), [and], shell eggs **and cut flowers**.

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

2:71-2.5 Commodity Grades, packing requirements, packer identification and containers

(a) (No change.)

(b) Commodities shall be graded, packed, identified and contained as follows:

1.-66. (No change.)

67. Tomatoes (fresh market) shall be U.S. No. 1 grade "Mixed Colors." Containers shall be marked with [either "Maximum Large" or] "Extra Large" or "Large" **or "Medium"** in accordance with the following size specifications: ["Maximum Large" shall have a three and fifteen thirty-second inch minimum diameter;] "Extra Large" shall have a two and [twenty-eight] **twenty-four** thirty-second inch minimum diameter [and three and fifteen thirty-second inch maximum diameter]; "Large" shall have a two and [seventeen] **sixteen** thirty-second inch minimum diameter and two and [twenty-eight] **twenty-five** thirty-second inch maximum diameter. **"Medium" shall have a two and eight thirty-second inch minimum diameter and two and seventeen thirty-second inch maximum diameter.** Containers [shall] **may** also be marked as follows, in accordance with the facts, ["Large to Extra Large"] **"Medium" to "Large"** or ["Extra Large and Larger"] **"Large" and "Extra Large"**. Containers shall be at least fairly well filled. Cherry tomatoes shall be U.S. No. 1 grade, color turning to full color. All containers shall be at least well filled.

68. Tomatoes (fresh market, 10 pound count pack) shall be U.S. No. 1 grade with pink to red color. Containers shall be marked with

count as follows: 15 count, 20 count, 25 count or 30 count in accordance with the following size specifications; 15 count shall have a three and one-half inch minimum diameter and four inch maximum diameter; 20 count shall have a three and one-eighth inch minimum diameter and three and one-half inch maximum diameter; 25 count shall have a two and seven-eights inch minimum diameter and three and one-eighth inch maximum diameter; and 30 count shall have a two and one-half inch minimum diameter and two and seven-eighths inch maximum diameter. Containers must meet minimum of 10 pound net weight.

Recodify existing 68.-72. as **69.-73.** (No change in text.)

74. Cut flowers shall consist of buds which are fresh, firm, well shaped but not overmature and stems which are fresh, strong and fairly straight. Buds and stems shall be free from decay and freezing injury and damage caused by dirt of other foreign material, discoloration, moisture, disease, insects, mechanical or other means. In order to allow for variation incident to proper grading and handling, the following tolerance, by count is provided. Not more than a total of five percent in any container may be below the requirements of these specifications, including not more than one-half of one percent for decay.

2:71-2.6 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise.

. . .

"Cut flowers" The following definitions apply to cut flowers:

1. "Damage" means any injury or defect which materially affects the appearance or shipping quality of the cut flowers or foliage.

2. "Fairly straight" means that the stem is of normal growth and is not more than slightly curved or crooked.

3. "Firm" means that the bud is fairly compact and yields slightly to moderate pressure of the fingers.

4. "Free from" means any amount is scorable.

5. "Fresh" means that the bud and foliage are bright, not badly wilted, limp or flabby.

6. "Overmature" means that the flower has opened beyond commercial value.

7. "Stem" means the flower stalks with any attached foliage.

8. "Strong" means that the stem is fairly stiff and sturdy enough to hold the bud in a reasonably erect position.

9. "Well shaped" means that the bud is symmetrical, not lopsided or otherwise deformed.

. . .

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Governmental Unit Deposit Protection Public Funds Exceeding 75 Percent of Capital Funds Proposed Amendment: N.J.A.C. 3:1-4.5

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

Authority: N.J.S.A. 17:9-43.

Proposal Number: PRN 1994-414.

Submit comments by August 17, 1994 to:

Steve Szabatin, Deputy Commissioner
Department of Banking
CN 040
Trenton, NJ 08625

The agency proposal follows:

Summary

The Governmental Unit Deposit Protection Act, N.J.S.A. 17:9-41 ("GUDPA"), provides protection for funds of governmental units such as municipalities. Only depositories "located" in New Jersey may accept these deposits (N.J.S.A. 17:9-41 and 42). According to regulations promulgated by the Department of Banking (the "Department"), a public depository which receives and holds public deposits which in the aggregate exceed 75 percent of its capital funds must collateralize such excess. Such collateral must have a market value at least equal to the amount of the excess.

Recent merger and interstate branching laws may permit public depositories located in New Jersey to have branches in other States. For such institutions, the Department is of the view that the entire capital should not be used when determining whether such collateralization is necessary. Such a formula might not adequately protect the deposits of governmental units. Accordingly, the Department proposes an amendment at N.J.A.C. 3:1-4.5 which provides that, for public depositories located in New Jersey which have branches outside New Jersey, its capital funds shall be its total capital funds multiplied by the percentage of its deposits located in New Jersey.

Social Impact

This proposed amendment is intended to further ensure the safety of governmental funds. To the extent it accomplishes this goal, it will have a positive social impact.

Economic Impact

This proposed amendment may limit the governmental deposits depositories located in New Jersey, which have branches outside New Jersey, may take. This may have a negative economic impact on these depositories. However, by increasing the protection of governmental funds, it may have a positive economic impact on governmental units and other depositories who might otherwise be assessed in the event of a default.

Regulatory Flexibility Analysis

Depositories with branches in more than one state are frequently larger institutions with more than 100 employees, and therefore do not constitute small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. For such depositories located in New Jersey that are small businesses, the proposed amendment requires the depository to allocate its capital for GUDPA purposes based on the deposits in New Jersey. This recordkeeping requirement is important to ensure that deposits of governmental units remain safe regardless of the size of the institution. Accordingly, no differentiation based on business size is made.

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

3:1-4.5 Public funds exceeding 75 percent of capital funds

A public depository which receives and holds on deposit for any period exceeding 15-calendar days public funds of a governmental unit or units which in the aggregate exceed 75 percent of the capital funds of the public depository as reported on the last valuation date shall file a certified statement with the Commissioner indicating the amount of such excess and a description of the eligible collateral pledged to secure said excess. Such collateral shall have a market value at least equal to the amount of such excess and shall be in addition to the five percent security required to be maintained and as noted in the last semi annual certified statement. **For purposes of this section, the capital funds of a public depository located in New Jersey which has branches located outside New Jersey shall be its total capital funds multiplied by the percentage of deposits located in New Jersey to total deposits of the depository.**

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

DIVISION OF ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS

Worker and Community Right to Know Regulations Designation of Environmental Hazardous Substances; Completion of Community Right to Know Survey Portion of the Environmental Survey

Proposed Amendments: N.J.A.C. 7:1G-2.1 and 3.1

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 34:5A-1 et seq. and 13:1D-1 et seq.
DEPE Docket Number: 29-94-06/462.
Proposal Number: PRN 1994-413.

A **public hearing** will be held at 9:30 A.M. on Tuesday, August 16, 1994 at:

New Jersey Department of Environmental Protection and Energy
401 East State Street
First Floor Hearing Room
Trenton, New Jersey

Submit written comments, identified by the Docket Number given above, by August 17, 1994 to:

Janis E. Hoagland, Esq.
New Jersey Department of Environmental Protection and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy (Department) is proposing to amend its Community Right to Know (CRTK) regulations to increase the threshold for CRTK reporting from 100 pounds to 500 pounds and to add the list of regulated substances for accidental release prevention found at 40 CFR 68.130 to the Environmental Hazardous Substances (EHS) list, the list of substances subject to CRTK reporting.

The Community Right to Know regulations (N.J.A.C. 7:1G) were promulgated pursuant to the New Jersey Worker and Community Right to Know Act (N.J.S.A. 34:5A-1 et seq.). The Act mandates the collection of chemical inventory and environmental release information from employers in businesses having certain Standard Industrial Classification (SIC) codes. This information is made available to emergency responders and the public to increase their awareness of chemicals in the community.

The Department is proposing to increase the CRTK reporting threshold in response to comments received on its January 3, 1994 proposal establishing a 100 pound threshold. The adoption of the proposal setting the 100 pound threshold, with the responses to the comments received, appears elsewhere in this New Jersey Register.

A reporting threshold of 500 pounds was originally proposed on April 19, 1993. As a result of the comments received on that proposal, the Department reproposed a lower threshold of 100 pounds on January 3, 1994. After consideration of the comments received on both proposals, the Department believes that the 500 pound reporting threshold will better align the State and Federal Right to Know programs and reduce the burden on industry of reporting small quantities of EHS with minimal increase in the potential risk to public safety or the environment.

Under the present 100 pound threshold, an EHS is reportable on the CRTK survey if it is present at the facility, in aggregate, at 100 pounds. This means that the hazardous substance could be present in many different mixtures and in many different places at the facility, with a total quantity of only 100 pounds, or less than ¼ drum, needed to trigger reporting. While the establishment of a 100 pound threshold eliminated the need to report very small quantities of hazardous substances, the Department believes that increasing the threshold to 500 pounds will further relieve the burden on industry to report small quantities of hazardous substances without significantly impacting community safety. In addition, the Department believes that a 500 pound threshold brings the program closer to the Federal program and enables the State requirements to better mesh with the reporting requirements of the Federal Emergency Planning and Community Right to Know Act (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act (SARA).

Pursuant to Section 302 of EPCRA (SARA), the United States Environmental Protection Agency (USEPA) listed Extremely Hazardous Substances, which are reportable under the Federal program at 500 pounds or the threshold planning quantity, whichever is less. USEPA lists Extremely Hazardous Substances at 40 CFR 355 because the substances have the potential to cause serious, irreversible health effects if accidentally released. The reporting thresholds for these substances range from 500 pounds down to one pound. The substances on the EPCRA (SARA) Section 302 list have been incorporated into New Jersey's EHS list and are reportable at the Federal threshold if that threshold is lower than the State threshold. Thus, substances which require reporting at under 500 pounds will be reported in New Jersey at those lower threshold levels.

The Department is also proposing to list as EHSs the regulated substances for accidental release prevention promulgated by USEPA on January 31, 1994 at 40 CFR 68.130 (59 FR 4478). The Department believes the substances on this newly adopted list of toxics, flammable liquids and gases, and USDOT Class 1, Division 1.1 explosives should be listed as EHSs because of their potential to cause death, injury, or serious adverse effects to human health or the environment if accidentally released.

USEPA developed the list of regulated substances for accidental release prevention to fulfill its mandate under Section 112(r) of the 1990 Clean Air Act Amendments (CAAA). The focus of Section 112(r) is on chemicals that pose a significant hazard to the community should an accident occur. The CAAA required USEPA to promulgate a list of substances that, in the event of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health or the environment. Because the goal of Section 112(r) closely parallels the public safety goals of the New Jersey Worker and Community Right to Know Act, the Department believes the section 112(r) list is more appropriate than the previously proposed United States Department of Transportation (USDOT) Hazardous Materials Table for incorporation in the EHS list.

The Section 112(r) list contains 77 toxic substances, 72 of which are already listed as EHSs. Sixty-three flammable liquids and gases are listed, eight of which already appear on the EHS list. In addition, USEPA listed the Class 1, Division 1.1 USDOT explosives having a mass explosion hazard. A mass explosion is one which affects almost the entire load of material instantaneously. The listing criteria for the Section 112(r) regulated substances were described in the January 31, 1994 Federal Register. The Department's addition of these substances to the EHS list will provide information about substances that present risks to public safety and the environment from short-term exposure.

Social Impact

The proposed amendments are expected to have a positive impact because they require chemical inventory reporting on those substances which have the greatest potential to adversely affect human health and the environment if an accidental release should occur. Since most of the substances on the 112(r) list are already regulated as EHSs, the proposed amendments are expected to have minimum impact on industry. The addition of the substances not currently regulated as EHSs will better enable emergency responders to prepare comprehensive plans for emergencies.

The proposed increase in the threshold for reporting will have a positive impact because it will focus information collection and processing on quantities of hazardous substances that truly pose a risk to the community. By eliminating the need to report on small quantities the resultant database will be more meaningful to those who utilize it.

Economic Impact

The proposed increase in the reporting threshold will have a positive impact on industry since the costs associated with reporting will be reduced. The Department will also see a reduction in the costs associated with processing the collected data. The costs to industry of adding the additional Section 112(r) substances are expected to be minimal since most of these substances are already being reported as EHSs. On

balance, the cost savings realized by the increase in the reporting threshold will offset any additional reporting costs incurred by incorporating the Section 112(r) list into the EHS list. The net impact will be positive.

Environmental Impact

The impact on the environment of the increased reporting threshold is expected to be negligible. All other states rely on the 10,000 pound Federal threshold under Section 312 of SARA for emergency planning and chemical inventory information. While the Department considers the Federal threshold to be too high for a highly industrialized, densely populated state like New Jersey, raising the facility-wide threshold from 100 pounds to 500 pounds (less than one drum) will have little impact on the environment, since Federal Extremely Hazardous Substances having thresholds lower than 500 pounds will continue to be reported at the lower thresholds. The environmental impact of adding the Section 112(r) list to the EHS list will be positive as information about substances that can adversely affect the environment will have to be reported.

Regulatory Flexibility Analysis

These proposed amendments will apply to approximately 33,000 New Jersey businesses having specific Standard Industrial Classification codes listed in the Worker and Community Right to Know Act at N.J.S.A. 34:5A-3. Of those businesses, the vast majority can be considered "small businesses" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since many small businesses will already be exempt from reporting under the recently adopted 100 pound reporting threshold, these amendments are not expected to impact them. Rather, the increase in the reporting threshold will eliminate the need for additional businesses to submit chemical inventory reports. The addition of the Section 112(r) list to the EHS list is not expected to impact small businesses since it is unlikely that small businesses would use, store or manufacture these chemicals in quantities that exceed the reporting thresholds. Therefore, the Department anticipates that no additional recordkeeping, reporting or compliance requirements will be placed on small businesses.

In order for the CRTK rules to serve their intended purpose of providing meaningful information about environmental hazardous substances in the community, the Department has determined that further reductions in the requirements for small businesses would endanger public safety and the environment. Therefore, no additional exemption is provided for small business.

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

7:1G-2.1 Designation of environmental hazardous substances (EHSs)

(a) The list of EHSs shall be comprised of the substances listed below:

1.-5. (No change.)

6. [(Reserved)] **Regulated Substances on the list at 40 CFR 68.130 established by the United States Environmental Protection Agency for accidental release prevention under Section 112(r) of the Federal Clean Air Act Amendments, incorporated herein by reference, as from time to time supplemented or amended.**

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

7:1G-3.1 Completion of Community Right to Know Survey Portion of the Environmental Survey

(a) (No change.)

(b) A threshold of [100] **500** pounds of the Federal SARA 302 threshold planning quantity, whichever is lower, shall apply to all EHSs present in aggregate at the facility at any one time. These thresholds for reporting do not apply to container labeling pursuant to N.J.A.C. 8:59-1 et seq.

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

(a)

ENGINEERING AND CONSTRUCTION ELEMENT

Flood Plain Redelineation of Pascack and Fieldstone Brooks

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

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

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

DEPE Docket Number: 30-94-06/455.

Proposal Number: PRN 1994-416.

A **public hearing** concerning this proposal will be held on Friday, August 5, 1994 at 10:30 A.M. at:

Department of Environmental Protection and Energy
Division of Engineering and Construction
Casagrande Conference Room, Second Floor
5 Station Plaza
501 East State Street
Trenton, New Jersey

Submit written comments, identified by the Docket Number given above, by August 17, 1994 to:

Janis E. Hoagland, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection and Energy (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated Floodways, by revising the present floodway limits and flood plain delineations of (1) Pascack Brook from approximately 525 feet downstream of Bayberry Drive near the confluence with Muddy Creek, upstream 3,300 feet to a location approximately 800 feet downstream of Magnolia Avenue and (2) of Fieldstone Brook, a tributary to Pascack Brook, from the mouth upstream 900 feet to a location approximately 675 feet downstream of Woodland Avenue in the Borough of Montvale, Bergen County. The proposed redelineation of Pascack Brook is based on a reanalysis of the original HEC2 hydraulic modelling with additional field-surveyed cross sections inserted into the existing computer model to reflect the current field conditions and more accurate topography. For Fieldstone Brook, engineering calculations were submitted for a proposed culvert and swale along with an analysis for the existing 48 inch culvert. The proposed culvert and swale are designed to convey a portion of the flood waters to Pascack Brook.

The Borough performed stream maintenance along the Pascack Brook to protect an exposed sanitary sewer line under the streambed, installed gabion walls to stabilize the stream banks and minimize the erosion and relocated, deepened and widened the stream. The channel improvements are located on the property owned by Mr. Raymond Janovic. Mr. Janovic plans to construct a residential development on his property. The current flood profiles do not reflect the Borough's channel improvements and the current profiles indicate a substantial portion of his parcel within the flood hazard area of Pascack Brook and Fieldstone Brooks. A HEC2 hydraulic analysis of Pascack Brook was performed by Mr. Raymond Fox, P.E., P.P. of Canger Engineering Associates, on behalf of Mr. Raymond Janovic, to determine the effects of the channel improvements to Mr. Janovic's property. The HEC2 hydraulic modelling determines water elevations and flood profiles for various flooding events, as well as floodway limits. The additional field-surveyed cross sections in the model better define the stream channel and overbanks, therefore making the proposed redelineation more accurate than the current delineation. Review of the proposed Pascack Brook flood profiles indicates that the 100-year flood and the New Jersey Flood Hazard Area Design Flood profiles range from zero to approximately two feet lower than the current adopted profiles. The reduction in flood levels along Pascack Brook are due to the channel improvements performed by the Borough. The proposed floodway limits across and downstream from Mr. Janovic's property remain generally unchanged; however, the floodway limits from his property to a location 1,500 feet upstream are wider than the current

floodway limits. Due to lower flood levels as a result of the channel improvements, the proposed floodway limits and flood plain areas along Mr. Janovic's property are closer to the stream. Most of the runoff from the site will be collected and routed into a proposed water quality basin, and then discharged into Pascack Brook, or collected in the drainage swale along Fieldstone Brook and then discharged into Pascack Brook.

It should be noted that the proposed map revision reflects the present stream conditions along Pascack Brook and the proposed channel improvements along Fieldstone Brook. The hydraulic analysis and engineering calculations assume unobstructed flow. The flood elevations are therefore considered valid only if hydraulic structures remain unobstructed, operate properly and do not fail.

The proposssed redelineation will require no change in the text of N.J.A.C. 7:13-7.1, since only a revision of the flood hazard area delineation map is required.

Social Impact

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

Economic Impact

The proposed redelineation is the result of a reanalysis of the existing hydraulics with additional current field-surveyed cross sections to reflect the channel improvements along Pascack Brook and a hydraulic analysis for Fieldstone Brook. There will be a favorable economic impact for Mr. Janovic resulting from this proposed amendment since the floodway limits are redefined to better reflect the actual conditions at the site, which in this case lowers the 100 year and New Jersey Flood Hazard Area flood levels along Pascack Brook therefore reducing the flood plain areas on the site from Pascack Brook. Flooding along Fieldstone Brook will also be confined to the proposed swale and culvert and the existing 48 inch culvert. In areas where the proposed floodway limits are shown to be located closer to the stream, additional construction or development may be allowed where it was previously prohibited.

Environmental Impact

The purpose of this proposed redelineation is to accurately define the floodway limits and flood hazard areas, based on a reanalysis of the hydraulic modelling for a portion of Pascack Brook and a hydraulic analysis for Fieldstone Brook within Montvale Borough, Bergen County. The scope of permissible development is restricted within the delineated area, to prevent and minimize potential flood damage. Regulated development is permissible within the flood fringe portion of the flood hazard area, provided the necessary permits and applications are obtained. This proposal is not expected to have any adverse environmental impact, since the area on which development may be permitted is not considered environmentally sensitive or significant.

Regulatory Flexibility Statement

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

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

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

State of New Jersey
Department of Environmental Protection
Division of Water Resources
Delineation of Floodway and Flood Hazard Area
Pascack Brook, Stateline Brook and Fieldstone Brook
Plate No. 16

(a)

DIVISION OF FISH, GAME AND WILDLIFE
FISH AND GAME COUNCIL
1995-96 Fish Code
Proposed Amendments: N.J.A.C. 7:25-6

Authorized By: Fish and Game Council, Cole Gibbs, Chairman.
Authority: N.J.S.A. 13:1B-30 et seq. and 23:1-1 et seq.
DEPE Docket Number: 31-94-06/457.
Proposal Number: PRN 1994-417.

A **public hearing** concerning the proposed amendment will be held on:

Tuesday, August 9, 1994 at 7:30 P.M.
Assunpink Wildlife Conservation Center
Eldridge Road
Assunpink Wildlife Management Area
Robbinsville, New Jersey 08691

Submit written comments by August 17, 1994 to:
Robert McDowell, Director
Division of Fish, Game and Wildlife
Department of Environmental Protection and Energy
CN 400
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Fish Code (Code), N.J.A.C. 7:25-6, states, when, by what means, at which location, in what numbers and at what sizes, fish may be pursued, caught, killed or possessed.

The proposed amendments to N.J.A.C. 7:25-6 for the 1995-96 fishing season are as follows:

1. Opening Day of the 1995-96 trout season has been set for April 8, 1995. All of the dates, throughout the Code, which are dependent on this date have been adjusted accordingly.

2. Shadow Lake, Monmouth County has been restored to the list of trout stocked waters as the result of a satisfactory resolution of a local access problem.

3. A 1.1 mile stretch of the South Branch of the Raritan River in Morris County, locally known as the "Claremont Stretch" has been designated as a "Year-round Trout Conservation Area." This involves the imposition of a 15 inch size limit for trout, a one trout daily bag limit and the use of artificial lures only. This stretch is biologically suited for this purpose and the designation is supported by the local sportsmen's federation.

4. Lake Aeroflex, in Sussex County, has been designated as a "Trophy Trout Lake." This involves the imposition of a 15 inch size limit for brown trout and rainbow trout and a two trout daily bag limit. This designation recognizes the lake's potential for producing trophy sized trout.

5. Canistear Reservoir, in Sussex County, has been deleted from the "Holdover Trout Lakes" category, because of its minimal year-round trout supporting capability.

6. Snagging has been prohibited in Monksville Reservoir and its tributaries to protect a spawning population of walleye. The walleye spawning run coincides with the spawning run of suckers, which may be legally taken by snaggers, and because of the nature of this type of a fishery, the walleye, which may not be legally taken by snaggers, were inadvertently being snagged along with the suckers. Hooking mortality is very high for this type of fishing and even when released the walleye frequently did not survive the experience.

7. A "Lunker Bass" program has been established at Parvin Lake in Salem County and Assunpink Lake in Monmouth County. It is anticipated that by establishing a higher size limit (15 inches) and a reduced possession limit (three), the average size and numbers of largemouth bass will be increased in these waters.

8. Recent legislation (P.L. 1994, c.26) has given the authority to manage striped bass, in freshwater, to the Fish and Game Council. The establishment of a 34 inch size limit and a one fish daily bag limit will be consistent with the regulations that have been established for most marine waters. It was felt that it would also be necessary to set the same regulations for the striped bass hybrid in waters where they both occur because of their similar appearance.

9. N.J.A.C. 7:25-6.14(c) has been amended to reinforce the requirement that ice-fishing devices that are not hand-held are not to be left unattended by expressly prohibiting devices with automatic hook setting capability. A device with automatic hook setting capability does not require the user to attend it, because when a fish strikes the bait, a spring mechanism is triggered to snag the fish.

10. The provision at N.J.A.C. 7:25-6.20(a)2 regarding the recognition of New Jersey and Pennsylvania fishing licenses on the Delaware River and along its banks has been deleted. The State Legislature has granted fishing privileges in Delaware River waters within New Jersey's jurisdiction to holders of valid Pennsylvania licenses, so long as Pennsylvania has reciprocal legislation in effect. See P.L. 1993, c.20 (N.J.S.A. 23:3-1d).

Social Impact

Some displacement of fishermen may occur as a result of the changing trout management designation of the Claremont Stretch of the South Branch of the Raritan River. It is anticipated that those that traditionally have fished this area for the purpose of taking home a daily limit of six trout will oppose this amendment. However, the number of areas so managed are very limited and highly popular. It should also be noted that this amendment was initiated by the Morris County Federation of Sportsmen Clubs and has been supported by the Northern District of that Federation, with support anticipated from the Federation's Central and Southern Districts.

In general, there has been increasing support for more restrictive regulations and those types of programs that are designed to produce larger fish through reduced creel limits and increased size limits.

Economic Impact

Regulations, such as Trout Conservation Areas, Trophy Trout Lakes and Lunker Bass Programs, which are designed to promote a long-term fishery, as opposed to a quick harvest of fish, can be expected to increase revenue for those businesses that support and serve fishermen. Therefore, it is anticipated that these amendments will have a positive impact on the economies of the areas where they occur.

Environmental Impact

The proposed amendments should have a positive environmental impact in continuing the conservation, management and enhancement of the State's fisheries resources based on their current population, distribution and habitat status.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these amendments would not impose reporting, record keeping, or other compliance requirements on small businesses, because small businesses are not regulated by N.J.A.C. 7:25-6.

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

SUBCHAPTER 6. [1994-95] **1995-96** FISH CODE

7:25-6.3 Trout Season and Angling in Trout-Stocked Waters

(a) Except as provided in N.J.A.C. 7:25-6.4, 6.6 to 6.9, 6.18, 6.19 and (i) below: the trout season for [1994] **1995** shall commence 12:01 A.M. January 1, [1994] **1995** and extend to midnight March [20, 1994] **19, 1995**. The trout season shall re-open at 8:00 A.M. Saturday, April [9, 1994] **8, 1995** and extend to include March [19, 1995] **17, 1996**.

(b) Except as provided in N.J.A.C. 7:26-6.4, 6.6 and 6.7 and (i) below, it shall be unlawful to fish for any species of fish from midnight March [20, 1994] **19, 1995** to 8:00 A.M. on April [9, 1994] **8, 1995** in ponds, lakes or those portions of streams that are listed herein for stocking during [1994] **1995**.

(c) (No change.)

(d) Except as provided in N.J.A.C. 7:25-6.6 to 6.9, in trout-stocked waters for which in-season closures will be in force, waters will be closed from 5:00 A.M. to 5:00 P.M. on dates indicated, provided that in the event of emergent conditions, the Division may suspend stocking of any or all of the following:

1. Big Flat Brook—100 ft. above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River—April [15, 22, 29] **14, 21, 28**; May [6, 13, 20, 27] **5, 12, 19, 26**.

2. Black River—Route 206 Chester, to the posted Black River Fish and Game club property at the lower end of Hacklebarney State Park—April [14, 21, 28] **13, 20, 27**; May [5, 12, 19, 26] **4, 11, 18, 25**.

3. Manasquan River—Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area—April [11, 18, 25] **10, 17, 24**; May [2, 9, 16, 23] **1, 8, 15, 22**.

4. Metedeconk River, N. Br.—Aldrich Road Bridge to Ridge Avenue—April [11, 18, 25] **10, 17, 24**; May [2, 9, 16, 23] **1, 8, 15, 22**.

5. Metedeconk River, S. Br.—Bennetts Mills dam to twin wooden foot bridge, opposite Lake Park Boulevard, on South Lake Drive, Lakewood—April [11, 18, 25] **10, 17, 24**; May [2, 9, 16, 23] **1, 8, 15, 22**.

6. Musconetcong River—Lake Hopatcong Dam to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong—April [15, 22, 29] **14, 21, 28**; May [6, 13, 20, 27] **5, 12, 19, 26**.

7. Paulinskill River and E. Br. and W. Br.—Limecrest Railroad Spur Bridge on E. Br., Sparta Township, and Warbasse Junction Road, Route 663, on W. Br., Lafayette Twp., to Columbia Lake—April [14, 21, 28] **13, 20, 27**; May [5, 12, 19, 26] **4, 11, 18, 25**.

8. Pequest River—Source to Delaware River—April [15, 22, 29] **14, 21, 28**; May [6, 13, 20, 27] **5, 12, 19, 26**.

9. Pohatcong Creek—Route 31 to Delaware River—April [12, 19, 26] **11, 18, 25**; May [3, 10, 17, 24] **2, 9, 16, 23**.

10. Ramapo River—State line to Pompton Lake—April [14, 21, 28] **13, 20, 27**; May [5, 12, 19, 26] **4, 11, 18, 25**.

11. Raritan River, N. Br.—Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River—April [13, 20, 27] **12, 19, 26**; May [4, 11, 18, 25] **3, 10, 17, 24**.

12. Raritan River, S. Br.—Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River—April [12, 19, 26] **11, 18, 25**; May [3, 10, 17, 24] **2, 9, 16, 23**.

13. Rockaway River—Longwood Lake dam to Jersey City Reservoir in Boonton—April [11, 18, 25] **10, 17, 24**; May [2, 9, 16, 23] **1, 8, 15, 22**.

14. Toms River—Ocean County Route 528, Holmansville, to confluence with Maple Root Branch and Route 70 to County Route 571—April [11, 18, 25] **10, 17, 24**; May [2, 9, 16, 23] **1, 8, 15, 22**.

15. Wallkill River—Lake Mohawk Dam to Route 23, Hamburg—April [11, 18, 25] **10, 17, 24**; May [2, 9, 16, 23] **1, 8, 15, 22**.

16. Wanaque River—Greenwood Lake Dam to Jct. with Pequannock River, excluding Wanaque Reservoir, Monksville Reservoir and Lake Inez—April [15, 22, 29] **14, 21, 28**; May [6, 13, 20, 27] **5, 12, 19, 26**.

(e) (No change.)

(f) Trout stocked waters for which no in-season closures will be in force. Figure in parenthesis indicates the anticipated number of stockings to be carried out from April [11] **10** through May 31, provided that, in the event of emergency conditions, the Division may suspend stocking of any or all of the following:

1.-12. (No change.)

13. Monmouth County

Englishtown Mill Pond—Englishtown—(3)

Garvey's Pond—Navesink—(3)

Hockhocksen Brook—Hockhocksen Road to Garden State Parkway Bridge (northbound)—(5)

Holmdel Park Pond—Holmdel—(3)

Manasquan Reservoir—Howell Township—(3)

Mingamahone Brook—Farmingdale, Hurley Pond Road to Manasquan River—(5)

Mohawk Pond—Red Bank—(4)

Pine Brook—Tinton Falls, Jersey Central Railroad to Hockhocksen Brook—(2)
Shadow Lake—Middletown—(3)
Shark River—Hamilton, Route 33 to Remsen Mill Road—(5)
Spring Lake—Spring Lake—(3)
Takanassee Lake—Long Branch—(4)
Topenemus Lake—Freehold—(3)
Yellow Brook—Heyers Mill Road to Muhlenbrink Rd., Colts Neck Township—(2)
14.-21. (No change.)
(g) (No change.)
(h) A person shall not take, kill or have in possession in one day more than six in total of brook trout, brown trout, rainbow trout, lake trout or hybrids thereof during the period extending from 8:00 A.M. April [9, 1994] **8, 1995** until midnight May 31, [1994] **1995** or more than four of these species during the periods of January 1, [1994] **1995** to midnight March [20, 1994] **19, 1995** and June 1, [1994] **1995** through midnight March [19, 1995] **17, 1996** except as designated in N.J.A.C. 7:25-6.4 to 6.9.
(i) Spruce Run Reservoir, Hunterdon County, Lake Hopatcong, Morris/Sussex County, and the Manasquan Reservoir, Monmouth County, will remain open to angling year-round. Trout, if taken during the period commencing at midnight, March [20, 1994] **19, 1995** and extending to 8:00 A.M. April [9, 1994] **8, 1995** must be returned to the water immediately and unharmed.

7:25-6.4 Special Regulation Trout Fishing Areas—Fly Fishing Waters
(a) [From] **Beginning January 1, 1995 to midnight March 19, 1995 and from** 5:00 A.M. on Monday, April [18, 1994] **17, 1995** to and including March [19, 1995] **17, 1996** the following stretches are open to fly-fishing only, and closed to all fishing from 5:00 A.M. to 5:00 P.M. on the days listed for stocking:
1.-2. (No change.)
(b) Beginning January 1, [1994] **1995** to midnight March [20, 1994] **19, 1995** and from 8:00 A.M. on April [9, 1994] **8, 1995** to midnight March [19, 1995] **17, 1996** the following stretch is open to fly-fishing only, but is closed to all fishing from 5:00 A.M. to 5:00 P.M. on days listed for stocking:
1. (No change.)
(c)-(d) (No change.)

7:25-6.5 Special Regulation Trout Fishing Areas—Seasonal Trout Conservation Areas
(a) The following stream segments are designated as Seasonal Trout Conservation Areas and are subject to the provisions at (b) below governing these areas during the period of May [23, 1994] **22, 1995** through March [19, 1995] **17, 1996**.
1.-2. (No change.)
(b) The following shall apply to the Seasonal Trout Conservation Areas designated at (a) above:
1.-4. (No change.)
5. A person shall not have in possession, while fishing, any more than one dead, creeled or otherwise appropriated trout, except that **no trout may be retained during in-season closures which apply to the remainder of the respective rivers where these areas exist.** [additional] **Additional** trout may be caught providing they are returned to the water immediately and unharmed; and
6. (No change.)

7:25-6.6 Special Regulation Trout Fishing Areas—Wild Trout Streams
(a) (No change.)
(b) The following regulations shall apply to the Wild Trout Streams designated at (a) above:
1.-4. (No change.)
5. During the period extending from 8:00 A.M. April [9, 1994] **8, 1995** to September 15, [1994] **1995**, no person shall have in possession while fishing any more than two legally sized dead, creeled or otherwise appropriated trout. No trout may be killed or possessed during other times of the year. Any number of trout may be caught provided they are immediately returned to the water unharmed.
6. (No change.)

7:25-6.7 Special Regulation Trout Fishing Areas—Year-Round Trout Conservation Areas
(a) The following stream segments are designated as Year-Round Trout Conservation Areas and are subject to the provisions at (b) below governing these areas on a year-round basis:
1. Toms River, Ocean County—a one mile stretch of river from the downstream end of Riverwood Park in Dover Township, defined by markers, downstream to the Route 571 bridge; [and]
2. East Branch of Paulinskill River, Sussex County—from the Limecrest Railroad Spur Bridge downstream to its confluence with the West Branch of the Paulinskill at Warbasse Junction, a distance of approximately 2.25 miles[.]; **and**
3. South Branch Raritan River, Morris County—an approximate 1.1 mile stretch of river, locally known as the Claremont Stretch extending from the downstream end of the posted Anglers Anonymous property downstream to its junction with Electric Brook.
(b) (No change.)

7:25-6.8 Special Regulation Trout Fishing Areas—Trophy Trout Lakes
(a) The following lakes are designated as Trophy Trout Lakes:
1. Round Valley Reservoir; [and]
2. Merrill Creek Reservoir[.]; **and**
3. Lake Aeroflex.
(b) The following [regulations] shall apply to the Trophy Trout Lakes designated at (a) above:
1.-3. (No change.)
4. The season for lake trout shall extend from 12:01 A.M., January 1, [1994] **1995** to midnight, September 15, [1994] **1995** and from December 1, [1994] **1995** to midnight, September 15, [1995] **1996**.
5. (No change.)

7:25-6.9 Special Regulation Trout Fishing Areas—Holdover Trout Lakes
(a) The following lakes are designated as Holdover Trout Lakes:
[1. Canistear Reservoir;
2. Clinton Reservoir;
3. Swartswood Lake;
4. Monksville Reservoir;
5. Wawayanda Lake; and]
[6.]**1.** Sheppard's Lake, Passaic County.
(b) The following **shall** apply to the Holdover Trout Lakes designated at (a) above:
1.-2. (No change.)
3. A person shall not take, kill or have in possession, in one day, more than four in total of brook trout, brown trout, rainbow trout, lake trout or hybrids thereof, during the period extending from 8:00 A.M. April [9, 1994] **8, 1995** until May 31, [1994] **1995** or more than two of these species during the periods of January 1, [1994] **1995** to midnight March [20, 1994] **19, 1995 and June 1, 1995 through midnight March 18, 1996**. Trout, if taken during the period commencing at midnight, March [20, 1994] **19, 1995** and extending to 8:00 A.M., April [9, 1994] **8, 1995** must be returned to the water immediately and unharmed.

7:25-6.12 Snagging prohibited
The foul hooking of largemouth bass, smallmouth bass, striped bass, chain pickerel, northern pike, muskellunge, walleye, brook trout, brown trout, lake trout and rainbow trout or any of the hybrids thereof, shall be prohibited in open waters. Any of the aforementioned fish so hooked must be immediately returned to the water. This shall not apply to fish so taken through the ice during the ice fishing season. **Snagging of any species is prohibited in Monksville Reservoir and its tributaries, including the Wanaque River.**

7:25-6.13 Warmwater fish
(a)-(d) (No change.)

(e) The minimum size of largemouth bass shall be 12 inches, **except for Parvin Lake and Assunpink Lake where it shall be 15 inches.**

(f) The daily creel and possession limit for largemouth bass and smallmouth bass shall be five in total, except **for Parvin Lake and Assunpink Lake where it shall be three.** [that during] **During** the period of April 15 through June 15 the possession of these bass is prohibited and all bass caught shall be immediately returned to the water unharmed.

(g)-(l) (No change.)

(m) The daily creel and possession limit for walleye shall be five, except for Monksville Reservoir, Wanaque Reservoir and the Wanaque River between Greenwood Lake and Monksville Reservoir where it shall be two with a closed season during the period of March 1, [1994] **1995** to April 30, [1994] **1995.**

(n) The minimum length for striped bass × white bass hybrid shall be 16 inches[. The] **and the** daily creel and possession limit shall be two[.], **except for the Raritan River downstream of the Duke Island Park dam where the minimum length shall be 34 inches and the daily creel and possession limit shall be one.**

(o)-(p) (No change.)

(q) The minimum length for striped bass shall be 34 inches. The daily creel and possession limit shall be one.

(r) Striped bass may not be taken or possessed during the period of January 1, 1995 to February 28, 1995.

7:25-6.14 Ice fishing

(a) (No change.)

(b) A person, while fishing through the ice, may use not more than five devices for the taking of fish. The types of devices that may be used are:

1. Ice supported tip-ups or lines with one **single** hook attached;
2. An artificial jigging lure with not more than one burr of three hooks that measure not more than ½ inch from point to point;
3. An artificial jigging lure with not more than three single hooks measuring not more than ½ inch from point to shaft;
4. An artificial jigging lure with a combination of the hook limitations described in (b)2 and 3 above.

(c) **Expressly prohibited are any devices with automatic hook setting capability.** Natural bait may be used on the hooks of the artificial jigging lure. All devices that are not hand-held must be clearly marked with the name and address of the user and shall not be left unattended.

7:25-6.20 Delaware River between New Jersey and Pennsylvania

(a) In cooperation with the Pennsylvania Fish Commission, the following regulations for the Delaware River between New Jersey and Pennsylvania are made a part of the New Jersey State Fish and Game Code and will be enforced by the conservation authorities of each state.

1. Trout	Season April [9]**8**-Sept. 30	Size Limit no minimum	Daily Bag Limit 5
...			
Striped bass and Striped bass × white bass hybrid	Downstream of Trenton Falls—March 1-30 and June 1-Dec. 31 Upstream of Trenton Falls March 1-Dec. 31	[36]**34** inch minimum	1 **in total**
All other freshwater species	no closed season	no minimum	no limit

[2. Fishing licenses of either New Jersey and Pennsylvania will be recognized in the Delaware River from water's edge to water's edge and fishermen will be permitted to take off in a boat from either shore and on returning, to have in possession any fish which may be legally taken in New Jersey and Pennsylvania; however, any person fishing from the shore must obtain a license in New Jersey and Pennsylvania on whose shore fishing is done. Residents of Pennsylvania must possess a New Jersey non-resident license if they fish from the New Jersey bank.]

Recodify existing 3.-7. as **2.-6.** (No change in text.)

7:25-6.22 Snapping Turtles, Bull Frogs and Green Frogs

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

(c) The open season for taking of snapping turtles shall extend from **January 1, 1995 through April 30, 1995 and from** June 16, [1994] **1995** through April 30, [1995] **1996.** The open season for the taking of bull frogs and green frogs shall be from **January 1, 1995 through March 31, 1995 and from** July 1, [1994] **1995** through March 31, [1995] **1996.**

(d) Snapping turtles, bull frogs and green frogs may be taken in numbers greater than the daily limit under special permit issued by the Division at its discretion.

1.-2. (No change.)

3. The following information will be needed by the Division to grant the permit:

i. Why is the extension necessary;
ii. How long will the extension be needed; [and]
iii. Where will the trapping activity take place[.]; **and**
iv. What method will be used.

4. (No change.)

(e) (No change.)

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Determination of Need for a Guardian

Proposed Readoption with Amendments: N.J.A.C. 10:43

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

Authority: N.J.S.A. 30:1-12 and 30:4-165.4 et seq.

Proposal Number: PRN 1994-421.

Submit comments by August 17, 1994 to:

James M. Evanochko
Administrative Practice Officer
Division of Developmental Disabilities
CN 726
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposal seeks to continue the chapter adopted effective August 21, 1989 with only minor amendments. The chapter was originally adopted following a major revision of the statute concerning guardianship services of the Division of Developmental Disabilities which occurred in April, 1985 (see N.J.S.A. 30:4-165.4 et seq.). In accordance with Executive Order No. 66(1978), N.J.A.C. 10:43 will expire on August 21, 1994. The Department has reviewed these rules and, with the amendments described below, finds them reasonable, necessary and proper for their promulgated purpose.

The chapter establishes guidelines for the Division to determine the need of an individual receiving its services for a guardian. There are two amendments proposed. N.J.A.C. 10:43-1.3 contained a reference to the "Bureau of Special Residential Services." This bureau no longer exists within the Division. The wording has been changed to "Special Residential Services."

The second amendment appears at N.J.A.C. 10:43-4.2. This section required the preliminary determination of the Division be forwarded to the Office of the Public Advocate. This section is deleted. The Division has not engaged in this practice for several years. This change was mutually agreed upon with the Office of the Public Advocate.

Subchapter 1 establishes the purpose and authority of the rules. It defines the various terms employed in the rules. It also indicates that the rules apply only to persons who have been admitted for 30 or more

continuous days of services of the Division of Developmental Disabilities and that the rules apply for guardianship of the person only.

Subchapter 2 indicates that such determinations are made on an individual basis. It describes the factors to be used in such determinations.

Subchapter 3 sets forth the requirement for an initial screening of an individual. If such screening indicates the possible need for a guardian, the rules describe the requirements for a more formal clinical evaluation.

Subchapter 4 indicates the manner in which the decision of the Division is communicated to the individual served, his or her family, or other interested persons.

Subchapter 5 establishes the requirements in terms of affidavits and supporting documentation for referral to a court of competent jurisdiction for the establishment of a guardian.

Subchapter 6 sets forth the process of evaluating the need for a guardian for individuals who are presently receiving guardianship services from the Division without prior judicial review. The notification process is also described in this section.

Subchapter 7 describes the requirements of the Division with respect to a party other than the Division who applies to become a guardian.

Subchapter 8 establishes the procedures for addressing the suitability of a prospective guardian.

Subchapter 9 requires that the continued need for a guardian be reviewed at least annually by the Division. This subchapter also describes the procedures to be followed when the Division does not feel that the individual continues to require a guardian.

Social Impact

The rules proposed for readoption set forth the criteria for determining the need of an individual served by the Division for a guardian. The rules should facilitate the appointment of a family member or other interested party as the guardian of an individual. The rules allow for the appointment of a guardian without either financial expense to the family or the need to secure legal services to initiate court action.

Economic Impact

It is anticipated that the rules proposed for readoption will have a positive impact on the families of individuals served by the Division. The rules describe a procedure whereby a family member or other interested party may be appointed as the guardian of an individual at no cost to the family. The cost of pursuing a guardianship of the person independently is estimated to exceed $500.00.

There is an anticipated economic impact on the Department of Human Services and the Office of the Attorney General. Each is responsible in part for implementing the procedures towards the appointment of guardians. The anticipated cost to the Division of Developmental Disabilities is estimated at $285,000, primarily for psychological consultations and legal services for the alleged incompetent.

Regulatory Flexibility Statement

The rules proposed for readoption do not require a regulatory flexibility analysis since they do not impose any requirements on small businesses as the term is defined in N.J.S.A 52:14B-16 et seq. The rules provide guidelines for the Division to determine the need of an individual receiving its services for a guardian.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:43.

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

10:43-1.3 Definitions

The following words and terms shall, for the purposes of this chapter, have the meanings contained in this section unless the text clearly indicates otherwise.

...

"Functional service unit" means any of the following components of the Division: a Developmental Center, a Regional Office of Community Services or the [Bureau of Special Residential Services] **Special Residential Services**.

10:43-4.2 [Communication with the Department of the Public Advocate] **(Reserved)**

[The preliminary determination of the division that an individual is in need of a guardian shall be forwarded to the Department of the Public Advocate along with supportive documentation.]

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medical Supplier Manual
Reimbursement for Certain Medical Supply Services
Proposed Amendment: N.J.A.C. 10:59-1.9

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

Authority: N.J.S.A. 30:4D-6b, 30:4D-7, 7a, b and c, and 30:4D-12.

Agency Control Number: 94-P-22.

Proposal Number: PRN 1994-422.

Submit comments by August 17, 1994 to:

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

The agency proposal follows:

Summary

The Division of Medical Assistance and Health Services (Division) is proposing a change in policy regarding provider reimbursement for certain medical supply and durable medical equipment services. The State Fiscal Year 1995 budget anticipates that the New Jersey Medicaid program will reduce reimbursement for these services. Reimbursement for certain medical supply and durable medical equipment will be adjusted from the current rate based on 150 percent of a manufacturer's invoice cost or 90 percent of a list price to 130 percent and 80 percent respectively. Services affected are medical supplies and durable medical equipment which have not been assigned a unique Medicaid Maximum Fee Allowance by the New Jersey Medicaid program.

The Division is proposing the replacement of the general statement indicating the discretion of the Commissioner of Human Services to establish reasonable allowances for Medicaid-covered medical supply services. This statement has been replaced by more specific standards of reimbursement traditionally applied by the New Jersey Medicaid program to determine the Medicaid Maximum Fee Allowance for medical supplies and equipment. Reimbursement changes required by the recommended State Fiscal Year 1995 budget will have no effect on medical supplies and equipment that are reimbursed in accordance with a set fee (Medicaid Maximum Fee Allowances) previously assigned by the Division.

Social Impact

Medicaid recipients may experience some difficulties receiving certain medical supply and equipment services which are priced based on acquisition cost in that the supplies and services will not be stocked, but will be ordered, causing waiting time before delivery. Medicaid providers which specialize in supplies and customized equipment which is priced based on acquisition cost will experience an impact from this proposed amendment. Providers, including pharmacies, which provide "shelf" medical supply or DME items will experience a minimal impact from this amendment. Shelf items are typically priced utilizing Medicaid assigned maximum fee allowances previously assigned by the Division. However, the Division will work with recipients to find the necessary equipment and services, and no significant access problems are anticipated.

Economic Impact

The proposed amendment in Medicaid reimbursement for certain medical supply and equipment services will have no financial impact on recipients, who are not expected to pay towards the cost of medical supplies.

Medical suppliers and medical equipment providers that participate in the New Jersey Medicaid program will experience a reduction in Medicaid reimbursement for similar services previously provided.

This amendment will reduce State expenditures by approximately 4.55 million dollars (State share $2.27 million—Federal share $2.27 million).

Regulatory Flexibility Statement

The proposed amendment will primarily affect those Medicaid providers who supply durable medical equipment and medical supplies to Medicaid recipients. Some of these providers may be considered small

businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment imposes no additional reporting, recordkeeping, or other compliance requirements on small businesses. The providers are already required to maintain sufficient records to fully disclose the name of the recipient who received the service, date of service, and any additional information as may be required by regulation (reference is made to N.J.S.A. 30:4D-12). This requirement applies equally to all providers regardless of size. The paperwork requirements remain the same. There should be no capital costs associated with this amendment. The impact of this amendment is the economic impact upon providers as indicated in the previous section.

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

10:59-1.9 Purchase policy

(a) Medical equipment items shall be purchased when, in the judgement of the Medicaid Medical Consultant, the medical need will exist for a period of time long enough to make purchase more economically practical than rental.

(b) When purchase is authorized:

1. The submitted price shall be the provider's usual and customary charge to the general public.

2. Reimbursement shall be based on one of the following standards, whichever is less:

i. The provider's usual and customary charge to the general public; or

[ii. An allowance determined reasonable by the Commissioner of Human Services, within the limitations set by Federal policy relative to reimbursement individual providers.]

ii. A Medicaid Maximum Fee Allowance assigned a medical supply or equipment service by the Division of Medical Assistance and Health Services, as set forth in Division rules; or

iii. A price based on 130 percent of a provider's acquisition cost indicated on a manufacturer's invoice for a medical supply or equipment service or a price based on 80 percent of the list price for a medical supply or equipment service.

3. In no event shall the Medicaid allowance exceed the lowest charge calculated by the Medicare Carrier, or other government agencies, or the lowest charges to other groups or individuals in the community.

(c) When purchase of a vaporizer or cool mist humidifier is prescribed:

1. (No change.)

2. Reimbursement shall be based on [one of the following] standards[, whichever is less:] **described in (b)2 above.**

[i. Wholesale cost plus 50 percent of cost. A copy of the invoice must be submitted with the claim; or

ii. The provider's usual and customary charge to the general public.]

[3.]**i.** [The] **In no event shall the** maximum [charge] **reimbursement** allowed by the N.J. Medicaid Program for a vaporizer or a cool mist humidifier [is] **exceed** $30.00.

(d) When durable medical equipment is authorized and purchased on behalf of a Medicaid recipient, ownership of such equipment will [best] **vest** in the Division of Medical [Assistant] **Assistance** and Health Services. The recipient will be granted a possessory interest for as long as it is medically necessary (as approved by the Division) that the recipient requires use of the equipment.

(e) (No change.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Home Care Services
Accreditation of Private Duty Nursing Agencies
Proposed Amendment: N.J.A.C. 10:60-1.3

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

Authority: N.J.S.A. 30:4D-3h, 30:4D-6(b)2, 7, 7a, b and c; 30:4D-12, 30:4E; 42 CFR 440.70, 170.

Agency Control Number: 94-P-14.

Proposal Number: PRN 1994-411.

Submit comments by August 17, 1994 to:

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

The agency proposal follows:

Summary

The Department's Division of Medical Assistance and Health Services is proposing to amend its existing Home Care Services Manual to require private duty nursing agencies to become accredited through one of two accrediting bodies, the Commission on Accreditation for Home Care, Inc., and the Community Health Accreditation Program (CHAP). Additional accrediting bodies will be recognized as they become available to the Division.

Private duty nursing agencies are licensed, home health agencies, voluntary non-profit homemaker agencies, private employment agencies and temporary-help service agencies approved by the Division to provide private duty nursing services, in accordance with the provisions of N.J.A.C. 10:60 (see 26 N.J.R. 364(c).) The requirement of accreditation is supported by the home care industry as an added quality assurance measure. Both accrediting bodies are currently recognized by the Division in the fulfillment of the accreditation requirement for personal care assistant services and have recently expanded their accreditation standards to allow for the accreditation of private duty nursing agencies.

Agencies will be accredited initially and on an ongoing basis by the accrediting bodies with reports on their contacts to be furnished by the accrediting bodies to the Division.

Current providers shall have up to one year from the date of the adoption of this proposal to meet the accreditation requirements.

There are presently over 200 private duty nursing agencies approved as Medicaid providers. These agencies are monitored by Division staff in accordance with N.J.A.C. 10:60-1.16. With an accreditation process, much of this State responsibility will be lifted and the Division's monitoring activities could be confined to problem agencies.

Social Impact

There could be a positive impact on recipients of private duty nursing services. The Division proposes by amending the Home Care Services Manual to require accreditation of private duty nursing agencies as a condition for participation in the New Jersey Medicaid program. Because of the large number of private duty nursing agencies which will seek accreditation, access to this service will not be negatively impacted. The industry is in support of the requirement of accreditation which will add an element of quality that could be of significant benefit to recipients in the receipt of needed services.

Economic Impact

There will be no economic impact on the Division. The cost of accreditation will be totally supported by the agencies. Fees to participate in this independent accreditation program are geared to numbers of persons being served and hours of services provided by the agencies and are well within the budgets of even the smallest provider agency.

The requirements for the accreditation program were developed by a task force comprised of representatives of the home care/private duty nursing industry, as well as representatives of State government and the nursing association. Standards and cost of the program represent the consensus of this group.

Regulatory Flexibility Analysis

The proposed amendments have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impose some new reporting, recordkeeping or other compliance requirements on small businesses. The type of small businesses affected are private duty nursing agencies. These agencies are being required to become accredited through one of two accrediting bodies as indicated in the Summary. The accreditation requirement applies equally to all providers regardless of size. There is one differentiation relating to the effective date of accreditation. Current Medicaid providers will have up to one year from the date of the adoption of the amendments to meet the accreditation requirements. However, a new private duty nursing agency would have to be accredited upon application in order to be a Medicaid provider.

There will be some capital costs associated with the fees necessary to participate in this independent accreditation program. The fees, which are paid to the accrediting bodies, are geared to the number of persons being served and hours of service provided by the private duty nursing agency. However, the Division believes that the fees are minimal and within the budgets of even small provider agencies.

With respect to reporting requirements, the accrediting bodies will compile any necessary reports to support the accreditation (of the private duty nursing agency) and provide the data to the Division. The reports will be reviewed by Division staff.

The Division does not believe that private duty nursing agencies will have to hire any additional professional staff to comply with this requirement. The rationale for this statement is that nurses, whether licensed practical nurses or registered nurses, have already been qualified and the agency has to obtain proof from either the nurse or State Board of Nursing in order to provide this service. The agency might have to hire para-professional staff to process and maintain the necessary paper work. The Division has attempted to minimize any adverse economic impact by requiring proof of accreditation which should be a matter of obtaining and maintaining already existing paper work, that is, the credentials already provided by the State Board of Nursing.

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

10:60-1.3 Providers eligible to participate

(a) (No change.)

(b) The voluntary non-profit homemaker agency, private employment agency and temporary help-service agency shall be accredited, initially and on an ongoing basis, by the Commission on Accreditation for Home Care, Inc., or the Community Health Accreditation Program.

1. Exception: A private duty nursing agency currently approved by the Division to provide private duty nursing services (except for the licensed home health agency which is exempt from the accreditation requirement) shall have up to one year from the adoption date of this amendment to become an accredited agency and meet the Division's requirements for accreditation. New private duty nursing agencies applying to become Medicaid providers after the adoption of the amendment shall conform to the accreditation requirement at the time of application.

CORRECTIONS

(a)

THE COMMISSIONER

Adult County Correctional Facilities Definitions; Strip Searches; Body Cavity Searches

Proposed Amendment: N.J.A.C. 10A:31-1.3
Proposed New Rules: N.J.A.C. 10A:31-8.4 and 8.6
Proposed Recodification with Amendments: N.J.A.C. 10A:31-8.4 and 8.5 as 8.5 through 8.7
Proposed Recodification: N.J.A.C. 10A:31-8.6 through 8.15 to N.J.A.C. 10A:31-8.8 through 8.17

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

Authority: N.J.S.A. 30:1B-6, 30:1B-10, and 2A:161A-1.

Proposal Number: PRN 1994-407.

Submit comments by August 17, 1994 to:
William H. Fauver, Commissioner
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 2A:161A-1 et seq., the New Jersey Department of Corrections is mandated to promulgate rules regarding strip searches and body cavity searches at adult county correctional facilities. The Department of Corrections rules at N.J.A.C. 10A:31-8 as to when strip searches and body cavity searches are prohibited, and the exceptions to and the conditions under which these searches can be conducted, are not specific enough as per the Attorney General's strip search and body cavity search requirements and procedures for police officers dated February 3, 1993, which was promulgated pursuant to N.J.S.A. 2A:161A-8b. The amendments at N.J.A.C. 10A:31-8 will no longer permit strip searches based upon the suspicion that an individual has a communicable disease, and will no longer permit persons who have been detained or arrested for commission of an offense other than a crime to be strip searched or body cavity searched based solely on a blanket policy covering all persons entering an adult county correctional facility.

New rules have been developed at N.J.A.C. 10A:31-8.4 and 8.6 which outline the procedures by which strip searches and body cavity searches are authorized for persons who have been detained or arrested for commission of an offense other than a crime and how these searches are to be documented and reported. Procedures for strip searches and body cavity searches of inmates lawfully confined in an adult county correctional facility have been further clarified in order to eliminate any confusion by correctional facility staff. Procedures for the documentation and reporting of these searches have also been added. Terms and definitions for body cavity search, contraband, and strip search have been added at N.J.A.C. 10A:31-1.3.

Social Impact

The proposed amendments and new rules are expected to have a positive social impact because these amendments and new rules should help to insure maximum courtesy and respect for a person(s) who has been detained or arrested for the commission of an offense other than a crime and an inmate(s) lawfully confined in an adult county correctional facility by clarifying the exceptions to, the circumstances for, and the conditions under which these persons may be subjected to a strip or body cavity search. The requirement to restrict availability of detailed reports to authorized individuals only, when a strip search and/or body cavity search is conducted on a person(s) who has been detained or arrested for the commission of an offense other than a crime, will help insure confidentiality.

Economic Impact

The proposed amendments and new rules can be expected to clarify the conditions under which strip searches and body cavity searches may be conducted pursuant to N.J.S.A. 2A:161A-86 and the New Jersey Attorney General's strip search and body cavity search requirements and

procedures. The Department of Corrections believes there will be no adverse economic impact because additional financial resources will not be required to implement or maintain the amendments and new rules.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments and new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments and new rules impact on persons who have been detained or arrested for commission of an offense other than a crime, inmates who have been lawfully confined in an adult correctional facility and the New Jersey Department of Corrections. The proposed amendments and new rules have no effect on small businesses.

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

10A:31-1.3 Definitions

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

...

"Body cavity search" means the visual inspection or manual search of a person's anal or vaginal cavity.

...

"Contraband" means:

1. Any item, article or material found in the possession of or under the control of an inmate which is not authorized for retention or receipt; and/or

2. Any article which may be harmful or presents a threat to the security and orderly operation of an adult county correctional facility. Items of contraband shall include, but shall not be limited to:

i. Guns and firearms of any type;

ii. Ammunition;

iii. Explosives;

iv. Knives, tools and other implements not provided in accordance with adult county correctional facility regulations;

v. Hazardous or poisonous chemicals and gases;

vi. Unauthorized drugs and medications;

vii. Medicines dispensed or approved by the adult county correctional facility but not consumed or utilized in the manner prescribed;

viii. Intoxicants, including, but not limited to, liquor or alcoholic beverages; and

ix. Where prohibited, currency and stamps.

...

"Strip search" means the removal or rearrangement of clothing and the visual inspection of the person's undergarments, buttocks, anus, genitals, or breasts.

...

10A:31-8.4 Strip search of a person(s) who has been detained or arrested for commission of an offense other than a crime

(a) A person who has been detained or arrested for commission of an offense other than a crime and who is confined in an adult county correctional facility shall not be subject to a strip search unless there is reasonable suspicion that a weapon, controlled dangerous substance or contraband will be found.

(b) Strip searches shall be conducted:

1. By a person of the same sex;

2. In private;

3. Under sanitary conditions; and

4. In a professional and dignified manner.

(c) The person authorized to conduct a strip search shall file a written report to be made part of the detained or arrested person's record which shall include, but not be limtied to, the following information:

1. A statement of facts indicating reasonable suspicion for the search;

2. The name of the officer in charge who authorized the search;

3. The name(s) of the correction officer(s) present during the search and the reason for his or her presence;

4. The name(s) of the person(s) conducting the search; and

5. An inventory of the item(s) found during the search.

(d) Reports required pursuant to this section shall not be deemed public records, but, upon request, shall be made available to:

1. The Commissioner, New Jersey Department of Corrections;

2. The adult county correctional facility Administrator;

3. The Attorney General;

4. The county prosecutor; and/or

5. The person searched.

10A:31-[8.4]**8.5** Strip searches **of a person(s) lawfully confined in an adult county correctional facility**

[(a) A person who is detained for a non-indictable offense may not be strip searched unless there is a reasonable suspicion that such a person is carrying or concealing contraband or is suffering from a communicable disease.]

[(b)]**(a)** The [officer] **person** authorized to conduct [such] a strip search **on a person lawfully confined in an adult county correctional facility** shall obtain the permission of the supervisor on duty to conduct the search and [the officer] shall file a written report explaining the reasons for [such] **the** search.

[(c)]**(b)** Strip searches may be conducted in **any of** the following circumstances:

1. Prior to admitting a person [to a lockup, detention] **lawfully confined to an adult county correctional** facility, prison or jail by court order or pursuant to an arrest authorized by law[, except detainees for minor offenses as set forth in (a) above];

2.-5. (No change.)

[6. Whenever the person is suspected of a communicable disease;]

Recodify existing 7.-8. as **6.-7.** (No change in text.)

[(d) Before a strip search is conducted, the person who is detained for a minor offense must be afforded a reasonable opportunity to post bail. For the purposes of this section, bail may be fixed and accepted by the law enforcement officer in charge of the adult county correctional facility.]

[(e)]**(c)** [A strip search shall be conducted while the inmate is unclothed. A strip search includes a thorough and systematic examination of the inmate's body and orifices, including a visual inspect' n of external genital and anal areas, as well as the inmate's clothing and all personal possessions.] A strip search shall [also] include a check for:

1.-5. (No change.)

[(f)]**(d)** A strip search shall be conducted in private **at a location where the search cannot be observed by persons not conducting the search** and no member of the opposite sex shall be present during the search, except as set forth in [(g)] **(e)** below.

[(g)]**(e)** Strip searches may be conducted by [correction officers] **persons** of the opposite sex under emergent conditions as ordered by the [Jail] **adult county correctional facility** Administrator.

(f) No inmate shall be searched as punishment or discipline.

10A:31-8.6 Body cavity searches of a person(s) who has been detained or arrested for commission of an offense other than a crime

(a) The person who has been detained or arrested for the commission of an offense other than a crime and who is lawfully confined in an adult county correctional facility shall not be subject to a body cavity search unless the officer in charge determines that the search is based on a reasonable suspicion that a weapon, controlled dangerous substance or contraband will be found.

(b) An authorized body cavity search of a person who has been detained or arrested for commission of an offense other than a crime shall be conducted:

i. Under sanitary conditions;

ii. At a location where the search cannot be observed by unauthorized persons;

iii. By a physician or a registered nurse who must be of the same sex as the detained or arrested person;

iv. In the presence of only those correction officers deemed necessary for security, who are of the same sex as the detained or arrested person; and

v. In a professional and dignified manner, with maximum courtesy and respect for the person.

(c) The person who has been detained or arrested for the commission of an offense other than a crime may:

i. Remove the object in the presence of the physician or registered nurse and a correction officer(s) of the same sex as the person; or

ii. Be examined by the physician or registered nurse who may remove the object, without the use of force.

(d) In the event it is determined that a foreign object which contains metal is present in the body cavity of the person who has been detained or arrested for the commission of an offense other than a crime, such object may be removed only by the physician with or without the use of force.

(e) In the event the officer in charge or the physician or the registered nurse has determined that nonmetal contraband is being concealed in the body cavity of the person who has been detained or arrested for the commission of an offense other than a crime, and that person refuses to permit contraband removal, the person may be placed in medical isolation. During medical isolation, that person may be kept under visual surveillance to detect removal or elimination of the contraband.

(f) The person authorized to conduct a body cavity search shall file a written report to be made part of the detained or arrested person's record which shall include, but not be limited to, the following information:

1. A statement of facts indicating reasonable suspicion for the search;

2. The name of the officer in charge who authorized the search;

3. The name(s) of the correction officer(s) present during the search and the reason for his or her presence;

4. The name(s) of the person(s) conducting the search;

5. An inventory of any item(s) found during the search; and

6. The reason for use of force, if necessary.

(g) Reports required pursuant to this section shall not be deemed public records, but, upon request, shall be made available to:

1. The Commissioner, New Jersey Department of Corrections;

2. The correctional facility Administrator;

3. The Attorney General;

4. The county prosecutor; and/or

5. The person searched.

10A:31-[8.5]**8.7** Body cavity searches **of an inmate(s) lawfully confined in an adult county correctional facility**

(a) Under no circumstances may a body cavity search be conducted **on an inmate lawfully confined in an adult county correctional facility** unless the correction officer in charge is satisfied that a reasonable suspicion exists that contraband [is being concealed] **will be found** in the inmate's body cavity.

(b) In the event an officer in charge is reasonably satisfied that contraband is being concealed in the inmate's body cavity, the inmate shall be escorted immediately to the adult county correctional facility's hospital or medical department, and the following procedure shall be followed for examination of the inmate and removal of contraband.

[(b)]**1.** A body cavity search [may] **shall** be conducted [only by a licensed physician or registered nurse.]**:**

i. Under sanitary conditions;

ii. At a location where the search cannot be observed by unauthorized persons;

iii. By a physician or registered nurse of either sex;

[(c)]**iv.** [During a body cavity search,] **In the presence of** only those correction officers deemed necessary for security, who are of the same sex as the inmate[, may be present.]; **and**

v. Conducted in a professional and dignified manner, with maximum courtesy and respect for the inmate's person.

2. The inmate may:

i. Remove the object in the presence of the physician or registered nurse and a correction officer(s) of the same sex as the inmate; or

ii. Be examined by the physician or registered nurse who may remove the object without the use of force.

3. If a correction officer in charge determines there is reasonable suspicion to believe that a foreign object which contains metal is present in the inmate's body cavity, such object may be removed only by the physician with or without the use of force.

4. In the event the officer in charge or the physician or the registered nurse has determined that nonmetal contraband is being concealed in the inmate's body cavity, and the inmate refuses to permit contraband removal, the inmate shall receive appropriate disciplinary charges and may be placed in prehearing detention or medical isolation. During prehearing detention, medical isolation and disciplinary detention, if any, the inmate may be kept under visual surveillance to detect removal or elimination of the contraband.

[(d)](c) A written report of the results of a body cavity search shall be made part of the inmate's record[.] **and shall include, but not be limited to, the following information:**

1. A statement of facts indicating reasonable suspicion for the search;

2. The name of the officer in charge who authorized the search;

3. The name(s) of the correction officer(s) present during the search and the reason for his or her presence;

4. The name(s) of the person(s) conducting the search;

5. An inventory of any item(s) found during the search; and

6. The reason for use of force, if necessary.

Recodify existing 10A:31-8.6 through 8.15 as **10A:31-8.8 through 8.17** (No change in text.)

INSURANCE

(a)

SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD

Small Employer Health Benefits Program Enrollment; Permissible Rate Classification Factors; Optional Benefit Riders

Proposed New Rule: N.J.A.C. 11:21-7.15
Proposed Amendments: N.J.A.C. 11:21-3.2(d), 4.1(c), 6.3, and Exhibits A through F

Authorized By: New Jersey Small Employer Health Benefits Program Board, Maureen Lopes, Chair.

Authority: N.J.S.A. 17B:27A-17 et seq., as amended by N.J.S.A. 17B:27A-51, and P.L. 1994, c.11.

Proposal Number: PRN 1994-401.

Interested persons may testify with respect to proposed changes to the policy forms, Exhibits A-F, at a **public hearing** to be held on Wednesday, June 29, 1994 at 9:00 A.M. at the New Jersey Department of Insurance, 2nd Floor, 20 West State Street, Trenton, New Jersey.

Submit written comments by June 30, 1994 to:

New Jersey Small Employer Health Benefits Program
CN 325
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed new rule and amendments are being promulgated in accordance with N.J.S.A. 17B:27A-51, which provides a special procedure whereby the Small Employer Health Benefits Program ("SEH") Board may adopt certain actions. Pursuant to this procedure, the Board is required to publish notice of its intended action in three newspapers of general circulation, which notice shall include procedures for obtaining a detailed description of the intended action and the time, place and manner by which interested persons may present their views regarding the intended action. Notice of the intended action also is required to be sent to affected trade and professional associations, carriers, and other interested persons who may request such notice.

Concurrently, the Board is required to forward the notice of the intended action to the Office of Administrative Law ("OAL") for publication in the New Jersey Register. The Board must provide a

minimum 20-day period for all interested persons to submit their written comments on the intended action to the Board. The Board may adopt its intended action immediately upon the close of the specified comment period by submitting the adopted action to the OAL. If the Board elects to adopt the action immediately upon the close of the comment period, it shall nevertheless respond to the comments timely submitted within a reasonable period of time thereafter. The Board shall prepare a report for public distribution, and publication by the OAL in the New Jersey Register. The report shall include the list of commenters, their relevant comments, and the Board's responses.

The proposed new rule establishes rating factors, pursuant to section 4 of P.L. 1994, c.11, within the categories of age, gender, and geographical location, which are the only factors a carrier may use after the 60 days following the effective date of N.J.A.C. 11:21-7.15 to differentiate rates between different small employer groups purchasing the same health benefits plan. Thereafter, carriers may not use health status or any other factor not expressly permitted in rating health benefits plans. The established rating factors may be used until September 1, 1996, after which all health benefits plans issued or renewed must be community rated.

These rating factors must be used in a manner consistent with regulations promulgated by the New Jersey Department of Insurance with respect to rate filings.

As required by P.L. 1994, c.11, the age classifications are in five year increments. The six geographic categories are each no smaller than a county and, for ease of administration, are listed according to established post office zip code or county that applies to the small employer's principal place of business. Family structure, which is a permissible factor for rating under section 9(e) of the Act, N.J.S.A. 17B:27A-25(e), is divided into four categories: employee; employee and spouse; employee and child or children; and family.

The proposed amendment to N.J.A.C. 11:21-6.3(c) is of a technical nature to clarify that the Health Status form approved by the Board and specified in Exhibit S of the Appendix to the rules shall not, after 60 days following the effective date of the rating factors described above, be used for purposes of rating, pursuant to P.L. 1994, c.11, but may be used, where appropriate, to determine whether an applicant has a preexisting condition.

The proposed amendment to N.J.A.C. 11:21-3.2 creates filing requirements for benefits riders to the standard health benefits plans developed by the Board. P.L. 1994, c.11 authorized carriers to offer to small employers benefit riders, in addition to those authorized by the Board, that may change the coverage offered in the standard plans. Riders that add benefits or increase the actuarial value of a health benefits plan must be filed for informational purposes with the Board. Riders that decrease the benefits or actuarial value of a health benefits plan must be filed for informational purposes with the Board and for approval with the Commissioner of Insurance before the rider may be sold.

The proposed amendment to N.J.A.C. 11:21-3.2 requires that the carrier submit riders to the Board, that the carrier specify which plan each rider modifies, that the carrier certify the actuarial value of the rider. The proposed amendment also provides that the Board must notify a carrier within 30 days of its filing whether the filing is complete. If the Board fails to notify the carrier within 30 days, the filing shall be deemed complete.

The proposed amendment to N.J.A.C. 11:21-4.1(c) is of a technical nature and clarifies that the standard rider forms are to be used for those optional benefit riders designed by the Board, not for the optional benefit riders authorized to be issued by P.L. 1994, c.11.

The Board also has proposed amendments to the policy forms A through E and HMO (N.J.A.C. 11:21, Exhibits A through F), some substantive and others technical, to conform with legislative changes mandated by P.L. 1994, c.11 and other laws that have become effective since the Board's adoption of the policy forms. In Plan A, references to occupation have been deleted, since this will no longer be a valid rating criterion. In Plans A through E and HMO, the criteria for determining whether a carrier will cover "off-label" prescription drugs has been changed to conform with the Off Label Drug Use Act, P.L. 1993, c.321. A definition of "health benefits plan" has been added to Plans A through E and HMO which conforms with P.L. 1994, c.11. Optional language has been added to Plans A through E and HMO to accommodate preferred provider organizations.

Hospital indemnity type benefits and supplemental limited benefits insurance have been eliminated from the list of plans that will be taken into account under the coordination of benefits provision of Plans A through E and HMO to conform with P.L. 1994, c.11. The term and definition of "coinsurance cap" has been replaced in Plans A through E by the term and definition of "coinsurance charge limit." This change is purely technical, not substantive. In Plans B through E, "autologous bone marrow transplant and associated high dose chemotherapy for treatment of breast cancer" have been added to the list of services requiring pre-approval to conform with the existing Covered Charges with Special Limitations section. Plans B through E have been amended to clarify that a person who is replacing one health benefits plan with another and has satisfied some portion of a preexisting condition waiting period under the first health benefits plan will receive credit for that time toward any preexisting condition waiting period under the new plan.

The definition of "employee" in Plans A through E and HMO has been changed, in conformance with P.L. 1994, c.11, to exclude employees who are eligible for or participating in an employee welfare arrangement established pursuant to a collective bargaining agreement. Under the HMO Plan prescription drug rider, Exhibit J, language has been added to reflect that drugs used to treat a mental or nervous condition would be covered under the rider.

N.J.A.C. 11:21-7.15 establishes the four categories of rating factors that may be used in differentiating rates for the same health benefits plan offered to different employers.

N.J.A.C. 11:21-3.2(d) establishes filing procedures for optional riders to the standard health benefits plans offered by carriers.

Social Impact

The proposed new rule will establish factors which will permit carriers to differentiate rates charged to different small employers for the same health benefits plan on the basis of age, gender, geography, and family structure. This new rule will clarify that rates may not take other factors into account, such as health status or profession. The new rule will not greatly change current law, except that health status may not be used in rating a small employer health benefits plan.

The proposed amendment to N.J.A.C. 11:21-6.3(c) is of a technical nature and clarifies that the Health Status form contained in Exhibit S of the Appendix to the rules may not be used for rating purposes after the 60th day following the effective date of the rating factors regulation proposed herein, but may be used, where appropriate, to determine whether an applicant has a preexisting condition.

The proposed amendment to N.J.A.C. 11:21-3.2 will establish a filing procedure for carriers that choose to offer riders to the standard health benefits plans. The proposed amendment will facilitate carriers' offering greater choice and variability in the small employer health insurance market.

The proposed amendment to N.J.A.C. 11:21-4.1(c) is of a technical nature and does not have an independent social impact.

The proposed amendments to the policy forms A through E and HMO are in some cases purely technical changes, in some cases substantive changes proposed at the Board's initiative, and in some cases the changes are required by the passage of new laws. The changes to the benefits may increase the cost of the plans and will result in greater benefits to the employees covered by the plans.

Economic Impact

The new rule is not likely to have a significant economic impact on small employers or on carriers issuing or renewing health benefits plans. Carriers currently use various factors in underwriting health benefits plans, and restrictions on which factors may be used prospectively will not necessarily have an economic impact on the cost of underwriting. The new rule does not impose new reporting or filing requirements.

Small employers with employees whose health status may have resulted in increased rates in the past may experience a reduction in premiums, whereas small employers with employees whose health status may have resulted in lower rates may experience an increase in premiums as a result of health status no longer being a factor used in rating small employer groups.

The proposed amendment to N.J.A.C. 11:21-6.3(c) is of a technical nature and does not have an independent economic impact.

The proposed amendment to N.J.A.C. 11:21-3.2 will result in some filing requirements on carriers that choose to offer optional riders to the standard health benefits plans. The decision by a carrier to offer such riders to the standard plans is purely voluntary. The filing procedure is not likely to have a significant economic impact on either carriers or small employers.

The proposed amendment to N.J.A.C. 11:21-4.1(c) is of a technical nature and does not have an independent economic impact.

The proposed amendments to policy forms A through E and HMO and benefits offered therein may have an economic impact on employees who enjoy greater benefits under the amended provisions. The premium charged to employers may, however, reflect the cost of such increased benefits. The proposed amendments to the application, certification and enrollment forms will not have an economic impact on either small employers or carriers.

Regulatory Flexibility Analysis

The proposed new rule, N.J.A.C. 11:21-7.15, does not impose new reporting requirements on carriers issuing health benefits plans to small employers. To the extent that any carriers issuing health benefits plans might be considered a small business under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act, the proposed new rule restricts the factors that may be used in underwriting a health benefits plan. However, such restriction will not necessarily impose a burden or additional cost on carriers subject to the restrictions. Nor does the proposed new rule place any additional burden on small employers that purchase health benefits plans, in terms of recordkeeping, reporting or other compliance requirements. In fact, to the extent that the new rule prohibits the use of health status as a rating factor, a small employer seeking coverage by a health benefits plan may face reduced paperwork in the application process.

The proposed amendment to N.J.A.C. 11:21-6.3(c) is of a technical nature and does not impose any additional burden on carriers or small businesses.

The proposed amendment to N.J.A.C. 11:21-3.2 imposes new filing requirements on carriers issuing optional riders to health benefits plans offered to small employers. In addition to submitting the riders to the Board, a carrier will have to provide an actuarial certification of the value of the rider so that the Board may determine whether the rider increases or decreases the benefits or value of the underlying health benefits plan. However, the Board believes there is no less burdensome manner of determining whether a rider increases or decreases the benefits or value of the underlying health benefits plan, and this determination is necessary because of the different statutory filing requirements with respect to the Board and Commissioner. The Board has attempted to keep paperwork to a minimum by requiring only a certification of the actuarial value, rather than a detailed actuarial memorandum.

The proposed amendment to N.J.A.C. 11:21-4.1(c) is of a technical nature and does not have an independent impact on small business.

The proposed amendments to the policy forms A through E and HMO will not impose additional burdens on small business.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in cursive brackets {thus}):

11:21-3.2 Optional benefit riders

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

(d) In addition to the optional benefit riders listed in (c) above, members may offer riders that revise in any way the coverage offered by Plans A, B, C, D, E and HMO, subject to the provisions set forth in (d)1 through 5 below.

1. Before a member may sell a rider or amendment thereof that decreases any benefits or decreases the actuarial values of Plans A, B, C, D, E or HMO, the member shall file the rider or amendment thereof for informational purposes with the Board, and for approval by the Commissioner. No rider filed with the Commissioner may be sold until approved by the Commissioner and the carrier has either received appropriate notice from the Board or the filing is deemed to be in substantial compliance under (d)5 below.

2. Before a member may sell a rider or amendment thereof that increases any benefits or increases the actuarial value of Plans A, B, C, D, E or HMO, the member shall file the rider or amendment thereof with the Board for informational purposes.

3. In addition to (d)1 and 2 above, any benefit rider or amendments thereof shall be subject to the provisions of Sections 2, 3(b), 6, 7, 8, 9 and 11 of P.L. 1992, c.162.

4. A member making an informational filing to the Board pursuant to (d)1 or 2 above shall:

i. Submit the filing and any related materials to the Board in triplicate at the address specified at N.J.A.C. 11:21-1.3;

ii. Specify whether the rider or amendment thereof is to be used in connection with Plan A, B, C, D, E or HMO and provide clear and conspicuous notice of such on the forms submitted for each rider;

iii. Submit, in triplicate, a copy of each health benefits plan to be used in connection with a rider or amendment thereof clearly marked to show how the rider or amendment thereof changes the language of Plan A, B, C, D, E, or HMO; and

iv. Submit a certification signed by a duly authorized officer of the member that states clearly:

(1) Whether the rider or amendment thereof increases or decreases the benefits or actuarial value of Plan A, B, C, D, E, or HMO and include a detailed actuarial memorandum that supports the statement of actuarial value;

(2) That the filing is complete and in accordance with all the requirements of this subsection; and

(3) That the member will offer the rider or amendment thereof to any small employer seeking to purchase the health benefits plan it modifies.

5. The Board shall notify a member in writing of its determination of whether an informational filing is complete and in substantial compliance with this subsection, within 30 days of the member's submission of a rider or amendment thereof. If the Board does not notify a member of its determination with respect to an informational filing within 30 days of the date of submission thereof, the informational filing shall be deemed complete.

i. If an informational filing is incomplete, but in substantial compliance with the requirements of this subchapter, the notification shall provide the reasons the filing is incomplete and what additional information needs to be submitted by the member. The member shall provide the Board with the information required to complete the filing.

ii. If an informational filing is incomplete and not in substantial compliance with the requirements of this subchapter, the notification shall provide the reasons the filing is incomplete and what additional information needs to be submitted by the member. The member shall provide the Board with the information required to complete the filing. Upon receipt of notice from the Board that a filing is incomplete and not in substantial compliance with the requirements of this subchapter, the member shall not sell the rider or amendment thereof until the member has received written notice from the Board that the informational filing is in substantial compliance or complete.

iii. If the Board takes no action within 30 days of a member's submission of information requested by the Board to complete an informational filing, the filing shall be deemed to be in substantial compliance.

11:21-4.1 Policy forms

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

(c) In issuing riders pursuant to N.J.A.C. 11:21-3.2(c), members shall use the standard rider forms which are set forth in the Appendix to this chapter as Exhibits H, I and J, as applicable.

(d)-(j) (No change.)

11:21-6.3 Enrollment

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

(c) {Any} **A** small employer carrier {who elects to utilize} **may require a report of** an eligible employee's health status {in} **for the purpose of** determining {premium rates} **or the applicability of a preexisting condition limitation in accordance with the Act. The carrier** shall require eligible employees to complete the Health Status form approved by the Board and specified in Exhibit S of the Appendix to this chapter incorporated herein by reference. {This form may also be utilized by carriers in determining the applicability of any preexisting condition limitation in accordance with the Act.}

1. After the 60th day following the effective date of N.J.A.C. 11:21-7.15, such report may be used only for the purpose of determining the applicability of a preexisting condition limitation in accordance with the Act.

. . .

11:21-7.15 Permissible rate classification factors

(a) For health benefits plans issued or renewed after the 60th day following the effective date of this provision, a carrier shall not differentiate premium rates charged to different small employers for the same health benefits plan except on the basis of age, gender, and geography in accordance with the following restrictions:

1. Age factor categories shall be limited to the following increments: 24 and under; 25-29; 30-34; 35-39; 40-44; 45-49; 50-54; 55-59; 60-64; 65-69; 70 and over.

2. Geographic categories shall be limited to six territories, each consisting of the areas covered by the first three digits of the U.S. Postal Service zip codes or the counties listed below. A carrier shall determine which territory applies to a small employer on the basis of the address of the small employer's principal place of business. The six territories are the following:

i. Territory A consists of zip codes 070-073 or Essex, Hudson and Union counties;

ii. Territory B consists of zip codes 074-076 or Bergen and Passaic counties;

iii. Territory C consists of zip codes 077-079 or Monmouth, Morris, Sussex and Warren counties;

iv. Territory D consists of zip codes 088-089 or Hunterdon, Middlesex and Somerset counties;

v. Territory E consists of zip codes 081, 085-086 or Burlington, Camden, and Mercer counties; and

vi. Territory F consists of zip codes 080, 082-084, and 087 or Atlantic, Cape May, Ocean, Salem, Cumberland and Gloucester counties.

(b) Notwithstanding (a) above, a carrier may differentiate premium rates charged to different small employers for the same standard health benefits plan, whether it be A, B, C, D, E or HMO, on the basis of family structure according to only the following four rating tiers:

1. Employee only;
2. Employee and spouse;
3. Employee and child(ren); and
4. Family.

APPENDIX
EXHIBIT A

PLAN A

[Carrier]

SMALL GROUP HEALTH BENEFITS BASIC POLICY

. . .

SCHEDULE OF INSURANCE AND PREMIUM RATES PLAN A

. . .

SCHEDULE OF INSURANCE AND PREMIUM RATES EXAMPLE: PLAN A PPO

This Policy's classification, and the insurance coverages and amounts which apply to each class are shown below:

CLASS

[All eligible employees]

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

Calendar Year Cash Deductible:

• for Hospital Confinement	None (Note: See Hospital Confinement Co-Payment)
• for Preventive Care	None
• for All Other Charges	
—per Covered Person	$250
—per Covered Family	$500 Note: Must be individually satisfied by 2 separate Covered Persons

Medicare Alternate Deductible

For a Covered Person who is eligible for Medicare by reason of a disability, but is not insured by both Parts A and B, the Medicare Alternate Deductible is equal to the Cash Deductible **plus** what Parts A and B of Medicare would have paid had the Covered Person been so insured.

After the 18th month period described in **Medicare as Secondary Payor,** ends with respect to a Covered Person who is eligible for Medicare solely on the basis of End Stage Renal Disease, but is not insured by both Parts A and B, the Medicare Alternate Deductible is equal to the Cash Deductible plus what Parts A and B of Medicare would have paid had the Covered Person been so insured.

Hospital Confinement Co-Payment

—per day	$250
—maximum Co-Payment per Period of Confinement	$1,250
—maximum Co-Payment per Covered Person per Calendar Year	$2,500

Co-Insurance

Co-Insurance is the percentage of a Covered Charge that must be paid by a Covered Person. However, [Carrier] will waive the Co-Insurance requirement once {the Co-Insurance Cap} **Coinsured Charge Limit** has been reached. This Policy's Co-Insurance, as shown below, does not include penalties incurred under this Policy's Utilization Review provisions, or any other Non-Covered Charge.

	If treatment, services or supplies are given by: a Network Provider	**an Out-Network Provider**
The **Co-Insurance** for this Policy is as follows:		
• for Preventive Care	None	None
• for Facility charges made by:		
—a Hospital	None	20%
—an Ambulatory Surgical Center	None	20%
—a Birthing Center	None	20%
—an Extended Care Center or Rehabilitation Center	None	20%
—a Hospice	None	20%
• for the following Covered Charges incurred while the Covered Person is an Inpatient in a Hospital:		
—Prescription Drugs	None	20%
—Blood Transfusions	None	20%
—Infusion Therapy	None	20%
—Chemotherapy	None	20%
—Radiation Therapy	None	20%
• for all other Covered Charges	70%	50%

The **Coinsured Charge Limit** means the amount of Covered Charges a Covered Person must incur **each Calendar Year** before no Co-Insurance is required.

Coinsured Charge Limit: $10,000

Daily Room and Board Limits

. . .

GENERAL PROVISIONS

. . .

PREMIUM RATE CHANGES

The premium rates in effect on the Effective Date are shown in this Policy's Schedule. [Carrier] has the right to change premium rates as of any of these dates:

a. Any premium due date.
b. Any date that an Employer becomes, or ceases to be, an Affiliated Company.
c. Any date that the extent or nature of the risk under this Policy is changed:
   • by amendment or this Policy; or
   • by reason of any provision of law or any government program or regulation; or
   • if this Policy supplements or coordinates with benefits provided by another insurer, non-profit hospital or medical service plan, or health maintenance organization, on any date [Carrier's] obligation under this Policy is changed because of a change in such other benefits.
d. At the discovery of a clerical error or misstatement as described below.

{e. As of the date the nature of the Policyholder's business changes.}

[Carrier] will give the Policyholder 30 days advance written notice when a change in the premium rates is made.

PARTICIPATION REQUIREMENTS

...

CLERICAL ERROR—MISSTATEMENTS

Neither clerical error by the Policyholder, nor the [Carrier] in keeping any records pertaining to coverage under this Policy, nor delays in making entries thereon, will not invalidate coverage which would otherwise be in force, or continue coverage which would otherwise be validly terminated. However, upon discovery of such error or delay, an equitable adjustment of premiums will be made.

Premium adjustments involving return of unearned premium to the Policyholder will be limited to the period of 12 months preceding the date of [Carrier's] receipt of satisfactory evidence that such adjustments should be made.

If the age of an Employee, or any other relevant facts, are found to have been misstated, and the premiums are thereby affected, an equitable adjustment of premiums will be made. If such misstatement involves whether or not the person's coverage would have been accepted by [Carrier], {or the amount of coverage,} subject to this Policy's **Incontestability** section, the true facts will be used in determining whether coverge is in force under the terms of this Policy{, and in what amounts}.

TERMINATION OF THE POLICY—RENEWAL PRIVILEGE

...

The Employer must certify to [Carrier] the Employer's status as a Small Employer every year. Certification must be given to [Carrier] within 10 days of the date [Carrier] requests it. If Employer fails to do this, [Carrier] retains the right to take the action{s} described above as of the Employer's Policy Anniversary.

{[Also, if the nature of the Employer's business changes, the Employer must notify [Carrier] within 30 days. [Carrier] has the right to change the rates [Carrier] charges for this Policy if this happens. If the Employer fails to notify [Carrier] within 30 days, [Carrier] has the right to adjust premium rates retroactively to the date the nature of the Employer's business changed.] **[Note: This section will sunset January 1, 1997]**}

...

DEFINITIONS

...

Employee means a Full-Time Employee (25 hours per week) of the Employer. Partners, Proprietors, and independent contractors will be treated like Employees, if they meet all of this Policy's conditions of eligibility. Employees who work on a temporary or substitute basis **or who are participating in an employee welfare arrangement established pursuant to a collective bargaining agreement** are not considered to be Employees for the purpose of this Policy.

Employee's Eligibility Date means the later of:

a. the date of employment; or
b. the day after any applicable waiting period ends.

Employer means [ABC Company].

Experimental or Investigational means [Carrier] determines a service or supply is:

a. not of proven benefit for the particular diagnosis or treatment of a particular condition; or
b. not generally recognized by the medical community as effective or appropriate for the particular diagnosis or treatment of a particular condition; or
c. provided or performed in special settings for research purposes or under a controlled environment or clinical protocol.

Unless otherwise required by law with respect to drugs which have been prescribed for the treatment of a type of cancer for which the drug has not been approved by the United States Food and Drug Administration (FDA), [Carrier] will not cover any services or supplies, including treatment, procedures, drugs, biological products or medical devices or any hospitalizations in connection with Experimental or Investigational services or supplies.

[Carrier] will also not cover any technology or any hospitalization primarily to receive such technology if such technology is obsolete or ineffective and is not used generally by the medical community for the particular diagnosis or treatment of a particular condition.

Governmental approval of technology is not necessarily sufficient to render it of proven benefit or appropriate or effective for a particular diagnosis or treatment of a particular condition, as explained below.

[Carrier] will apply the following five criteria in determining whether services or supplies are Experimental or Investigational:

a. Any medical device, drug, or biological product must have received final approval to market by the FDA for the particular diagnosis or condition. Any other approval granted as an interim step in the FDA regulatory process, e.g., an Investigational Device Exemption or an Investigational New Drug Exemption, is not sufficient. Once FDA approval has been granted for a particular diagnosis or condition, use of the medical device, drug or biological product for another diagnosis or condition will require that one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information; or
   3. The United States Pharmacopeia Drug Information

   recognize the usage as appropriate medical treatment. As an alternative to such recognition in one or more of the compendia, the usage of the drug will be recognized as appropriate if it is {supported by the preponderance of evidence that exists in clinical studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature} **recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal**. A medical device, drug, or biological product that meets the above tests will not be considered Experimental or Investigational.

In any event, any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed will be considered Experimental or Investigational.

b. Conclusive evidence from the published peer-reviewed medical literature must exist that the technology has a definite positive effect on health outcomes; such evidence must include well-designed investigations that have been reproduced by non affiliated authoritative sources, with measurable results, backed up by the positive endorsements of national medical bodies or panels regarding scientific efficacy and rationale;
c. Demonstrated evidence as reflected in the published peer-reviewed medical literature must exist that over time the technology leads to improvement in health outcomes, i.e., the beneficial effects outweigh any harmful effects;
d. Proof as reflected in the published peer-reviewed medical literature must exist that the technology is at least as effective in improving health outcomes as established technology, or is usable in appropriate clinical contexts in which established technology is not employable; and
e. Proof as reflected in the published peer-reviewed medical literature must exist that improvements in health outcomes; as defined in item c. above, is possible in standard conditions of medical practice, outside clinical investigatory settings.

...

Health Benefits Plan **means any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in New Jersey by any carrier to a Small Employer group pursuant to section 3 of P.L. 1992, c.162 (C. 17B:27A-19). Health Benefits Plan excludes the following plans, policies, or contracts: accident only, credit, disability, long term care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only, or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers' compensation or similar law, hospital confinement or other Supplemental Limited Benefit Insurance coverage, automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (C. 39:6A-1 et seq.).**

...

Preventive Care means charges for routine physical examinations, including related laboratory tests and x-rays, immunizations and vaccines, well baby care, pap smears, mammography and screening tests.

...

Supplemental Limited Benefit Insurance **means insurance that is provided in addition to a Health Benefits Plan on an indemnity non-expense incurred basis.**

...

HEALTH BENEFITS INSURANCE

This health benefits insurance will pay many of the medical expenses incurred by a Covered Person.

Note: [Carrier] payments will be reduced or eliminated if a Covered Person does not comply with the Utilization Review and Pre-Approval requirements contained in this Policy.

BENEFIT PROVISION

The Cash Deductible

...

{Co-Insurance Cap

This Policy limits Co-Insurance amounts each Calendar Year **except** as stated below. The Co-Insurance Cap cannot be met with:

a. Non-Covered Charges;
b. Cash Deductibles; and
c. Co-Payments.

There is Co-Insurance Cap for each Covered Person.

The Co-Insurance Cap is shown in the Schedule.

Once the Covered Person's Co-Insurance amounts in a Calendar Year exceed the individual cap, [Carrier] will waive his or her Co-Insurance for the rest of that Calendar Year.}

[Coinsured Charge Limit

The Coinsured Charge Limit is the amount of Covered Charges a Covered Person must incur each Calendar Year before no Co-Insurance is required.]

...

If This Plan Replaces Another Plan

The Employer who purchased this Policy may have purchased it to replace a plan the Employer had with some other insurer.

The Covered Person may have incurred charges for covered expenses under the Employer's old plan before it ended. If so, these charges will be used to meet this Policy's Cash Deductible if:

a. the charges were incurred during the Calendar Year in which this Policy starts;
b. this Policy would have paid benefits for the charges, if this Policy had been in effect;
c. the Covered Person was covered by the old plan when it ended and enrolled in this Policy on its Effective Date; and
d. this Policy starts right after the old plan ends.

The Covered Person may have satisfied part of the eligibility waiting period under the Employer's old plan before it ended. If so, the time satisfied will be used to satisfy this Policy's eligibility waiting period if:

a. the Employee was employed by the Employer on the date the Employer's old plan ended; and
b. this Policy starts right after the old plan ends.

...

COORDINATION OF BENEFITS

Purpose Of This Provision

A Covered Person may be covered for health expense benefits by more than one plan. For instance, he or she may be covered by this Policy as an Employee and by another plan as a Dependent of his or her spouse. If he or she is, the provision allows [Carrier] to coordinate what [Carrier] pays with what another plan pays. [Carrier] does this so the Covered Person does not collect more in benefits than he or she incurs in charges.

DEFINITIONS

"Plan" means any of the following that provide health expense benefits or services:

a. group or blanket insurance plans;
b. group hospital or surgical plans, or other service or prepayment plans on a group basis;
c. union welfare plans, Employer plan, Employee benefits plans, trusteed labor and management plans, or other plans for members of a group;
d. programs or coverages required by law; **or**
{e. group or group-type hospital indemnity benefits which exceed $250.00 per day;
f. group or group-type hospital indemnity benefits of $250.00 per day or less for which the Employer pays part of the premium; or}
{g.}**e.** Medicare or other government programs which [Carrier] is allowed to coordinate with by law.

"Plan" does not include:

a. Medicaid or any other government program or coverage which [Carrier] is not allowed to coordinate with by law;
b. school accident type coverages written on either a blanket, group, or franchise basis;
c. **any** group or group-type hospital indemnity benefits; {of $250.00 per day or less for which the Employee pays the entire premium; nor}
d. Supplemental Limited Benefits Insurance; nor
{d.}**e.** any plan [Carrier] says [Carrier] supplements, as named in the Schedule.

...

EXHIBIT B

SCHEDULE OF INSURANCE AND PREMIUM RATES [PLAN B]

...

Daily Room and Board Limits

...

• During a Confinement In An Extended Care Center Or Rehabilitation Center

[Carrier] will cover the lesser of:

a. the center's actual daily room and board charge; or
b. 50% of the covered daily room and board charge made by the Hospital during the Covered Person's preceding Hospital confinement, for semi-private accommodations.

Pre-Approval is required for charges incurred in connection with:

- Durable Medical Equipment
- Extended Care and Rehabilitation
- Home Health Care
- Hospice Care
- Infusion Therapy
- Prosthetic Devices
- **Autologous Bone Marrow Transplant and Associated High Dose Chemotherapy for treatment of breast cancer**

...

DEFINITIONS

...

Preventive Care means charges for routine physical examinations, including related laboratory tests and x-rays, immunizations and vaccines, well baby care, pap smears, mammography and screening tests.

...

EXHIBIT C

SCHEDULE OF INSURANCE AND PREMIUM RATES [PLAN C] [PLANS C, D, E]

...

Daily Room and Board Limits

...

• During a Confinement In An Extended Care Center Or Rehabilitation Center

[Carrier] will cover the lesser of:

a. the center's actual daily room and board charge; or
b. 50% of the covered daily room and board charge made by the Hospital during the Covered Person's preceding Hospital confinement, for semi-private accommodations.

Pre-Approval is required for charges incurred in connection with:
- Durable Medical Equipment
- Extended Care and Rehabilitation
- Home Health Care
- Hospice Care
- Infusion Therapy
- Prosthetic Devices
- **Autologous Bone Marrow Transplant and Associated High Dose Chemotherapy for treatment of breast cancer**

...

DEFINITIONS

...

Preventive Care means charges for routine physical examinations, including related laboratory tests and x-rays, immunizations and vaccines, well baby care, pap smears, mammography and screening tests.

...

EXHIBIT F

PLANS B, C, D, E

[Carrier]

SMALL GROUP HEALTH BENEFITS POLICY

...

SCHEDULE OF INSURANCE AND PREMIUM RATES EXAMPLE PPO (without Co-Payment)

This Policy's classification, and the insurance coverages and amounts which apply to each class are shown below:

CLASS

[All eligible employees]

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

...

Co-Insurance

Co-Insurance is the percentage of a Covered Charge that must be paid by a Covered Person. However, [Carrier] will waive the Co-Insurance requirement once the {Co-Insurance Cap} **Coinsured Charge Limit** has been reached. This Policy's Co-Insurance, as shown below, does not include penalties incurred under this Policy's Utilization Review provisions, or any other Non-Covered Charge.

The **Co-Insurance** for this Policy is as follows:
- if treatment, services or supplies are given by a Network Provider 20%
- if treatment, services or supplies are given by an Out-Network Provider 40%

The **Coinsured Charge Limit** means the amount of Covered Charges a Covered Person must incur **each Calendar Year** before no Co-Insurance is required, **except as stated below.**

Exception: Charges for Mental and Nervous Conditions and Substance Abuse treatment are not subject to or eligible for the **Coinsured Charge Limit.**

Coinsured Charge Limit: $10,000

SCHEDULE OF INSURANCE AND PREMIUM RATES EXAMPLE PPO (with Co-Payment)

This Policy's classification, and the insurance coverages and amounts which apply to each class are shown below:

CLASS

[All eligible employees]

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

...

Co-Insurance

Co-Insurance is the percentage of a Covered Charge that must be paid by a Covered Person. However, [Carrier] will waive the Co-Insurance requirement once the {Co-Insurance Cap} **Coinsured Charge Limit** has been reached. This Policy's Co-Insurance, as shown below, does not include penalties incurred under this Policy's Utilization Review provisions, or any other Non-Covered Charge.

The **Co-Insurance** for this Policy is as follows:
- if treatment, services or supplies are given by a Network Provider None
- if treatment, services or supplies are given by an Out-Network Provider 30%

The **Coinsured Charge Limit** means the amount of Covered Charges a Covered Person must incur **each Calendar Year** before no Co-Insurance is required, **except as stated below.**

Exception: Charges for Mental and Nervous Conditions and Substance Abuse treatment are not subject to or eligible for the **Coinsured Charge Limit.**

Coinsured Charge Limit: $10,000

SCHEDULE OF INSURANCE AND PREMIUM RATES EXAMPLE POS

This Policy's classification, and the insurance coverages and amounts which apply to each class are shown below:

CLASS

[All eligible employees]

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

...

Co-Insurance

Co-Insurance is the percentage of a Covered Charge that must be paid by a Covered Person. However, [Carrier] will waive the Co-Insurance requirement once the {Co-Insurance Cap} **Coinsured Charge Limit** has been reached. This Policy's Co-Insurance, as shown below, does not include penalties incurred under this Policy's Utilization Review provisions, or any other Non-Covered Charge.

The **Co-Insurance** for this Policy is as follows:
- if treatment, services or supplies are given by the PCP None, **except as state below**
- if treatment, services or supplies are given or referred by a non-referred Provider 20%, **except as stated below**

Exception: for Mental and Nervous and Substance Abuse charges
- if treatment, services or supplies are given or referred by the PCP 5%
- if treatment, services or supplies are given by a non-referred Provider 25%

The **Coinsured Charge Limit** means the amount of Covered Charges a Covered Person must incur **each Calendar Year** before no Co-Insurance is required, **except as stated below.**

Exception: Charges for Mental and Nervous Conditions and Substance Abuse treatment are not subject to or eligible for the **Coinsured Charge Limit.**

Coinsured Charge Limit: $10,000

...

PREMIUM RATE CHANGES

The premium rates in effect on the Effective Date are shown in this Policy's Schedule. [Carrier] has the right to change premium rates as of any of these dates:

a. Any premium due date.
b. Any date that an Employer becomes, or ceases to be, an Affiliated Company.
c. Any date that the extent or nature of the risk under this Policy is changed:
   - by amendment or this Policy; or
   - by reason of any provision of law or any government program or regulation; or
   - if this Policy supplements or coordinates with benefits provided by another insurer, non-profit hospital or medical service plan, or health maintenance organization, on any date [Carrier's] obligation under this Policy is changed because of a change in such other benefits.
d. At the discovery of a clerical error or misstatement as described below.
{e. As of the date the nature of the Policyholder's business changes.}

[Carrier] will give the Policyholder 30 days advance written notice when a change in the premium rates is made.

...

CLERICAL ERROR—MISSTATEMENTS

Neither clerical error by the Policyholder, nor the [Carrier] in keeping any records pertaining to coverage under this Policy, nor delays in making entries thereon, will not invalidate coverage which would otherwise be in force, or continue coverage which would otherwise be validly terminated. However, upon discovery of such error or delay, an equitable adjustment of premiums will be made.

Premium adjustments involving return of unearned premium to the Policyholder will be limited to the period of 12 months preceding the date of [Carrier's] receipt of satisfactory evidence that such adjustments should be made.

If the age of an Employee, or any other relevant facts, are found to have been misstated, and the premiums are thereby affected, an equitable adjustment of premiums will be made. If such misstatement involves whether or not the person's coverage would have been accepted by [Carrier], {or the amount of coverage}, subject to this Policy's **Incontestability** section, the true facts will be used in determining whether coverge is in force under the terms of this Policy{, and in what amounts}.

TERMINATION OF THE POLICY—RENEWAL PRIVILEGE

...

The Employer must certify to [Carrier] the Employer's status as a Small Employer every year. Certification must be given to [Carrier] within 10 days of the date [Carrier] requests it. If Employer fails to do this, [Carrier] retains the right to take the action{s} described above as of the Employer's Policy Anniversary.

{[Also, if the nature of the Employer's business changes, the Employer must notify [Carrier] within 30 days. [Carrier] has the right to change the rates [Carrier] charges for this Policy if this happens. If the Employer fails to notify [Carrier] within 30 days, [Carrier] has the right to adjust premium rates retroactively to the date the nature of the Employer's business changed.] **[Note: This section will sunset January 1, 1997]**}

...

DEFINITIONS

...

Employee means a Full-Time Employee (25 hours per week) of the Employer. Partners, Proprietors, and independent contractors will be treated like Employees, if they meet all of this Policy's conditions of eligibility. Employees who work on a temporary or substitute basis **or who are participating in an employee welfare arrangement established pursuant to a collective bargaining agreement** are not considered to be Employees for the purpose of this Policy.

Employee's Eligibility Date means the later of:

a. the date of employment; or
b. the day after any applicable waiting period ends.

Employer means [ABC Company].

Experimental or Investigational means [Carrier] determines a service or supply is:

a. not of proven benefit for the particular diagnosis or treatment of a particular condition; or
b. not generally recognized by the medical community as effective or appropriate for the particular diagnosis or treatment of a particular condition; or
c. provided or performed in special settings for research purposes or under a controlled environment or clinical protocol.

Unless otherwise required by law with respect to drugs which have been prescribed for the treatment of a type of cancer for which the drug has not been approved by the United States Food and Drug Administration (FDA), [Carrier] will not cover any services or supplies, including treatment, procedures, drugs, biological products or medical devices or any hospitalizations in connection with Experimental or Investigational services or supplies.

[Carrier] will also not cover any technology or any hospitalization primarily to receive such technology if such technology is obsolete or ineffective and is not used generally by the medical community for the particular diagnosis or treatment of a particular condition.

Governmental approval of technology is not necessarily sufficient to render it of proven benefit or appropriate or effective for a particular diagnosis or treatment of a particular condition, as explained below.

[Carrier] will apply the following five criteria in determining whether services or supplies are Experimental or Investigational:

a. Any medical device, drug, or biological product must have received final approval to market by the FDA for the particular diagnosis or condition. Any other approval granted as an interim step in the FDA regulatory process, e.g., an Investigational Device Exemption or an Investigational New Drug Exemption, is not sufficient. Once FDA approval has been granted for a particular diagnosis or condition, use of the medical device, drug or biological product for another diagnosis or condition will require that one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information; or
   3. The United States Pharmacopeia Drug Information

   recognize the usage as appropriate medical treatment. As an alternative to such recognition in one or more of the compendia, the usage of the drug will be recognized as appropriate if it is {supported by the preponderance of evidence that exists in clinical studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature} **recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal**. A medical device, drug, or biological product that meets the above tests will not be considered Experimental or Investigational.

In any event, any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed will be considered Experimental or Investigational.

b. Conclusive evidence from the published peer-reviewed medical literature must exist that the technology has a definite positive effect on health outcomes; such evidence must include well-designed investigations that have been reproduced by non affiliated authoritative sources, with measurable results, backed up by the positive endorsements of national medical bodies or panels regarding scientific efficacy and rationale;
c. Demonstrated evidence as reflected in the published peer-reviewed medical literature must exist that over time the technology leads to improvement in health outcomes, i.e., the beneficial effects outweigh any harmful effects;
d. Proof as reflected in the published peer-reviewed medical literature must exist that the technology is at least as effective in improving health outcomes as established technology, or is usable in appropriate clinical contexts in which established technology is not employable; and
e. Proof as reflected in the published peer-reviewed medical literature must exist that improvements in health outcomes; as defined in item c. above, is possible in standard conditions of medical practice, outside clinical investigatory settings.

...

Health Benefits Plan **means any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in New Jersey by any carrier to a Small Employer group pursuant to section 3 of P.L. 1992, c.162 (C. 17B:27A-19). Health Benefits Plan excludes the following plans, policies, or contracts: accident only, credit, disability, long term care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only, or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers' compensation or similar law, hospital confinement or other Supplemental Limited Benefit Insurance coverage, automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (C. 39:6A-1 et seq.).**

...

Supplemental Limited Benefit Insurance **means insurance that is provided in addition to a Health Benefits Plan on an indemnity non-expense incurred basis.**

...

HEALTH BENEFITS INSURANCE

This health benefits insurance will pay many of the medical expenses incurred by a Covered Person.

Note: [Carrier] payments will be reduced or eliminated if a Covered Person does not comply with the Utilization Review and Pre-Approval requirements contained in this Policy.

BENEFIT PROVISION

...

{Co-Insurance Cap

This Policy limits Co-Insurance amounts each Calendar Year **except** as stated below. The Co-Insurance Cap cannot be met with:

a. Non-Covered Charges;
b. Cash Deductibles;
c. Co-Insurance for the treatment of Mental and Nervous Conditions and Substance Abuse; and
d. Co-Payments.

There are Co-Insurance Caps for:

a. each Covered Person; and
b. each Covered Family.

The Co-Insurance Caps are shown in the Schedule.

Each Covered Person's Co-Insurance amounts are used to meet his or her own Co-Insurance Cap. But, all amounts used to meet the cap must actually be paid by a Covered Person out of his or her own pocket.

Once the Covered Person's Co-Insurance amounts in a Calendar Year exceed the individual cap, [Carrier] will waive his or her Co-Insurance for the rest of that Calendar Year.

Once two Covered Persons in a family meet their individual Co-Insurance amounts, [Carrier] will waive the family's Co-Insurance for the rest of that Calendar Year.

Exception: Charges for Mental and Nervous Conditions and Substance Abuse treatment are not subject to or eligible for the Co-Insurance Cap.}

[Coinsured Charge Limit

The Coinsured Charge Limit is the amount of Covered Charges a Covered Person must incur each Calendar Year before no Co-Insurance is required, except as stated below.

Exception: **Charges for Mental and Nervous Conditions, and Substance Abuse Treatment are not subject to or eligible for the *Coinsured Charge Limit*.]**

...

If This Plan Replaces Another Plan

The Employer who purchased this Policy may have purchased it to replace a plan the Employer had with some other insurer.

The Covered Person may have incurred charges for covered expenses under the Employer's old plan before it ended. If so, these charges will be used to meet this Policy's Cash Deductible if:

a. the charges were incurred during the Calendar Year in which this Policy starts;
b. this Policy would have paid benefits for the charges, if this Policy had been in effect;
c. the Covered Person was covered by the old plan when it ended and enrolled in this Policy on its Effective Date; and
d. this Policy starts right after the old plan ends.

The Covered Person may have satisfied part of the eligibility waiting period under the Employer's old plan before it ended. If so, the time satisfied will be used to satisfy this Policy's eligibility waiting period if:

a. the Employee was employed by the Employer on the date the Employer's old plan ended; and
b. this Policy starts right after the old plan ends.

...

Prescription Drugs

[Carrier] covers drugs to treat an Illness or Injury which require a Practitioner's prescription. But [Carrier] only covers drugs which are:

a. approved for treatment of the Covered Person's Illness or Injury by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information;
   3. The United States Pharmacopeia Drug Information; or

{c. supported by the preponderance of evidence that exists in clinical review studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature.}

c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does not cover drugs to treat Mental and Nervous Conditions and Substance Abuse as part of the Prescription Drugs Covered Charge. Drugs for such treatment are subject to the Mental and Nervous Conditions and Substance Abuse section of this Policy.

...

COORDINATION OF BENEFITS

Purpose Of This Provision

A Covered Person may be covered for health benefits by more than one plan. For instance, he or she may be covered by this Policy as an Employee and by another plan as a Dependent of his or her spouse. If he or she is, the provision allows [Carrier] to coordinate what [Carrier] pays with what another plan pays. [Carrier] does this so the Covered Person does not collect more in benefits than he or she incurs in charges.

DEFINITIONS

"Plan" means any of the following that provide health expense benefits or services:

a. group or blanket insurance plans;
b. group hospital or surgical plans, or other service or prepayment plans on a group basis;
c. union welfare plans, Employer plan, Employee benefits plans, trusteed labor and management plans, or other plans for members of a group;
d. programs or coverages required by law; **or**

{e. group or group-type hospital indemnity benefits which exceed $250.00 per day;
f. group or group-type hospital indemnity benefits of $250.00 per day or less for which the Employer pays part of the premium; or}

{g.}**e.** Medicare or other government programs which [Carrier] is allowed to coordinate with by law.

"Plan" does not include:

a. Medicaid or any other government program or coverage which [Carrier] is not allowed to coordinate with by law;
b. school accident type coverages written on either a blanket, group, or franchise basis;
c. **any** group or group-type hospital indemnity benefits; {of $250.00 per day or less for which the Employee pays the entire premium; nor}
d. Supplemental Limited Benefits Insurance; nor

{d.}**e.** any plan [Carrier] says [Carrier] supplements, as named in the Schedule.

...

EXHIBIT G

HMO PLAN

[Carrier]

SMALL GROUP HEALTH MAINTENANCE ORGANIZATION CONTRACT

. . .

I.-II. (No change.)

III. DEFINITIONS

. . .

EMPLOYEE. A Full-Time Employee (25 hours per week) of the Employer. **Employees who work on a temporary or substitute basis or who are participating in an employee welfare arrangement established pursuant to a collective bargaining agreement are not considered to be Employees for the purpose of this Contract.** Partners, Proprietors, and independent contractors will be treated like Employees, if they meet all of this Contract's conditions of eligibility.

EMPLOYEE'S ELIGIBILITY DATE.

a. the date of employment; or
b. the day after any applicable waiting period ends.

EMPLOYER. [ABC Company].

EXPERIMENTAL OR INVESTIGATIONAL.

Services or supplies which We Determine are:

a. not of proven benefit for the particular diagnosis or treatment of a Member's particular condition; or
b. not generally recognized by the medical community as effective or appropriate for the particular diagnosis or treatment of a Member's particular condition; or
c. provided or performed in special settings for research purposes or under a controlled environment or clinical protocol.

Unless otherwise required by law with respect to drugs which have been prescribed for the treatment of a type of cancer for which the drug has not been approved by the United States Food and Drug Administration (FDA), We will not cover any services or supplies, including treatment, procedures, drugs, biological products or medical devices or any hospitalizations in connection with Experimental or Investigational services or supplies.

We will also not cover any technology or any hospitalization in connection with such technology if such technology is obsolete or ineffective and is not used generally by the medical community for the particular diagnosis or treatment of a Member's particular condition.

Governmental approval of a technology is not necessarily sufficient to render it of proven benefit or appropriate or effective for a particular diagnosis or treatment of a Member's particular condition, as explained below.

We will apply the following five criteria in Determining whether services or supplies are Experimental or Investigational:

1. any medical device, drug, or biological product must have received final approval to market by the United States Food and Drug Administration (FDA) for the particular diagnosis or condition. Any other approval granted as an interim step in the FDA regulatory process, e.g., an Investigational Device Exemption or an Investigational New Drug Exemption, is not sufficient. Once FDA approval has been granted for a particular diagnosis or condition, use of the medical device, drug or biological product for another diagnosis or condition will require that one or more of the following established reference compendia:
   I. The American Medical Association Drug Evaluations;
   II. The American Hospital Formulary Service Drug Information; or
   III. The United States Pharmacopeia Drug Information.

   recognize the usage as appropriate medical treatment. As an alternative to such recognition in one or more of the compendia, the usage of the drug will be recognized as appropriate if it is {supported by the preponderance of evidence that exists in clinical review studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature} **recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.** A medical device, drug, or biological product that meets the above tests will not be considered Experimental or Investigational.

In any event, any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed will be considered Experimental or Investigational.

2. conclusive evidence from the published peer-reviewed medical literature must exist that the technology has a definite positive effect on health outcomes; such evidence must include well-designed investigations that have been reproduced by nonaffiliated authoritative sources, with measurable results, backed up by the positive endorsements of national medical bodies or panels regarding scientific efficacy and rationale;
3. demonstrated evidence as reflected in the published peer-reviewed medical literature must exist that over time the technology leads to improvement in health outcomes, i.e., the beneficial effects outweigh any harmful effects;
4. proof as reflected in the published peer-reviewed medical literature must exist that the technology is at least as effective in improving health outcomes as established technology, or is usable in appropriate clinical contexts in which established technology is not employable; and
5. proof as reflected in the published peer-reviewed medical literature must exist that improvements in health outcomes, as defined in paragraph 3, is possible in standard conditions of medical practice, outside clinical investigatory settings.

FULL-TIME. A normal work week of 25 or more hours. Work must be at the Employer's regular place of business or at another place to which an Employee must travel to perform his or her regular duties for his or her full and normal work hours.

HEALTH BENEFITS PLAN. **Any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in New Jersey by any carrier to a Small Employer group pursuant to section 3 of P.L. 1992, c.162 (C. 17B:27A-19). Health Benefits Plan excludes the following plans, policies, or contracts: accident only, credit, disability, long term care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only, or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers' compensation or similar law, hospital confinement or other Supplemental Limited Benefit Insurance coverage, automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (C. 39:6A-1 et seq.).**

[*HEALTH CARE CENTER OR HEALTH CENTER.* A place operated by or on behalf of an HMO where [Network] [Participating] Providers provide Covered Services and Supplies to Members.]

. . .

SUPPLEMENTAL LIMITED BENEFIT INSURANCE. **Insurance that is provided in addition to a Health Benefits Plan on an indemnity non-expense incurred basis.**

. . .

IV. ELIGIBILITY

. . .

DEPENDENT COVERAGE

. . .

Adopted Children and Step-Children

An Employee's "unmarried Dependent children" include the Employee's legally adopted children, {if they depend on the Employee for most of their support and maintenance,} his or her step-children **if they depend on the Employee for most of their support and maintenance** and children under a court appointed guardianship. [Carrier] will treat a child as legally adopted from the time the child is placed in the home for the purpose of adoption. [Carrier] will treat such a child this way whether or not a final adoption order is ever issued.

Eligible Dependents will not include any Dependent who is:

a. covered by this Contract as an Employee or
b. on active duty in the armed forces of any country.

...

VIII. COORDINATION OF BENEFITS AND SERVICES

...

DEFINITIONS

"Plan" means any of the following that provide health expense benefits or services:

a. group or blanket insurance plans;
b. group hospital or surgical plans, or other service or prepayment plans on a group basis;
c. union welfare plans, Employer plan, Employee benefits plans, trusteed labor and management plans, or other plans for members of a group;
d. programs or coverages required by law;
{e. group or group-type hospital indemnity benefits which exceed $250.00 per day;
f. group or group-type hospital indemnity benefits of $250.00 per day or less which the Employer pays part of the premium;}
{g.}**e.** Medicare or other government programs which We are allowed to coordinate with by law.

"Plan" does not include:

a. Medicaid or any other government program or coverage which [Carrier] is not allowed to coordinate with by law;
b. school accident type coverages written on either a blanket, group, or franchise basis;
c. group or group-type hospital indemnity benefits {of $250.00 per day or less}; {nor}
d. Supplemental Limited Benefits Insurance coverages; nor
{d.}**e.** any plan We say We supplement.

...

IX. CONTRACT HOLDER GENERAL PROVISIONS

...

PREMIUM RATE CHANGES

The Premium rates in effect on the Effective Date are shown in the Premium Rates and Provisions section of the Contract. We have the right to change Premium rates as of any of these dates:

a. any Premium Due Date;
b. any date that an Employer becomes, or ceases to be, an Affiliated Company.
c. any date that the extent or nature of the risk under the Contract is changed:
1. by amendment of the Contract; or
2. by reason of any provision of law or any government program or regulation;
d. at the discovery of a clerical error or misstatement as described below.
{e. As of the date the nature of the Contract Holder's business changes}.

We will give You 30 days written notice when a change in the Premium rates is made.

TERMINATION OF THE CONTRACT—RENEWAL PRIVILEGE

...

{[Also, if the nature of the Employer's business changes, the Employer must notify Us within 30 days. We have the right to change the rates We charge for this Contract if this happens. If the Employer fails to notify Us within 30 days, We have the right to adjust premium rates retroactively to the date the nature of the Employer's business changed.] **[Note: This section will sunset January 1, 1997]**}

THE CONTRACT

...

EXHIBIT H
PART 1

RIDER FOR PRESCRIPTION DRUG INSURANCE **(CARD/MAIL)**

Policyholder:

Group Policy No:

Effective Date:

The **Prescription Drug** section of the **COVERED CHARGES** provision of the **HEALTH BENEFITS INSURANCE** section is replaced with the following:

[Carrier] covers drugs to treat an Illness or Injury which require a Practitioner's prescription which are obtained while confined as an Inpatient in a Facility. But [Carrier] only covers drugs which are:

a. approved for treatment of the Covered Person's Illness or Injury by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:
1. The American Medical Association Drug Evaluations;
2. The American Hospital Formulary Service Drug Information;
3. The United States Pharmacopeia Drug Information; or
{c. supported by the preponderance of evidence that exists in clinical review studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature.}
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does cover drugs to treat Mental and Nervous Conditions and Substance Abuse under the Rider for Prescription Drug Insurance.

This Prescription Drug insurance will pay benefits for covered drugs, prescribed by a Practitioner. What [Carrier] pays and the terms of payment are explained below.

...

EXHIBIT H
PART 2

RIDER FOR PRESCRIPTION DRUG INSURANCE **(CARD)**

Policyholder:

Group Policy No:

Effective Date:

The **Prescription Drug** section of the **COVERED CHARGES** provision of the **HEALTH BENEFITS INSURANCE** section is replaced with the following:

[Carrier] covers drugs to treat an Illness or Injury which require a Practitioner's prescription which are obtained while confined as an Inpatient in a Facility. But [Carrier] only covers drugs which are:

a. approved for treatment of the Covered Person's Illness or Injury by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:
1. The American Medical Association Drug Evaluations;

2. The American Hospital Formulary Service Drug Information;
3. The United States Pharmacopeia Drug Information; or

{c. supported by the preponderance of evidence that exists in clinical review studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature.}

c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does cover drugs to treat Mental and Nervous Conditions and Substance Abuse under the Rider for Prescription Drug Insurance.

This Prescription Drug insurance will pay benefits for covered drugs, prescribed by a Practitioner. What [Carrier] pays and the terms of payment are explained below.

...

EXHIBIT H
PART 3

RIDER FOR PRESCRIPTION DRUG INSURANCE **(MAIL)**

Policyholder:

Group Policy No:

Effective Date:

The **Prescription Drug** section of the **COVERED CHARGES** provision of the **HEALTH BENEFITS INSURANCE** section is replaced with the following:

[Carrier] covers drugs to treat an Illness or Injury which require a Practitioner's prescription which are obtained while confined as an Inpatient in a Facility. But [Carrier] only covers drugs which are:

a. approved for treatment of the Covered Person's Illness or Injury by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information;
   3. The United States Pharmacopeia Drug Information; or

{c. supported by the preponderance of evidence that exists in clinical review studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature.}

c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does cover drugs to treat Mental and Nervous Conditions and Substance Abuse under the Rider for Prescription Drug Insurance.

This Prescription Drug insurance will pay benefits for covered drugs, prescribed by a Practitioner. What [Carrier] pays and the terms of payment are explained below.

...

EXHIBIT I

RIDER FOR MENTAL AND NERVOUS CONDITIONS AND SUBSTANCE ABUSE BENEFITS

Policyholder:

Group Policy No:

Effective Date:

The **Prescription Drug** section of the **COVERED CHARGES** provision of the **HEALTH BENEFITS INSURANCE** section is replaced with the following:

[Carrier] covers drugs to treat an Illness, Injury, or Mental and Nervous Conditions and Substance Abuse which require a Practitioner's prescription. But [Carrier] only covers drugs which are:

a. approved for treatment of the Covered Person's Illness, Injury or Mental and Nervous Conditions and Substance Abuse by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information;
   3. The United States Pharmacopeia Drug Information; or

{c. supported by the preponderance of evidence that exists in clinical review studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature.}

c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does cover drugs to treat Mental and Nervous Conditions and Substance Abuse as part of the Prescription Drugs Covered Charge. Drugs for such treatment are not covered under the Rider for Mental and Nervous Conditions and Substance Abuse Benefits.

The **Mental and Nervous Conditions and Substance Abuse** section of the **COVERED CHARGES WITH SPECIAL LIMITATIONS** provision of the **HEALTH BENEFITS INSURANCE** section of the Policy is replaced with the following:

The Co-Payment, Cash Deductible, Co-Insurance and Co-Insurance cap provisions of this Rider are independent of similar provisions of the **Health Benefits** section of the Policy. Charges incurred for the treatment of Mental and Nervous Conditions and Substance Abuse must be considered under the terms of this Rider and cannot be considered under the **Health Benefits** section of the Policy.

...

EXHIBIT J
PART 1

RIDER FOR PRESCRIPTION DRUG COVERAGE **(CARD/MAIL)**

Contract Holder:

Group Contract No.:

Effective Date:

The Prescription Drug section of the **Covered Services and Supplies** section of the HMO Contract is replaced with the following:

We cover drugs which require a Participating Provider's prescription which are obtained while confined as an Inpatient. But We only cover drugs which are:

a. approved for treatment of the Member's Illness or Injury or Mental or Nervous Condition by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Member's and recognized as appropriate medical treatment for the Member's diagnosis or condition in one or more of the following established reference compendia:
1. The American Medical Association Drug Evaluations;
2. The American Hospital Formulary Service Drug Information; or
3. The United States Pharmacopeia Drug Information.
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

In no event will We provide [or arrange] for
a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; **or**
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And We do not cover drugs that can be obtained without a prescription, even if a Participating Provider orders them.

...

EXHIBIT J
PART 2

RIDER FOR PRESCRIPTION DRUG COVERAGE (CARD)

Contract Holder:

Group Contract No.:

Effective Date:

The Prescription Drug section of the **Covered Services and Supplies** Section of the HMO Contract is replaced with the following:

We cover drugs which require a Participating Provider's prescription which are obtained while confined as an Inpatient. But We only cover drugs which are:
a. approved for treatment of the Member's Illness or Injury or Mental or Nervous Condition by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Member's and recognized as appropriate medical treatment for the Member's diagnosis or condition in one or more of the following established reference compendia:
1. The American Medical Association Drug Evaluations;
2. The American Hospital Formulary Service Drug Information; or
3. The United States Pharmacopeia Drug Information.
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

In no event will We provide [or arrange] for
a. drugs labeled: "Caution—limited by Federal Law to Investigational Use"; **or**
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And We do not cover drugs that can be obtained without a prescription, even if a Participating Provider orders them.

...

EXHIBIT J
PART 3

RIDER FOR PRESCRIPTION DRUG COVERAGE (MAIL)

Contract Holder:

Group Contract No.:

Effective Date:

The Prescription Drug section of the **Covered Services and Supplies** Section of the HMO Contract is replaced with the following:

We cover drugs which require a Participating Provider's prescription which are obtained while confined as an Inpatient. But We only cover drugs which are:
a. approved for treatment of the Member's Illness or Injury or Mental or Nervous Condition by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Member's and recognized as appropriate medical treatment for the Member's diagnosis or condition in one or more of the following established reference compendia:
1. The American Medical Association Drug Evaluations;
2. The American Hospital Formulary Service Drug Information; or
3. The United States Pharmacopeia Drug Information.
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

In no event will We provide [or arrange] for
a. drugs labeled: "Caution—limited by Federal Law to Investigational Use"; **or**
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And We do not cover drugs that can be obtained without a prescription, even if a Participating Provider orders them.

...

EXHIBIT V

[Carrier] PLAN A

SMALL GROUP HEALTH BENEFITS [CERTIFICATE]

...

SCHEDULE OF INSURANCE PLAN A

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

...

SCHEDULE OF INSURANCE EXAMPLE: PLAN A PPO

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

...

Co-Insurance

...

	If treatment, services or supplies are given by: a Network Provider	**an Out-Network Provider**
• for the following Covered Charges incurred while the Covered Person is an Inpatient in a Hospital:		
—Prescription Drugs	None	20%
—Blood Transfusions	None	20%
—Infusion Therapy	None	20%
—Chemotherapy	None	20%
—Radiation Therapy	None	20%
• for all other Covered Charges	70%	50%

The **Coinsured Charge Limit** means the amount of Covered Charges a Covered Person must incur **each calendar year** before no Co-Insurance is required.

Coinsured Charge Limit: $10,000

Daily Room and Board Limits

...

GENERAL PROVISIONS

...

MISSTATEMENTS

If the age of an Employee, or any other relevant facts, are found to have been misstated, and the premiums are thereby affected, an equitable adjustment of premiums will be made. If such misstatement involves

whether or not the person's coverage would have been accepted by [Carrier], {or the amount of coverage,} subject to the Policy's **Incontestability** section, the true facts will be used in determining whether coverage is in force under the terms of the Policy{, and in what amounts}.

...

DEFINITIONS

...

Employee means a Full-Time Employee (25 hours per week) of the Employer. Partners, Proprietors, and independent contractors will be treated like Employees, if they meet all of the Policy's conditions of eligibility. Employees who work on a temporary or substitute basis **or who are participating in an employee welfare arrangement established pursuant to a collective bargaining agreement** are not considered to be Employees for the purpose of the Policy. See also You, Your, Yours.

Employee's Eligibility Date means the later of:

a. the date of employment; or
b. the day after any applicable waiting period ends.

Employer means [ABC Company].

Experimental or Investigational means [Carrier] determines a service or supply is:

a. not of proven benefit for the particular diagnosis or treatment of a particular condition; or
b. not generally recognized by the medical community as effective or appropriate for the particular diagnosis or treatment of a particular condition; or
c. provided or performed in special settings for research purposes or under a controlled environment or clinical protocol.

Unless otherwise required by law with respect to drugs which have been prescribed for the treatment of a type of cancer for which the drug has not been approved by the United States Food and Drug Administration (FDA), [Carrier] will not cover any services or supplies, including treatment, procedures, drugs, biological products or medical devices or any hospitalizations in connection with Experimental or Investigational services or supplies.

[Carrier] will also not cover any technology or any hospitalization primarily to receive such technology if such technology is obsolete or ineffective and is not used generally by the medical community for the particular diagnosis or treatment of a particular condition.

Governmental approval of technology is not necessarily sufficient to render it of proven benefit or appropriate or effective for a particular diagnosis or treatment of a particular condition, as explained below.

[Carrier] will apply the following five criteria in determining whether services or supplies are Experimental or Investigational:

a. Any medical device, drug, or biological product must have received final approval to market by the FDA for the particular diagnosis or condition. Any other approval granted as an interim step in the FDA regulatory process, e.g., an Investigational Device Exemption or an Investigational New Drug Exemption, is not sufficient. Once FDA approval has been granted for a particular diagnosis or condition, use of the medical device, drug or biological product for another diagnosis or condition will require that one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information; or
   3. The United States Pharmacopeia Drug Information

   recognize the usage as appropriate medical treatment. As an alternative to such recognition in one or more of the compendia, the usage of the drug will be recognized as appropriate if it is {supported by the preponderance of evidence that exists in clinical studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature.} **recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.** A medical device, drug, or biological product that meets the above tests will not be considered Experimental or Investigational.

In any event, any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed will be considered Experimental or Investigational.

b. Conclusive evidence from the published peer-reviewed medical literature must exist that the technology has a definite positive effect on health outcomes; such evidence must include well-designed investigations that have been reproduced by non affiliated authoritative sources, with measurable results, backed up by the positive endorsements of national medical bodies or panels regarding scientific efficacy and rationale;
c. Demonstrated evidence as reflected in the published peer-reviewed medical literature must exist that over time the technology leads to improvement in health outcomes, i.e., the beneficial effects outweigh any harmful effects;
d. Proof as reflected in the published peer-reviewed medical literature must exist that the technology is at least as effective in improving health outcomes as established technology, or is usable in appropriate clinical contexts in which established technology is not employable; and
e. Proof as reflected in the published peer-reviewed medical literature must exist that improvements in health outcomes; as defined in item c. above, is possible in standard conditions of medical practice, outside clinical investigatory settings.

...

Health Benefits Plan **means any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in New Jersey by any carrier to a Small Employer group pursuant to section 3 of P.L. 1992, c.162 (C. 17B:27A-19). Health Benefits Plan excludes the following plans, policies, or contracts: accident only, credit, disability, long term care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only, or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers' compensation or similar law, hospital confinement or other Supplemental Limited Benefit Insurance coverage, automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (C. 39:6A-1 et seq.).**

...

Preventive Care means charges for routine physical examinations, including related laboratory tests and x-rays, immunizations and vaccines, well baby care, pap smears, mammography and screening tests.

...

Supplemental Limited Benefit Insurance **means insurance that is provided in addition to a Health Benefits Plan on an indemnity non-expense incurred basis.**

...

HEALTH BENEFITS INSURANCE

This health benefits insurance will pay many of the medical expenses incurred by a Covered Person.

Note: [Carrier] payments will be reduced or eliminated if a Covered Person does not comply with the Utilization Review and Pre-Approval requirements contained in the Policy and in this [certificate].

BENEFIT PROVISION

...

{Co-Insurance Cap

The Policy limits Co-Insurance amounts each Calendar Year **except** as stated below. The Co-Insurance Cap cannot be met with:

a. Non-Covered Charges;
b. Cash Deductibles; and
c. Co-Payments.

There is Co-Insurance Cap for each Covered Person.

The Co-Insurance Cap is shown in the Schedule.

Once the Covered Person's Co-Insurance amounts in a Calendar Year exceed the individual cap, [Carrier] will waive his or her Co-Insurance for the rest of that Calendar Year.}

[Coinsured Charge Limit

The coinsured charge limit is the amount of Covered Charges a Covered Person must incur each Calendar Year before no Co-Insurance is required.]

...

If This Plan Replaces Another Plan

The Employer who purchased the Policy may have purchased it to replace a plan the Employer had with some other insurer.

The Covered Person may have incurred charges for covered expenses under the Employer's old plan before it ended. If so, these charges will be used to meet the Policy's Cash Deductible if:

a. the charges were incurred during the Calendar Year in which the Policy starts;
b. the Policy would have paid benefits for the charges, if the Policy had been in effect;
c. the Covered Person was covered by the old plan when it ended and enrolled in the Policy on its Effective Date; and
d. the Policy starts right after the old plan ends.

The Covered Person may have satisfied part of the eligibility waiting period under the Employer's old plan before it ended. If so, the time satisfied will be used to satisfy the Policy's eligibility waiting period if:

a. the Employee was employed by the Employer on the date the Employer's old plan ended; and
b. the Policy starts right after the old plan ends.

...

COORDINATION OF BENEFITS

Purpose Of This Provision

A Covered Person may be covered for health expense benefits by more than one plan. For instance, he or she may be covered by the Policy as an Employee and by another plan as a Dependent of his or her spouse. If he or she is, the provision allows [Carrier] to coordinate what [Carrier] pays with what another plan pays. [Carrier] does this so the Covered Person does not collect more in benefits than he or she incurs in charges.

DEFINITIONS

"Plan" means any of the following that provide health expense benefits or services:

a. group or blanket insurance plans;
b. group hospital or surgical plans, or other service or prepayment plans on a group basis;
c. union welfare plans, Employer plan, Employee benefits plans, trusteed labor and management plans, or other plans for members of a group;
d. programs or coverages required by law;
{e. group or group-type hospital indemnity benefits which exceed $250.00 per day;
f. group or group-type hospital indemnity benefits of $250.00 per day or less for which You pay part of the premium; or}
{g.}**e.** Medicare or other government programs which [Carrier] is allowed to coordinate with by law.

"Plan" does not include:

a. Medicaid or any other government program or coverage which [Carrier] is not allowed to coordinate with by law;
b. school accident type coverages written on either a blanket, group, or franchise basis;
c. **any** group or group-type hospital indemnity benefits**;** {of $250.00 per day or less for which You pay the entire premium; nor}
d. Supplemental Limited Benefits Insurance; nor
{d.}**e.** any plan [Carrier] says [Carrier] supplements, as named in the Schedule.

...

EXHIBIT W

[Carrier] **PLANS B, C, D, E**

SMALL GROUP HEALTH BENEFITS [CERTIFICATE]

...

SCHEDULE OF INSURANCE **EXAMPLE PPO (without Co-Payment)**

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

...

Co-Insurance

Co-Insurance is the percentage of a Covered Charge that must be paid by a Covered Person. However, [Carrier] will waive the Co-Insurance requirement once the {Co-Insurance Cap} **Coinsured Charge Limit** has been reached. This Policy's Co-Insurance, as shown below, does not include penalties incurred under the Policy's Utilization Review provisions, or any other Non-Covered Charge.

The **Co-Insurance** for this Policy is as follows:

- if treatment, services or supplies are given by a Network Provider 20%
- if treatment, services or supplies are given by an Out-Network Provider 40%

The **Coinsured Charge Limit** means the amount of Covered Charges a Covered Person must incur **each Calendar Year** before no Co-Insurance is required, **except as stated below.**

Exception: Charges for Mental and Nervous Conditions and Substance Abuse treatment are not subject to or eligible for the **Coinsured Charge Limit.**

Coinsured Charge Limit: $10,000

SCHEDULE OF INSURANCE **EXAMPLE PPO (with Co-Payment)**

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

...

Co-Insurance

Co-Insurance is the percentage of a Covered Charge that must be paid by a Covered Person. However, [Carrier] will waive the Co-Insurance requirement once the {Co-Insurance Cap} **Coinsured Charge Limit** has been reached. This Policy's Co-Insurance, as shown below, does not include penalties incurred under the Policy's Utilization Review provisions, or any other Non-Covered Charge.

The **Co-Insurance** for the Policy is as follows:

- if treatment, services or supplies are given by a Network Provider None
- if treatment, services or supplies are given by an Out-Network Provider 30%

The **Coinsured Charge Limit** means the amount of Covered Charges a Covered Person must incur **each Calendar Year** before no Co-Insurance is required, **except as stated below.**

Exception: Charges for Mental and Nervous Conditions and Substance Abuse treatment are not subject to or eligible for the **Coinsured Charge Limit.**

Coinsured Charge Limit: $10,000

SCHEDULE OF INSURANCE **EXAMPLE POS**

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

...

Co-Insurance

Co-Insurance is the percentage of a Covered Charge that must be paid by a Covered Person. However, [Carrier] will waive the Co-Insurance requirement once the {Co-Insurance Cap} **Coinsured Charge Limit** has been reached. This Policy's Co-Insurance, as shown below, does not include penalties incurred under the Policy's Utilization Review provisions, or any other Non-Covered Charge.

The **Co-Insurance** for the Policy is as follows:

- if treatment, services or supplies are given by the PCP None, **except as stated below**
- if treatment, services or supplies are given or referred by a non-referred Provider 20%, **except as stated below**

Exception: for Mental and Nervous and Substance Abuse charges
- if treatment, services or supplies are given or referred by the PCP 5%
- if treatment, services or supplies are given by a non-referred Provider 25%

The **Coinsured Charge Limit** means the amount of Covered Charges a Covered Person must incur **each Calendar Year** before no Co-Insurance is required, **except as stated below.**

Exception: Charges for Mental and Nervous Conditions and Substance Abuse treatment are not subject to or eligible for the **Coinsured Charge Limit.**

Coinsured Charge Limit: $10,000

[PLAN B]

Daily Room and Board Limits

...

- **During a Confinement In An Extended Care Center Or Rehabilitation Center**

[Carrier] will cover the lesser of:
a. the center's actual daily room and board charge; or
b. 50% of the covered daily room and board charge made by the Hospital during the Covered Person's preceding Hospital confinement, for semi-private accommodations.

Pre-Approval is required for charges incurred in connection with:
- Durable Medical Equipment
- Extended Care and Rehabilitation
- Home Health Care
- Hospice Care
- Infusion Therapy
- Prosthetic Devices
- **Autologous Bone Marrow Transplant and Associated High Dose Chemotherapy for treatment of breast cancer**

...

[PLANS C, D, E]

Daily Room and Board Limits

...

- **During a Confinement In An Extended Care Center Or Rehabilitation Center**

[Carrier] will cover the lesser of:
a. the center's actual daily room and board charge; or
b. 50% of the covered daily room and board charge made by the Hospital during the Covered Person's preceding Hospital confinement, for semi-private accommodations.

Pre-Approval is required for charges incurred in connection with:
- Durable Medical Equipment
- Extended Care and Rehabilitation
- Home Health Care
- Hospice Care
- Infusion Therapy
- Prosthetic Devices
- **Autologous Bone Marrow Transplant and Associated High Dose Chemotherapy for treatment of breast cancer**

...

GENERAL PROVISIONS

...

MISSTATEMENTS

If the age of an Employee, or any other relevant facts, are found to have been misstated, and the premiums are thereby affected, an equitable adjustment of premiums will be made. If such misstatement involves whether or not the person's coverage would have been accepted by [Carrier], {or the amount of coverage,} subject to the Policy's **Incontestability** section, the true facts will be used in determining whether coverage is in force under the terms of the Policy{, and in what amounts}.

...

DEFINITIONS

...

Employee means a Full-Time Employee (25 hours per week) of the Employer. Partners, Proprietors, and independent contractors will be treated like Employees, if they meet all of the Policy's conditions of eligibility. Employees who work on a temporary or substitute basis **or who are participating in an employee welfare arrangement established pursuant to a collective bargaining agreement** are not considered to be Employees for the purpose of the Policy. See also You, Your, Yours.

Employee's Eligibility Date means the later of:
a. the date of employment; or
b. the day after any applicable waiting period ends.

Employer means [ABC Company].

Experimental or Investigational means [Carrier] determines a service or supply is:
a. not of proven benefit for the particular diagnosis or treatment of a particular condition; or
b. not generally recognized by the medical community as effective or appropriate for the particular diagnosis or treatment of a particular condition; or
c. provided or performed in special settings for research purposes or under a controlled environment or clinical protocol.

Unless otherwise required by law with respect to drugs which have been prescribed for the treatment of a type of cancer for which the drug has not been approved by the United States Food and Drug Administration (FDA), [Carrier] will not cover any services or supplies, including treatment, procedures, drugs, biological products or medical devices or any hospitalizations in connection with Experimental or Investigational services or supplies.

[Carrier] will also not cover any technology or any hospitalization primarily to receive such technology if such technology is obsolete or ineffective and is not used generally by the medical community for the particular diagnosis or treatment of a particular condition.

Governmental approval of technology is not necessarily sufficient to render it of proven benefit or appropriate or effective for a particular diagnosis or treatment of a particular condition, as explained below.

[Carrier] will apply the following five criteria in determining whether services or supplies are Experimental or Investigational:

a. Any medical device, drug, or biological product must have received final approval to market by the FDA for the particular diagnosis or condition. Any other approval granted as an interim step in the FDA regulatory process, e.g., an Investigational Device Exemption or an Investigational New Drug Exemption, is not sufficient. Once FDA approval has been granted for a particular diagnosis or condition, use of the medical device, drug or biological product for another diagnosis or condition will require that one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information; or
   3. The United States Pharmacopeia Drug Information

   recognize the usage as appropriate medical treatment. As an alternative to such recognition in one or more of the compendia, the usage of the drug will be recognized as appropriate if it is {supported by the preponderance of evidence that exists in clinical studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature} **recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.** A medical device, drug, or biological product that meets the above tests will not be considered Experimental or Investigational.

In any event, any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed will be considered Experimental or Investigational.

b. Conclusive evidence from the published peer-reviewed medical literature must exist that the technology has a definite positive effect on health outcomes; such evidence must include well-designed investigations that have been reproduced by non affiliated authoritative sources, with measurable results, backed up by the positive endorsements of national medical bodies or panels regarding scientific efficacy and rationale;

c. Demonstrated evidence as reflected in the published peer-reviewed medical literature must exist that over time the technology leads to improvement in health outcomes, i.e., the beneficial effects outweigh any harmful effects;
d. Proof as reflected in the published peer-reviewed medical literature must exist that the technology is at least as effective in improving health outcomes as established technology, or is usable in appropriate clinical contexts in which established technology is not employable; and
e. Proof as reflected in the published peer-reviewed medical literature must exist that improvements in health outcomes; as defined in item c. above, is possible in standard conditions of medical practice, outside clinical investigatory settings.

...

Health Benefits Plan **means any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in New Jersey by any carrier to a Small Employer group pursuant to section 3 of P.L. 1992, c.162 (C. 17B:27A-19). Health Benefits Plan excludes the following plans, policies, or contracts: accident only, credit, disability, long term care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only, or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers' compensation or similar law, hospital confinement or other Supplemental Limited Benefit Insurance coverage, automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (C. 39:6A-1 et seq.).**

...

Preventive Care means charges for routine physical examinations, including related laboratory tests and x-rays, immunizations and vaccines, well baby care, pap smears, mammography and screening tests.

...

Supplemental Limited Benefit Insurance **means insurance that is provided in addition to a Health Benefits Plan on an indemnity non-expense incurred basis.**

...

HEALTH BENEFITS INSURANCE

This health benefits insurance will pay many of the medical expenses incurred by a Covered Person.

Note: [Carrier] payments will be reduced or eliminated if a Covered Person does not comply with the Utilization Review and Pre-Approval requirements contained in the Policy and in this [certificate].

BENEFIT PROVISION

...

{Co-Insurance Cap

The Policy limits Co-Insurance amounts each Calendar Year **except** as stated below. The Co-Insurance Cap cannot be met with:
a. Non-Covered Charges;
b. Cash Deductibles;
c. Co-Insurance for the treatment of Mental and Nervous Conditions and Substance Abuse; and
d. Co-Payments.

There are Co-Insurance Caps for:
a. each Covered Person; and
b. each Covered Family.

The Co-Insurance Caps are shown in the Schedule.

Each Covered Person's Co-Insurance amounts are used to meet his or her own Co-Insurance Cap. But, all amounts used to meet the cap must actually be paid by a Covered Person out of his or her own pocket.

Once the Covered Person's Co-Insurance amounts in a Calendar Year exceed the individual cap, [Carrier] will waive his or her Co-Insurance for the rest of that Calendar Year.

Once two Covered Persons in a family meet their individual Co-Insurance amounts, [Carrier] will waive the family's Co-Insurance for the rest of that Calendar Year.

Exception: Charges for Mental and Nervous Conditions and Substance Abuse treatment are not subject to or eligible for the Co-Insurance Cap.**}**

[Coinsured Charge Limit

The Coinsured Charge Limit is the amount of Covered Charges a Covered Person must incur each Calendar Year before no Co-Insurance is required, *except as stated below.*

Exception: **Charges for Mental and Nervous Conditions and Substance Abuse Treatment are not subject to or eligible for the *Coinsured Charge Limit.*]**

...

If This Plan Replaces Another Plan

The Employer who purchased this Policy may have purchased it to replace a plan the Employer had with some other insurer.

The Covered Person may have incurred charges for covered expenses under the Employer's old plan before it ended. If so, these charges will be used to meet the Policy's Cash Deductible if:
a. the charges were incurred during the Calendar Year in which the Policy starts;
b. the Policy would have paid benefits for the charges, if the Policy had been in effect;
c. the Covered Person was covered by the old plan when it ended and enrolled in the Policy on its Effective Date; and
d. the Policy starts right after the old plan ends.

The Covered Person may have satisfied part of the eligibility waiting period under the Employer's old plan before it ended. If so, the time satisfied will be used to satisfy this Policy's eligibility waiting period if:
a. the Employee was employed by the Employer on the date the Employer's old plan ended; and
b. this Policy starts right after the old plan ends.

...

COVERED CHARGES

...

Prescription Drugs

[Carrier] covers drugs to treat an Illness or Injury which require a Practitioner's prescription. But [Carrier] only covers drugs which are:
a. approved for treatment of the Covered Person's Illness or Injury by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:
1. The American Medical Association Drug Evaluations;
2. The American Hospital Formulary Service Drug Information;
3. The United States Pharmacopeia Drug Information; or

{c. supported by the preponderance of evidence that exists in clinical review studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature.**}**

c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:
a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does not cover drugs to treat Mental and Nervous Conditions and Substance Abuse as part of the Prescription Drugs Covered Charge. Drugs for such treatment are subject to the Mental and Nervous Conditions and Substance Abuse section of the Policy.

...

COORDINATION OF BENEFITS

Purpose Of This Provision

A Covered Person may be covered for health benefits by more than one plan. For instance, he or she may be covered by the Policy as an Employee and by another plan as a Dependent of his or her spouse. If he or she is, the provision allows [Carrier] to coordinate what [Carrier] pays with what another plan pays. [Carrier] does this so the Covered Person does not collect more in benefits than he or she incurs in charges.

DEFINITIONS

"Plan" means any of the following that provide health expense benefits or services:

a. group or blanket insurance plans;
b. group hospital or surgical plans, or other service or prepayment plans on a group basis;
c. union welfare plans, Employer plan, Employee benefits plans, trusteed labor and management plans, or other plans for members of a group;
d. programs or coverages required by law; **or**
{e. group or group-type hospital indemnity benefits which exceed $250.00 per day;
f. group or group-type hospital indemnity benefits of $250.00 per day or less for which You pay part of the premium; or}
{g.}**e.** Medicare or other government programs which [Carrier] is allowed to coordinate with by law.

"Plan" does not include:

a. Medicaid or any other government program or coverage which [Carrier] is not allowed to coordinate with by law;
b. school accident type coverages written on either a blanket, group, or franchise basis;
c. **any** group or group-type hospital indemnity benefits; {of $250.00 per day or less for which You pay the entire premium; nor}
d. Supplemental Limited Benefits Insurance; nor
{d.}**e.** any plan [Carrier] says [Carrier] supplements, as named in the Schedule.

...

EXHIBIT Y

[Carrier] **HMO PLAN**

SMALL GROUP HEALTH MAINTENANCE ORGANIZATION EVIDENCE OF COVERAGE

...

II. DEFINITIONS

...

EMPLOYEE. A Full-Time Employee (25 hours per week) of the Employer. **Employees who work on a temporary or substitute basis or who are participating in an employee welfare arrangement established pursuant to a collective bargaining agreement are not considered to be Employees for the purpose of this Group Health Care Plan.** Partners, Proprietors, and independent contractors will be treated like Employees, if they meet all of the Group Health Care Plan's conditions of eligibility.

EMPLOYEE ELIGIBILITY DATE.

a. the date of employment; or
b. the day after any applicable waiting period ends.

EMPLOYER. [ABC Company].

EXPERIMENTAL or INVESTIGATIONAL.

Services or supplies which We Determine are:

a. not of proven benefit for the particular diagnosis or treatment of a Member's particular condition; or
b. not generally recognized by the medical community as effective or appropriate for the particular diagnosis or treatment of a Member's particular condition; or
c. provided or performed in special settings for research purposes or under a controlled environment or clinical protocol.

Unless otherwise required by law with respect to drugs which have been prescribed for the treatment of a type of cancer for which the drug has not been approved by the United States Food and Drug Administration (FDA), We will not cover any services or supplies, including treatment, procedures, drugs, biological products or medical devices or any hospitalizations in connection with Experimental or Investigational services or supplies.

We will also not cover any technology or any hospitalization in connection with such technology if such technology is obsolete or ineffective and is not used generally by the medical community for the particular diagnosis or treatment of a Member's particular condition.

Governmental approval of a technology is not necessarily sufficient to render it of proven benefit or appropriate or effective for a particular diagnosis or treatment of a Member's particular condition, as explained below.

We will apply the following five criteria in Determining whether services or supplies are Experimental or Investigational:

1. any medical device, drug, or biological product must have received final approval to market by the United States Food and Drug Administration (FDA) for the particular diagnosis or condition. Any other approval granted as an interim step in the FDA regulatory process, e.g., an Investigational Device Exemption or an Investigational New Drug Exemption, is not sufficient. Once FDA approval has been granted for a particular diagnosis or condition, use of the medical device, drug or biological product for another diagnosis or condition will require that one or more of the following established reference compendia:
   I. The American Medical Association Drug Evaluations;
   II. The American Hospital Formulary Service Drug Information; or
   III. The United States Pharmacopeia Drug Information.

   recognize the usage as appropriate medical treatment. As an alternative to such recognition in one or more of the compendia, the usage of the drug will be recognized as appropriate if it is {supported by the preponderance of evidence that exists in clinical review studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature} **recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.** A medical device, drug, or biological product that meets the above tests will not be considered Experimental or Investigational.

In any event, any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed will be considered Experimental or Investigational.

2. conclusive evidence from the published peer-reviewed medical literature must exist that the technology has a definite positive effect on health outcomes; such evidence must include well-designed investigations that have been reproduced by non-affiliated authoritative sources, with measurable results, backed up by the positive endorsements of national medical bodies or panels regarding scientific efficacy and rationale;
3. demonstrated evidence as reflected in the published peer-reviewed medical literature must exist that over time the technology leads to improvement in health outcomes, i.e., the beneficial effects outweigh any harmful effects;
4. proof as reflected in the published peer-reviewed medical literature must exist that the technology is at least as effective in improving health outcomes as established technology, or is usable in appropriate clinical contexts in which established technology is not employable; and
5. proof as reflected in the published peer-reviewed medical literature must exist that improvements in health outcomes, as defined in paragraph 3, is possible in standard conditions of medical practice, outside clinical investigatory settings.

FULL-TIME. A normal work week of 25 or more hours. Work must be at the Employer's regular place of business or at another place to which an Employee must travel to perform his or her regular duties for his or her full and normal work hours.

HEALTH BENEFITS PLAN. **Any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in New Jersey by any carrier to a Small Employer group pursuant to section 3 of P.L. 1992, c.162 (C. 17B:27A-19). Health Benefits Plan excludes the following plans, policies, or contracts: accident only, credit, disability, long term**

care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only, or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers' compensation or similar law, hospital confinement or other Supplemental Limited Benefit Insurance coverage, automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (C. 39:6A-1 et seq.).

...

SUPPLEMENTAL LIMITED BENEFIT INSURANCE. **Insurance that is provided in addition to a Health Benefits Plan on an indemnity non-expense incurred basis.**

...

III. ELIGIBILITY

...

DEPENDENT COVERAGE

...

Adopted Children and Step-Children

Your "unmarried Dependent children" include Your legally adopted children, {if they depend on You for most of their support and maintenance,} Your step-children **if they depend on You for most of their support and maintenance** and children under a court appointed guardianship. [Carrier] will treat a child as legally adopted from the time the child is placed in the home for the purpose of adoption. [Carrier] will treat such a child this way whether or not a final adoption order is ever issued.

Eligible Dependents will not include any Dependent who is:

a. covered by the Group Health Care Plan as an Employee or
b. on active duty in the armed forces of any country.

...

VII. COORDINATION OF BENEFITS AND SERVICES

...

DEFINITIONS

"Plan" means any of the following that provide health expense benefits or services:

a. group or blanket insurance plans;
b. group hospital or surgical plans, or other service or prepayment plans on a group basis;
c. union welfare plans, Employer plan, Employee benefits plans, trusteed labor and management plans, or other plans for members of a group;
d. programs or coverages required by law;
{e. group or group-type hospital indemnity benefits which exceed $250.00 per day;
f. group or group-type hospital indemnity benefits of $250.00 per day or less which the Employer pays part of the premium;}
{g.}**e.** Medicare or other government programs which We are allowed to coordinate with by law.

"Plan" does not include:

a. Medicaid or any other government program or coverage which [Carrier] is not allowed to coordinate with by law;
b. school accident type coverages written on either a blanket, group, or franchise basis;
c. group or group-type hospital indemnity benefits {of $250.00 per day or less which the Employee pays the entire premium}; {nor}
d. Supplemental Limited Benefits Insurance coverages; nor
{d.}**e.** any plan We say We supplement.

...

EXHIBIT Z
PART 1

RIDER FOR PRESCRIPTION DRUG INSURANCE (CARD/MAIL)

[Policyholder:

Group Policy No:

Effective Date:]

The **Prescription Drug** section of the **COVERED CHARGES** provision of the **HEALTH BENEFITS INSURANCE** section is replaced with the following:

[Carrier] covers drugs to treat an Illness or Injury which require a Practitioner's prescription which are obtained while confined as an Inpatient in a Facility. But [Carrier] only covers drugs which are:

a. approved for treatment of the Covered Person's Illness or Injury by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information;
   3. The United States Pharmacopeia Drug Information; or
{c. supported by the preponderance of evidence that exists in clinical review studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature.}
c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or
b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does cover drugs to treat Mental and Nervous Conditions and Substance Abuse under the Rider for Prescription Drug Insurance.

This Prescription Drug insurance will pay benefits for covered drugs, prescribed by a Practitioner. What [Carrier] pays and the terms of payment are explained below.

...

EXHIBIT Z
PART 2

RIDER FOR PRESCRIPTION DRUG INSURANCE (CARD)

[Policyholder:

Group Policy No:

Effective Date:]

The **Prescription Drug** section of the **COVERED CHARGES** provision of the **HEALTH BENEFITS INSURANCE** section is replaced with the following:

[Carrier] covers drugs to treat an Illness or Injury which require a Practitioner's prescription which are obtained while confined as an Inpatient in a Facility. But [Carrier] only covers drugs which are:

a. approved for treatment of the Covered Person's Illness or Injury by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information;

3. The United States Pharmacopeia Drug Information; or

{c. supported by the preponderance of evidence that exists in clinical review studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature.}

c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or

b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does cover drugs to treat Mental and Nervous Conditions and Substance Abuse under the Rider for Prescription Drug Insurance.

This Prescription Drug insurance will pay benefits for covered drugs, prescribed by a Practitioner. What [Carrier] pays and the terms of payment are explained below.

. . .

EXHIBIT Z
PART 3

RIDER FOR PRESCRIPTION DRUG INSURANCE (MAIL)

[Policyholder:

Group Policy No:

Effective Date:]

The **Prescription Drug** section of the **COVERED CHARGES** provision of the **HEALTH BENEFITS INSURANCE** section is replaced with the following:

[Carrier] covers drugs to treat an Illness or Injury which require a Practitioner's prescription which are obtained while confined as an Inpatient in a Facility. But [Carrier] only covers drugs which are:

a. approved for treatment of the Covered Person's Illness or Injury by the Food and Drug Administration;

b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:

1. The American Medical Association Drug Evaluations;
2. The American Hospital Formulary Service Drug Information;
3. The United States Pharmacopeia Drug Information; or

{c. supported by the preponderance of evidence that exists in clinical review studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature.}

c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or

b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does cover drugs to treat Mental and Nervous Conditions and Substance Abuse under the Rider for Prescription Drug Insurance.

This Prescription Drug insurance will pay benefits for covered drugs, prescribed by a Practitioner. What [Carrier] pays and the terms of payment are explained below.

. . .

EXHIBIT Z
PART 4

RIDER FOR MENTAL AND NERVOUS CONDITIONS AND SUBSTANCE ABUSE BENEFITS

[Policyholder:

Group Policy No:

Effective Date:]

The **Prescription Drug** section of the **COVERED CHARGES** provision of the **HEALTH BENEFITS INSURANCE** section is replaced with the following:

[Carrier] covers drugs to treat an Illness, Injury, or Mental and Nervous Conditions and Substance Abuse which require a Practitioner's prescription. But [Carrier] only covers drugs which are:

a. approved for treatment of the Covered Person's Illness, Injury or Mental and Nervous Conditions and Substance Abuse by the Food and Drug Administration;

b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Covered Person's and recognized as appropriate medical treatment for the Covered Person's diagnosis or condition in one or more of the following established reference compendia:

1. The American Medical Association Drug Evaluations;
2. The American Hospital Formulary Service Drug Information;
3. The United States Pharmacopeia Drug Information; or

{c. supported by the preponderance of evidence that exists in clinical review studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature.}

c. recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.

Coverage for the above drugs also includes medically necessary services associated with the administration of the drugs.

In no event will [Carrier] pay for:

a. drugs labeled: "Caution—Limited by Federal Law to Investigational Use"; or

b. any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed.

And [Carrier] excludes drugs that can be bought without a prescription, even if a Practitioner orders them.

[Carrier] does cover drugs to treat Mental and Nervous Conditions and Substance Abuse as part of the Prescription Drugs Covered Charge. Drugs for such treatment are not covered under the Rider for Mental and Nervous Conditions and Substance Abuse Benefits.

The **Mental and Nervous Conditions and Substance Abuse** section of the **COVERED CHARGES WITH SPECIAL LIMITATIONS** provision of the **HEALTH BENEFITS INSURANCE** section of the Policy is replaced with the following:

The Co-Payment, Cash Deductible, Co-Insurance and Co-Insurance cap provisions of this Rider are independent of similar provisions of the **Health Benefits** section of the Policy. Charges incurred for the treatment of Mental and Nervous Conditions and Substance Abuse must be considered under the terms of this Rider and cannot be considered under the **Health Benefits** section of the Policy.

. . .

EXHIBIT AA
PART 1

EVIDENCE OF COVERAGE RIDER FOR PRESCRIPTION DRUG COVERAGE (CARD/MAIL)

Contract Holder:

Group Contract No:

Effective Date:

The **Prescription Drug** section of the **COVERED SERVICES AND SUPPLIES** Section of the HMO **EVIDENCE OF COVERAGE** is replaced with the following:

We cover drugs which require a Participating Provider's prescription which are obtained while confined as an Inpatient. But We only cover drugs which are:

a. approved for treatment of the Member's Illness or Injury or Mental or Nervous Condition by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Member's and recognized as appropriate medical treatment for the Member's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information; or
   3. The United States Pharmacopeia Drug Information.
c. [supported by the preponderance of evidence that exists in clinical review studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature.] **recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.**

...

EXHIBIT AA
PART 2

EVIDENCE OF COVERAGE RIDER FOR PRESCRIPTION DRUG COVERAGE (CARD)

Contract Holder:

Group Contract No:

Effective Date:

The **Prescription Drug** section of the **COVERED SERVICES AND SUPPLIES** Section of the HMO **EVIDENCE OF COVERAGE** is replaced with the following:

We cover drugs which require a Participating Provider's prescription which are obtained while confined as an Inpatient. But We only cover drugs which are:

a. approved for treatment of the Member's Illness or Injury **or Mental or Nervous Condition** by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Member's and recognized as appropriate medical treatment for the Member's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information; or
   3. The United States Pharmacopeia Drug Information.
c. [supported by the preponderance of evidence that exists in clinical review studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature.] **recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.**

...

EXHIBIT AA
PART 3

EVIDENCE OF COVERAGE RIDER FOR PRESCRIPTION DRUG COVERAGE (MAIL)

Contract Holder:

Group Contract No:

Effective Date:

The **Prescription Drug** section of the **COVERED SERVICES AND SUPPLIES** Section of the HMO **EVIDENCE OF COVERAGE** is replaced with the following:

We cover drugs which require a Participating Provider's prescription which are obtained while confined as an Inpatient. But We only cover drugs which are:

a. approved for treatment of the Member's Illness or Injury or Mental or Nervous Condition by the Food and Drug Administration;
b. approved by the Food and Drug Administration for the treatment of a particular diagnosis or condition other than the Member's and recognized as appropriate medical treatment for the Member's diagnosis or condition in one or more of the following established reference compendia:
   1. The American Medical Association Drug Evaluations;
   2. The American Hospital Formulary Service Drug Information; or
   3. The United States Pharmacopeia Drug Information.
c. [supported by the preponderance of evidence that exists in clinical review studies that are reported in major peer-reviewed medical literature or review articles that are reported in major peer-reviewed medical literature.] **recommended by a clinical study and recommended by a review article in a major peer-reviewed professional journal.**

...

LABOR

(a)

DIVISION OF UNEMPLOYMENT INSURANCE AND DISABILITY INSURANCE FINANCING

Contributions, Records and Reports
Wage Reporting
Magnetic Media Reporting

Proposed Amendment: N.J.A.C. 12:16-13.7

Authorized By: Peter J. Calderone, Commissioner, Department of Labor.
Authority: N.J.S.A. 43:21-1 et seq.
Proposal Number: PRN 1994-419.

A **public hearing** on the proposed amendments will be held on the following date at the following location:

Wednesday, August 10, 1994
10:00 A.M. to 12:00 P.M.
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625-0110

Please call the Office of Regulatory Services at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by August 17, 1994 to:

Deirdre L. Webster, Regulatory Officer
Office of the Commissioner
Regulatory Services
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, contact the Office of Communications at (609) 292-3221 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

N.J.S.A. 43:21-14(a)(2)(A) requires the Department of Labor to secure and process quarterly wage information from all employers subject to the Unemployment Compensation and Temporary Disability Benefits Laws. In most instances, employers and third-party payroll processors prepare listings of this information, which is then keypunched by the Division of Unemployment Insurance (UI)/Disability Insurance (DI) Financing. Many large employers and the third-party payroll processors use data stored in a magnetic media to prepare their hard copy listings.

The Division of UI/DI Financing receives and processes wage information via magnetic media from a large number of employers. In addition,

the use of magnetic media is more accurate and efficient for large entities reporting wage information.

The Department intends to phase in the requirement as a proposed amendment at N.J.A.C. 12:16-13.7(c) that would require large employers to submit wage information via magnetic media. Employers who have in excess of 250 employees will be required to submit the wage information via magnetic media in 1995. Employers who have 100 to 250 employees will be required to submit wage information via magnetic media in 1996.

The Department intends to require third-party payroll processors to combine the wage information of their clients and submit wage information via magnetic media directly to the Division of UI/DI Financing, if the aggregate number of employees processed and reported by the third-party payroll processor exceeds 100 in any calendar quarter for all calendar quarters subsequent to the quarter ending December 31, 1994.

Social Impact

The proposed amendment will enable the Department to accomplish more effectively its function by reducing the amount of keypunching and therefore, eliminating errors. This in turn will result in a more timely unemployment benefit determination. It will also enable employers and third-party payroll processors to report more effectively their employees or clients wage information because such information is in most cases already maintained on magnetic media.

Economic Impact

The impact of the proposed amendments will be to reduce the Department of Labor's data entry costs associated with the handling and processing of the large employer and third-party payroll processor wage information by approximately $20,000 for every 100,000 employees who are reported on magnetic media.

The implementation of the proposed amendments may result in some cost to the affected employers, who must convert from reporting the wage information on paper to a magnetic media. However, the long-term cost will be less due to reduced handling and processing costs. In addition, the increased accuracy of magnetic media reporting, will result in fewer wage reporting penalties which are imposed for reporting errors.

Regulatory Flexibility Analysis

The proposed amendments impose minimal, if any, reporting, recordkeeping and compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The magnetic media reporting requirement is aimed at large employers and third-party payroll processors. There will be an impact on small businesses only in those cases where they choose to contract with third-party payroll processors who may charge an increased fee for magnetic media reporting. However, it is noted that most third-party payroll processors do not charge an increased fee for this service.

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

12:16-13.7 Wage reporting

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

(c) The following pertain to magnetic media reporting:

1. For all calendar quarters subsequent to the quarter ending December 31, 1994 all employers who would report in excess of 250 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such report via magnetic media in a form and manner specified by the Director, Unemployment Insurance/Disability Insurance Financing.

2. For all calendar quarters subsequent to the quarter ending December 31, 1995 all employers who would report in excess of 100 employees on Form WR-30, "Employer Report of Wages Paid," in any calendar quarter shall file such report via magnetic media in a form and manner specified by the Director, Unemployment Insurance/Disability Insurance Financing.

3. For all calendar quarters subsequent to the quarter ending December 31, 1994, all third-party payroll processors who prepare or provide to employers the information used in the preparation of Form WR-30 "Employer Report of Wages Paid," shall file such reports for all their clients via magnetic media directly to the Division of Unemployment Insurance/Disability Insurance Financing in a form and manner specified by the Director, if the aggregate number of employees for all clients processed and so reported by the third party exceeds 100 in any calendar quarter.

4. Employers or third-party payroll processors may have the requirements in (c)1 through 3 above waived or extended for good cause as defined in N.J.A.C. 12:19-1.2 upon written application for waiver or extension to the Director, Unemployment Insurance/Disability Insurance Financing.

5. If an employer or third-party payroll processor fails to comply with the provisions of this subsection, the penalties specified in N.J.A.C. 12:16-13.7(b) shall apply.

(a)

OFFICE OF JTPA PROGRAMS

Job Training Partnership Act (JTPA): Non-Criminal Complaint/Grievance, Hearing and Review Procedures at Employer, SDA, State and Federal Level

Proposed Amendments: N.J.A.C. 12:41-1.2 and 1.14

Authorized By: Peter J. Calderone, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 20 U.S.C.A. Sec. 1554 and 20 CFR Sec. 627.500 et seq.

Proposal Number: PRN 1994-420.

A **public hearing** on the proposed amendments will be held on the following date at the following location:

Wednesday, August 3, 1994
10:00 A.M. to 12:00 P.M.
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625

Please call the Office of Regulatory Services at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by August 17, 1994 to:

Deirdre L. Webster, Regulatory Officer
Office of Regulatory Services
Department of Labor
CN 110
Trenton, New Jersey 08625

If you need this document in braille, large print or audio cassette, contact the Office of Communications at (609) 292-3221 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

The Department is proposing to amend the rules governing the grievance, hearing and review procedures that apply at the employer, Service Delivery Area (SDA), State and Federal levels for non-criminal complaints and appeals under the Job Training Partnership Act (JTPA) found at N.J.A.C. 12:41. The purpose of the amendments is to bring the rules into conformity with Federal and State codification formats, and to clarify that a grievant may pursue a remedy under another Federal, State or local law. This will be accomplished by duplicating the provision currently found in N.J.A.C. 12:41-1.14(e) at N.J.A.C. 12:41-1.2(g). N.J.A.C. 12:41-1.14(e) is also being amended to reflect similar language as it appears in N.J.A.C. 12:41-1.13(d).

Social Impact

The proposed amendments will clarify that a remedy under another Federal, State or local law is available to a grievant when it has been determined that a Section 143 labor standards violation has occurred.

Economic Impact

The proposed amendments ensure that corrective action is available to grievants at all levels.

Regulatory Flexibility Statement

The proposed amendments allow a grievant to pursue a remedy under another Federal, State or local law at all levels. The proposed amendments will not impose any additional reporting, recordkeeping or compliance requirements upon small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

12:41-1.2 Scope

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

(g) Nothing in this subchapter shall be construed to prohibit a grievant from pursuing a remedy authorized under another Federal, State, or local law for violation of Section 143 of the JTPA.

12:41-1.14 Section 143 labor standards complaints: binding arbitration

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

(e) [Nothing in this section shall be construed to prohibit a grievant from pursuing a remedy] **The grievant may pursue remedies** authorized under another Federal, State, or local law for violation of Section 143 of the JTPA.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Equipment for Emergency Vehicles and Other Specified Vehicles

Proposed Readoption: N.J.A.C. 13:24

Authorized By: C. Richard Kamin, Acting Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:2-3, 39:3-43, 39:3-50, 39:3-54, 39:3-54.7 et seq. and 39:3-69.

Proposal Number: PRN 1994-408.

Submit written comments by August 17, 1994 to:

C. Richard Kamin, Acting Director
Division of Motor Vehicles
Attention: Legal Staff
225 East State Street
CN 162
Trenton, New Jersey 08666-0162

The agency proposal follows:

Summary

The Division of Motor Vehicles proposes to readopt the provisions of N.J.A.C. 13:24 in accordance with the "sunset" and other provisions of Executive Order No. 66(1978). These rules expire on September 27, 1994. The Division of Motor Vehicles has reviewed N.J.A.C. 13:24 in accordance with Executive Order No. 66(1978) and has determined that said rules are necessary, adequate, reasonable, efficient, understandable and responsive to the purpose for which they were originally promulgated.

The rules which are the subject of this proposal set forth what vehicles or persons may qualify to display or use red, blue and/or amber emergency warning lights or flashing lights or sirens on motor vehicles and the permit application procedure in those instances in which a permit for such lights or sirens is required.

N.J.A.C. 13:24 contains six subchapters which are briefly summarized below:

Subchapter 1 contains a rule which sets forth the definitions of words and phrases used in N.J.A.C. 13:24.

Subchapter 2 sets forth rules pertaining to red emergency lights and sirens used on certain vehicles. Included in this subchapter are rules concerning red lights on vehicles; flashing lights on vehicles; sirens, whistles or bells on vehicles; permit applications; permit eligibility; permit possession and exhibition; permit cancellation or revocation; red light mounting and use requirements; and siren mounting requirements.

Subchapter 3 sets forth rules pertaining to red emergency lights and sirens used on certain vehicles owned or leased by certain persons engaged in emergency management. Included in this subchapter are rules concerning Municipal Emergency Management Coordinator applications; County Emergency Management Coordinator and Deputy County Emergency Management Coordinator applications; application contents; period of permit validity and cancellation of same; red light and siren mounting and use requirements; permit possession and exhibition; and permit revocation.

Subchapter 4 sets forth rules pertaining to flashing amber light permits for certain vehicles, including wreckers or service vehicles bearing commercial or governmental registration, snow removal and/or sanding equipment, and vehicles being operated by rural route letter carriers employed by the United States Postal Service while performing their official duties. Included in this subchapter are rules concerning persons eligible for flashing amber light permits; permit application procedure; permit possession and exhibition; permit revocation; and permit cancellation.

Subchapter 5 sets forth rules pertaining to blue emergency warning lights used on vehicles owned by volunteer firefighters or volunteer first aid or rescue squad members or members of their households. Included in this subchapter are rules concerning persons eligible for blue emergency warning light identification cards (permits); identification card (permit) possession and exhibition; identification card (permit) application procedure; surrender of identification cards (permits); blue emergency warning light mounting and use requirements; and identification card (permit) revocation.

Subchapter 6 sets forth rules pertaining to special amber identification light permits issued to certain licensed private detective businesses for their vehicles. Included in this subchapter are rules concerning permit eligibility; permit application procedure; special amber identification light mounting requirements; permit revocation; and permit cancellation.

Social Impact

The proposed readoption of N.J.A.C. 13:24 will promote highway safety by identifying the various types, colors and uses of emergency warning lights and sirens which may be displayed or used on motor vehicles in this State, the types of vehicles on which they may be displayed or used and the individuals who may apply for permits to display or use the various types and colors of emergency lights. Thus, the public and this State's law enforcement officials will be better informed as to the types of vehicles or persons permitted to exhibit and use emergency warning lights and sirens. The rules proposed for readoption have no social impact on the Division of Motor Vehicles.

Economic Impact

The economic impact of the proposed readoption of N.J.A.C. 13:24 on the State is limited to the costs incurred by the Division of Motor Vehicles in connection with processing permit applications and issuing permits in accordance with these rules. The owners of motor vehicles which need to be modified in some manner to comply with the rules' emergency light or siren mounting provisions may incur expenses in connection with the required modifications. Licensed private detective businesses applying for a special amber identification light permit pursuant to N.J.A.C. 13:24-6 will incur an expense in the amount of a $25.00 fee payable to the Division of Motor Vehicles as required by N.J.S.A. 39:3-54.14.

Regulatory Flexibility Analysis

Any small business which operates an ambulance which falls within the definitions of "authorized emergency vehicle" in N.J.A.C. 13:24-1.1 and which wishes to display flashing red lights and/or sirens on such a vehicle must comply with the mounting and use provisions set forth in N.J.A.C. 13:24-2. This includes any vehicle licensed as an ambulance by the New Jersey Department of Health in accordance with N.J.A.C. 8:40, and any ambulance of a volunteer first aid, rescue or ambulance squad certified as qualified for emergency medical service programs in accordance with N.J.S.A. 27:5F-27, when such vehicles are operated in response to an emergency. A Division of Motor Vehicles' red light and/or siren permit for such vehicles is not required provided the vehicles fall within the above-mentioned definition of "authorized emergency vehicle" in N.J.A.C. 13:24-1.1. Other than the mounting and use provisions, N.J.A.C. 13:24-2 does not impose reporting, recordkeeping or compliance requirements on such small businesses.

Any small business engaged in the manufacturer and/or sale of emergency vehicles or equipment as set forth in N.J.A.C. 13:24-2.5(a)4 which wishes to display red lights and/or sirens on its vehicles so that same may be operated by its employees only for the purpose of demonstration or delivery must apply to the Division of Motor Vehicles for a red light and/or siren permit in accordance with the procedures detailed in N.J.A.C. 13:24-2. The Division's permit application process for such small businesses is not unduly burdensome, consisting basically of completing a permit application form and forwarding the completed application form to the Division of Motor Vehicles. The Division does not charge a fee for the issuance of red light and/or siren permits issued pursuant to N.J.A.C. 13:24-2. Other than the permit application process,

mounting, use and permit possession and exhibition provisions, N.J.A.C. 13:24-2 does not impose additional reporting, recordkeeping or compliance requirements on such small businesses, and professional services should not be needed to assist in the completion of the permit application form. Given the need of this State's law enforcement officials to be able to determine by means of a permit issued by the Division of Motor Vehicles whether a vehicle being operated by an employee of a business engaged in the manufacture and/or sale of emergency vehicles or equipment for the purpose of demonstration or delivery is permitted to display flashing red lights and/or sirens, no exemption for such small businesses from the requirements of N.J.A.C. 13:24-2 is warranted.

Small businesses desiring to obtain a flashing amber light permit for their vehicles pursuant to N.J.A.C. 13:24-4 or a special amber identification light permit for their vehicles pursuant to N.J.A.C. 13:24-6 are affected by this proposed readoption in that they are required to comply with the Division of Motor Vehicles' permit application process set forth in the rules.

Any small business which owns or leases wreckers or service vehicles bearing commercial registration, or which owns or leases snow removal and/or sanding equipment under the cirsumstances set forth in N.J.A.C. 13:24-4 and which wishes to display flashing amber lights on same in accordance with that subchapter, must apply to the Division of Motor Vehicles for a flashing amber light permit for such vehicles in accordance with the procedures detailed in N.J.A.C. 13:24-4. The Division's permit application process for small businesses which own or lease such vehicles and wish to display flashing amber lights on same is not unduly burdensome, consisting basically of completing a permit application form, submitting the application form to the chief law enforcement official in the municipality in which the service is being provided for signature, and forwarding the completed application form to the Division of Motor Vehicles. The Division does not charge a fee for the issuance of flashing amber light permits issued pursuant to N.J.A.C. 13:24-4. Other than the permit application process, use and permit possession and exhibition provisions, N.J.A.C. 13:24-4 does not impose additional reporting, recordkeeping or compliance requirements on small businesses, and professional services should not be needed to assist in the completion of the permit application form. Given the need of this State's law enforcement officials to be able to ascertain by means of a permit issued by the Division of Motor Vehicles whether a vehicle operator is permitted to display flashing amber lights on a vehicle, no exemption for small businesses from the requirements of N.J.A.C. 13:24-4 is warranted.

Any small business which is a licensed private detective business and which meets the requirements of N.J.S.A. 39:3-54.14 and N.J.A.C. 13:24-6 and wishes to display a special amber identification light on its vehicles must apply to the Division of Motor Vehicles for a special amber identification light permit for such vehicles in accordance with the procedures detailed in N.J.A.C. 13:24-6. The Division of Motor Vehicles charges qualifying licensed private detective businesses a fee of $25.00 for the issuance of each such permit in accordance with N.J.S.A. 39:3-54.14. A small business which is a licensed private detective business is not exempt from payment of this mandatory statutory fee. The Division's permit application process for small businesses which are qualified licensed private detective businesses and which wish to display a special amber identification light on their vehicles is in accordance with N.J.S.A. 39:3-54.14 and is not unduly burdensome, consisting basically of completing a permit application form, submitting the application form to the chief law enforcement official in the municipality in which the permit will be used for signature, and forwarding the completed application form and the other documents specified in N.J.A.C. 13:24-6.2(b)1 and 2 and the mandatory statutory permit fee to the Division of Motor Vehicles. Other than the permit application process, fee, mounting, and permit possession and exhibition provisions, N.J.A.C. 13:24-6 does not impose additional reporting, recordkeeping or compliance requirements on small businesses, and professional services should not be needed to assist in the completion of the permit application form. Given the need of this State's law enforcement officials to be able to determine by means of a permit issued by the Division of Motor Vehicles whether a vehicle operator is permitted to display a special amber identification light on a vehicle, no exemption for small businesses which are qualified licensed private detective businesses from the requirements of N.J.A.C. 13:24-6 is warranted.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:24.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF CHIROPRACTIC EXAMINERS
Patient Records
Proposed Amendment: N.J.A.C. 13:44E-2.2

Authorized By: Board of Chiropractic Examiners, Alfred Davis, D.C., President.
Authority: N.J.S.A. 45:9-41.23(h).
Proposal Number: PRN 1994-402.

Submit written comments by August 17, 1994 to:
Kay McCormack, Executive Director
State Board of Chiropractic Examiners
Post Office Box 45004
Newark, New Jersey 07101

The agency proposal follows:

Summary

The State Board of Chiropractic Examiners is proposing an amendment to N.J.A.C. 13:44E-2.2, Patient records, which provides Board licensees with minimum requirements for the creation, maintenance and transfer of patient records in order to establish uniform recordkeeping practices within the profession.

The Patient Records rule was initially proposed on February 19, 1991 (see 23 N.J.R. 391(a)). During the 30-day comment period, comment was received by the law offices of Baker, Garber, Duffy & Pedersen urging the Board to include an additional provision, paragraph (g)4, in order to provide for the direct notification of patients by a licensed chiropractor ceasing to practice so that his or her patients may be able to secure their records and maintain continuous chiropractic care should they so desire. As noted when the adoption was filed as R.1991 d.441 (see 23 N.J.R. 2515(a), 2516, the Board agreed with the need for the proposed amendment but was unable to consider it at that time because the proposed amendment was considered too significant a change to be inserted except as a later amendment.

The amendment now being proposed makes no changes to N.J.A.C. 13:44E-2.2(a) through (g)3 of the existing Patient records rule. Instead, the amendment seeks to augment the provisions of paragraph (g)1 through 3, which cover a licensee's responsibilities in case of a discontinued practice, by adding paragraph (g)4.

The goal of paragraph (g)4 is to allow patients to secure their records so as to ensure the continuation of proper chiropractic care. While paragraph (g)2 covers the public notice that a chiropractor will give after ceasing practice, the proposed amendment seeks to cover the six-month period prior to a chiropractor ceasing practice. The proposed amendment would require licensees to make reasonable efforts during that six-month period to directly notify the patient not only of the fact that the licensee is ceasing his or her practice but also to let the patient know of the established procedure for the retrieval of records.

Social Impact

The proposed amendment should have a significant social impact on patients of licensees who are discontinuing their practices. The amendment supplements the existing provisions of the patient records regulation by requiring chiropractors to make reasonable efforts to contact their patients prior to ceasing their practice in order to help those patients secure their records and thereby maintain continuous chiropractic care.

Economic Impact

The additional provision regarding reasonable efforts will not have any economic impact on the general public or on patients of licensees who are discontinuing their practices. For chiropractors, however, the proposed amendment is likely to involve some additional expenses because they will now be required to communicate notice of their ceasing to practice both before, as well as after, their cessation of practice.

Regulatory Flexibility Analysis

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

The proposed amendment will apply to the approximately 3,000 licensees of the Board of Chiropractic Examiners. Compliance requirements relate to the transfer and retrieval of patient records. Since the intent of N.J.A.C. 13:44E-2.2 is to create uniformity in the profession

with regard to the transfer of records in the event of practice cessation, the rule must be uniformly applicable to all licensees without differentiation as to size of practice.

The proposed amendment requires no recordkeeping or reporting. However, the need to notify patients both before and after ceasing to practice is likely to mean an additional, though fairly minimal, outlay of funds because the need to make reasonable efforts to notify patients directly may take the form of published announcements, phone calls, mailings or in-person notification. As to professional services, they will be necessary only if a notification strategy is adopted that involves services not within the realm of duties that are capable of being handled by a licensee's regular office staff.

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

13:44E-2.2 Patient records

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

(g) If a licensee ceases to engage in practice or it is anticipated that he or she will remain out of practice for more than three months, the licensee or a designee shall:

1. (No change.)

2. If the practice is unattended by another licensee, publish a notice of the cessation and the established procedure for the retrieval of records in a newspaper of general circulation in the geographic location of the licensee's practice, at least once each month for the first three months after the cessation; [and]

3. File a notice of the established procedure for the retrieval of records with the Board of Chiropractic Examiners[.]; **and**

4. Make reasonable efforts to directly notify any patient treated during the six months preceding the cessation in order to provide information concerning the established procedure for the retrieval of records.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route N.J. 47

Dennis Township, Cape May County

Proposed Amendment: N.J.A.C. 16:28-1.132

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

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

Proposal Number: PRN 1994-404.

Submit comments by August 17, 1994 to:

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

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28-1.132 to revise certain "speed limit" zones along Route N.J. 47 in Dennis Township, Cape May County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace. A 45 mph "speed limit" zone in the vicinity of mileposts 16.79 to 17.73 is proposed.

Based upon a request from the Mayor of Dennis Township to the Commissioner of Transportation, dated January 28, 1994, advising of accidents on Route N.J. 47, and a petition signed by hundreds of residents citing numerous incidents caused by speeding, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation concluded that revising certain "speed limit" zones along Route N.J. 47 in Dennis Township, Cape May County, were warranted.

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

Social Impact

The proposed amendment will establish a 45 mph "speed limit" zone along Route N.J. 47 in Dennis Township, Cape May County, in the vicinity of mileposts 16.79 to 17.73 for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Regulatory Flexibility Statement

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

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

16:28-1.132 Route 47

(a) The rate of speed designated for the certain part of State highway Route 47 described in this subsection shall be established and adopted as the maximum legal rate of speed for both directions of traffic:

1. In Cape May County:

i.-iii. (No change.)

iv. Dennis Township:

[(1) 50 mph between the Middle Township-Dennis Township line and the Dennis Township-Maurice River Township line (Cape May County-Cumberland County line) (approximate mileposts 15.96 to 24.45).]

(1) Zone 1: 50 miles per hour between the Middle Township-Dennis Township corporate line and Beaver Dam Road (County Road 657) (approximate mileposts 15.96 to 16.79).

(2) Zone 2: 45 miles per hour between Beaver Dam Road (County Road 657) and 200 feet north of the bridge over Dennis Creek (approximate mileposts 16.79 to 17.73).

(3) Zone 3: 50 miles per hour between 200 feet north of the bridge over Dennis Creek to the Dennis Township-Maurice River Township corporate line (approximate mileposts 17.73 to 24.45).

2.-4. (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Route N.J. 47

Proposed Repeal and New Rule: N.J.A.C. 16:28A-1.33

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

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

Proposal Number: PRN 1994-405.

Submit comments by August 17, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed repeal and new rule at N.J.A.C. 16:28A-1.33 by the Department of Transportation will establish parking restrictions on Route N.J. 47 for the entire length of the roadway from Wildwood City in Cape May County to Brooklawn Borough in Camden County (approximate mileposts 0.00 to 74.98). The provisions of the new rule will improve the flow of traffic and enhance safety along the highway system.

As part of the Department's review of the current rule conducted by the Bureau of Traffic Engineering and Safety Programs, numerous amendments were recommended in the format of the existing rule to alleviate confusion and difficulty in locating effective parking restrictions.

This review was also generated by requests for new parking restrictions from Deptford Township in Gloucester County by a Resolution, adopted on December 16, 1993, requesting bus stops along Route N.J. 47, and by the City of Millville in Cumberland County by Resolution Number A-766, adopted on December 7, 1993, requesting a handicapped parking zone on Route N.J. 47.

The entire review and traffic investigation conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that the repeal and proposed new rule along Route N.J. 47 was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed repeal and new rule will establish updated parking restrictions along Route N.J. 47 for its entire length to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public in those areas where needed or where revisions will be made.

Economic Impact

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

Regulatory Flexibility Statement

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

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 16:28A-1.33.

Full text of the proposed new rule follows:

16:28A-1.33 Route 47

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

1. In Cape May County:

i. In Middle Township:

(1) Along both sides:

(A) Between milepost 3.0 and milepost 4.1 including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

(B) Between Fulling Mill Road and Paula Lane (approximate mileposts 5.0 to 6.05).

(2) Along the southbound side:

(A) From the northerly curb line of Indian Trail (County Road 585 Spur), Green Creek to a point 275 feet northerly therefrom (approximate mileposts 8.81 to 8.86).

ii. In Dennis Township:

(1) Along both sides:

(A) For the entire length within the corporate limits of Dennis Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation (approximate mileposts 15.95 to 24.45).

2. In Cumberland County:

i. In Maurice Township:

(1) Along both sides:

(A) From Hands Mill Road to South Street (approximate mileposts 26.92 to 33.48).

(B) All ramps and connections under the jurisdiction of the Commissioner of Transportation.

ii. In the City of Millville:

(1) Along both sides:

(A) From a point 1,715 feet south of the southerly curb line of Orange Street to a point 350 feet north of the northerly curb line of Orange Street (approximate mileposts 37.88 to 38.24).

(2) Along the northbound side:

(A) From a point 75 feet south of the southerly curb line of Mulberry Street to a point 75 feet north of the northerly curb line of Mulberry Street (approximate mileposts 40.22 to 40.24).

(B) From the northerly curb line of Vine Street to a point 75 feet north of the northerly curb line of East Oak Street (approximate mileposts 40.32 to 40.4).

(C) Between a point 100 feet south of the southerly curb line of Garfield Street and the intersection of Main Street (approximate mileposts 39.39 to 40.02).

(D) From the northerly curb line of "F" Street to the Millville City-Vineland City corporate line (approximate mileposts 40.2 to 42.4).

(3) Along the southbound side:

(A) From the Millville City-Vineland City corporate line to the prolongation of the southerly curb line of Garfield Avenue (approximate mileposts 42.36 to 39.40).

iii. In the City of Vineland:

(1) Along both sides:

(A) For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation (approximate mileposts 42.36 to 51.79).

3. In Gloucester County:

i. In Franklin Township:

(1) Along both sides:

(A) Beginning at the southerly curb line of New Street to the southerly curb line of Marshall Mill Drive (approximate mileposts 52.18 to 53.1).

(B) From a point 350 feet south of the southerly curb line of Grant Avenue to the southerly curb line of Hall Avenue-Little Mill Road (approximate mileposts 57.4 to 57.76).

(2) Along the northbound side:

(A) From a point 350 feet south of the southerly curb line of Blackwoodtown Road to a point 500 feet north of the northerly curb line of Blackwoodtown Road (approximate mileposts 54.94 to 55.12).

(B) From a point 200 feet south of the southerly curb line of Coles Mill Road to McArthur Avenue (approximate mileposts 56.3 to 56.62).

(3) Along the southbound side:

(A) Beginning at the southerly curb line of County Road 538 (Coles Mill Road) to a point 270 feet southerly therefrom (approximate mileposts 56.35 to 56.30).

ii. In Glassboro Borough:

(1) Along the northbound side:

(A) From the southerly curb line of Route U.S. 322-High Street to a point 425 feet southerly therefrom (approximate mileposts 62.20 to 62.29).

(B) From Route U.S. 322-West Street to Green Tree Road (approximate mileposts 62.66 to 63.12).

(C) From Bristol Drive to Heston Road (approximate mileposts 63.3 to 63.65).

(2) Along the southbound side:

(A) From Heston Road to Green Tree Road (approximate mileposts 63.65 to 63.12);

(B) From Spencer Street to Market Place (approximate mileposts 63.1 to 63.02);

(C) From the southerly curb line of Route U.S. 322-High Street to a point 120 feet southerly therefrom (approximate mileposts 62.29 to 62.27);

(D) All ramps and connections which are under the jurisdiction of the Commissioner of Transportation.

iii. In Washington Township:

(1) Along both sides:

(A) For the entire length within the corporate limits of Washington Township, including all ramps and connections which are under the jurisdiction of the Commissioner of Transportation (approximate mileposts 64.86 to 68.16).

iv. In Deptford Township:

(1) Along both sides:

(A) From a point 250 feet south of the southerly curb line of Cooper Street to a point 700 feet southerly therefrom (approximate mileposts 71.52 to 71.70).

(2) Along the northbound side:

(A) From a point 70 feet south of the southerly curb line of Park Avenue to a point 250 feet north of the northerly curb line of Oak Avenue (approximate mileposts 73.31 to 73.40).

v. In Westville Borough:

(1) Along the northbound side:

(A) From the Deptford Township-Westville Borough corporate line to the southerly curb line of Almonesson Avenue (approximate mileposts 73.77 to 74.25);

(B) From a point 160 feet south of the prolongation of the southerly curb line of the safety island at the intersection of Route 47 and Broadway and the Borough of Westville-Borough of Brooklawn corporate line at Timber Creek (approximate mileposts 74.62 to 74.88).

(2) Along the southbound side:

(A) Between the Borough of Brooklawn-Borough of Westville corporate line at Timber Creek and a point 115 feet south of the prolongation of the southerly curb line of the safety island at the intersection of Route 47 and Broadway (approximate mileposts 74.88 to 74.63).

(B) From the Deptford Township-Westville Borough corporate line to a point 250 feet north of the northerly curb line of Olive Street (approximate mileposts 74.02 to 73.77).

(b) The certain parts of State highway Route 47 described in this subsection shall be designated and established as "bus stops" 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 bus stops:

1. In Cumberland County:

i. In the City of Millville:

(1) Near side bus stops:

(A) East Vine Street (northbound)—beginning at the southerly curb line of East Vine Street and extending 105 feet southerly therefrom.

ii. In the City of Vineland:

(1) Mid-block bus stops:

(A) (Southbound)—between College Drive and Route 55 beginning 1,580 feet south of the southerly curb line of College Drive and extending 135 feet southerly therefrom.

2. In Gloucester County:

i. In Franklin Township:

(1) Mid-block bus stops:

(A) (Northbound)—beginning 420 feet south of the southerly curb line of Marshall Mill Road and extending 135 feet southerly therefrom.

(B) (Northbound)—beginning 350 feet south of the southerly curb line of Pennsylvania Avenue and extending 135 feet southerly therefrom.

ii. In Glassboro Borough:

(1) Far side bus stops:

(A) (Southbound) Grove Street—beginning at the southerly curb line of Grove Street and extending 100 feet southerly therefrom.

(2) Mid-block bus stops:

(A) (Northbound)—between High Street and Grove Street—beginning 490 feet south of the southerly curb line of High Street and extending 135 feet southerly therefrom.

iii. In Deptford Township:

(1) Near side bus stops:

(A) Kohler Avenue (northbound)—beginning at the southerly curb line of Kohler Avenue and extending 105 feet southerly therefrom;

(B) Taras Avenue (northbound)—beginning at the southerly curb line of Taras Avenue and extending 120 feet southerly therefrom;

(C) Park Avenue (northbound)—beginning at the southerly curb line of Park Avenue and extending 105 feet southerly therefrom;

(D) Shetland Way (southbound)—beginning at the prolongation of the northerly curb line of Shetland Way and extending 105 feet northerly therefrom;

(E) Oak Street (southbound)—beginning at the prolongation of the northerly curb line of Oak Street and extending 120 feet northerly therefrom;

(F) Taras Avenue (southbound)—beginning at the prolongation of the northerly curb line of Taras Avenue and extending 105 feet northerly therefrom;

(G) Narraticon Parkway (southbound)—beginning at the northerly curb line of Narraticon Parkway and extending 105 feet northerly therefrom.

(2) Far side bus stops:

(A) Red Stone Ridge Drive (northbound)—beginning at the northerly curb line of Red Stone Ridge Drive and extending 100 feet northerly therefrom;

(B) Essex Boulevard (northbound)—beginning at the northerly curb line of Essex Boulevard and extending 100 feet northerly therefrom;

(C) Oak Street (northbound)—beginning at the northerly curb line of Oak Street and extending 120 feet northerly therefrom;

(D) Shetland Way (northbound)—beginning at the northerly curb line of Shetland Way and extending 100 feet northerly therefrom;

(E) Kohler Avenue (southbound)—beginning at the prolongation of the southerly curb line of Kohler Avenue and extending 150 feet southerly therefrom;

(F) Red Stone Ridge Drive (southbound)—beginning at the prolongation of the southerly curb line of Red Stone Ridge Drive and extending 100 feet southerly therefrom;

iv. In Westville Borough:

(1) Near side bus stops:

(A) Almonesson Avenue (northbound)—beginning at the southerly curb line of Almonesson Avenue and extending 110 feet southerly therefrom.

(c) The certain parts of State highway Route 47, described in this subsection, shall be designated and established as "handicapped parking" areas, where parking is prohibited in spaces appropriately marked for vehicles for the physically handicapped pursuant to N.J.S.A. 39:4-197.5. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following handicapped parking areas:

1. In Cumberland County:

i. In the City of Millville:

(1) Along the northbound (easterly side):

(A) Beginning at a point 170 feet north of the northerly curb line of Broad Street to a point 192 feet northerly therefrom.

(d) The certain parts of State highway Route 47, described in this subsection, shall be designated and established as "loading zones," where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following loading zones:

1. In Cumberland County:
i. In the City of Millville:
(1) Along the northbound (easterly side):
(A) Beginning at a point 42 feet south of the southerly curb line of Broad Street and extending 50 feet southerly therefrom.

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

1. In Cumberland County:
i. In the City of Millville:
(1) Along the southbound (westerly side):
(A) Between Garfield Avenue and Henderson Avenue between the hours of 4:00 P.M. Friday through 8:00 A.M. Monday (approximate mileposts 39.40 to 39.05).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turn Prohibitions

Route U.S. 130

Bordentown Township, Mansfield Township, Florence Township, Burlington Township and Burlington City in Burlington County and Hamilton Township and Washington Township in Mercer County

Proposed Amendment: N.J.A.C. 16:31-1.22

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

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

Proposal Number: PRN 1994-406.

Submit comments by August 17, 1994 to:

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

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:31-1.22 concerning turning movements along Route U.S. 130 in the following counties and municipalities: Bordentown Township, Mansfield Township, Florence Township, Burlington Township and Burlington City in Burlington County, and Hamilton Township and Washington Township in Mercer County.

N.J.A.C. 16:31-1.22 is being amended to effect no "U" turns for trucks over four tons registered gross weight. This rule has been further recodified in compliance with the Department's rulemaking format.

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

This amendment is being proposed at the request of the Project Engineer of District S-3 from the Department's Bureau of Traffic Engineering and Safety Programs based on a memorandum dated May 9, 1994 stating that trucks over four tons registered gross weight could not safely negotiate "U" turns at locations indicated in the current rule. The traffic investigation conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of turning movement restrictions along Route U.S. 130 was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish "U" turn restrictions for trucks over four tons registered gross weight along Route U.S. 130 to improve traffic 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. 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 rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

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

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

16:31-1.22 Route U.S. 130

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

1.-3. (No change.)

4. No "U" turns for trucks over four tons registered gross weight:

[i. In Bordentown Township, Burlington County; and

ii. In Hamilton and Washington Townships, Mercer County:

(1) Along Route U.S. 130 northbound from milepost 56.6 to milepost 64.0.

(2) Along Route U.S. 130 southbound from milepost 64.0 to milepost 56.6.]

i. In Bordentown Township, Mansfield Township, Florence Township, Burlington Township and Burlington City in Burlington County:

(1) Along Route U.S. 130 northbound at:

(A) Old Burlington Road, Bordentown Township (approximate milepost 53.5).

(B) Mershon Concrete driveway, Mansfield Township (approximate milepost 52.45).

(C) 84 Lumber driveway, Florence Township (appoximate milepost 49.9).

(2) Along Route U.S. 130 southbound at:

(A) Hedding-Kinkora Road, Mansfield Township (approximate milepost 52.6).

(B) Citgo Station driveway, Florence Township (approximate milepost 49.32).

(C) McAllister Trucking driveway, Burlington Township (approximate milepost 48.45).

(D) Burlington Coat Factory driveway, Burlington City (approximate milepost 47.5).

(3) Along Route U.S. 130 for both directions:

(A) Between mileposts 56.0 and 58.28.

ii. In Hamilton Township, Mercer County:

(1) Along Route U.S. 130 for both directions:

(A) Between mileposts 58.28 and 61.93; and

iii. In Washington Township, Mercer County:

(i) Along Route U.S. 130 for both directions:

(A) Between mileposts 61.93 and 64.0.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Turn Prohibitions
Route U.S. 40/322
Egg Harbor Township, Atlantic County
Proposed New Rule: N.J.A.C. 16:31-1.36

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-124, 39:4-125, 39:4-183.6, 39:4-198 and 39:4-199.1.
Proposal Number: PRN 1994-400.

Submit comments by August 17, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to establish a new rule at N.J.A.C. 16:31-1.36 concerning turning movements along Route U.S. 40/322 in Egg Harbor Township, Atlantic County.

The provisions of this new rule will improve the flow of traffic and enhance safety along the highway system by prohibiting "U" turns at the newly installed left turn slots which were constructed in conjunction with the Department's regional maintenance project. This project was instituted after numerous town meetings in Egg Harbor Township. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that the establishment of the "U" turn restrictions along Route U.S. 40/322 in Egg Harbor Township in Atlantic County, were warranted where left turn lanes have been installed. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed new rule will establish "U" turn restrictions along Route U.S. 40/322 in Egg Harbor Township, Atlantic 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 rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

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

Full text of the proposed new rule follows:

16:31-1.36 Route U.S. 40/322

(a) Turning movements of traffic on certain parts of State highway Route U.S. 40/322 described in this subsection are regulated as follows:

1. In Atlantic County:

i. Egg Harbor Township:

(1) No "U" turn for vehicles over four tons registered gross weight eastbound at:

(A) Route U.S. 40/322, 100 feet west of Tower Avenue (approximate milepost 53.3).

(2) No "U" turn for vehicles over four tons registered gross weight westbound at:

(A) Route U.S. 40/322, 580 feet east of Zaberer Avenue (approximate milepost 53.3).

(3) No "U" turns eastbound at:

(A) Route U.S. 40/322, 580 feet east of Zaberer Avenue (approximate milepost 53.3).

(4) No "U" turns westbound at:

(A) Route U.S. 40/322, 100 feet west of Tower Avenue (approximate milepost 53.3).

(b)

NEW JERSEY TRANSIT CORPORATION
Examination and Duplication of NJ TRANSIT Records
Proposed Readoption with Amendments: N.J.A.C. 16:82

Authorized By: New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director.
Authority: N.J.S.A. 47:1A-2 and 27:25-20.
Proposal Number: PRN 1994-412.

Submit comments by August 17, 1994 to:
Albert R. Hasbrouck, III
Senior Director
Corporate Affairs
NJ TRANSIT Corporation
One Penn Plaza East
Newark, New Jersey 07105-2246

The agency proposal follows:

Summary

The New Jersey Transit Corporation (hereinafter "NJ TRANSIT") and its subsidiaries are responsible for the provision of rail and bus services in the State of New Jersey. NJ TRANSIT must make its public records available, for examination and duplication, to requesting members of the public consistent with N.J.S.A. 47:1A-2 and 27:25-20. In accordance with the sunset provisions of Executive Order No. 66(1978), NJ TRANSIT proposes to readopt N.J.A.C. 16:82, Examination and Duplication of NJ TRANSIT Records.

These subchapters are scheduled to expire on September 5, 1994. The provisions of Executive Order No. 66(1978) require that NJ TRANSIT review periodically its present regulations to determine their continuing usefulness. Accordingly, NJ TRANSIT has reviewed the rules concerning Examination and Duplication of NJ TRANSIT Records, and has determined the rules to be necessary, reasonable, adequate, efficient, understandable and responsive to the purpose for which they were originally promulgated.

N.J.A.C. 16:82 contains the rules governing the issuance and sale of copies of NJ TRANSIT public records. Specifically, Subchapter 1 describes the general provisions of the program—purpose and definitions. Subchapter 2 describes the requirements of the rules—non-public records, administrative fees and the procedure for a copy request or record examination. This subchapter has been amended by changing the title of the NJ TRANSIT contact person from "Assistant Executive Director for Labor Relations and Legal Affairs" to "Senior Director, Corporate Affairs" to reflect NJ TRANSIT's current organizational structure. Further in this subchapter, N.J.A.C. 16:82-2.3, Administrative Fees, has been amended to make NJ TRANSIT's regulations compatible with the changes made to the New Jersey Right to Know Law, N.J.S.A. 47:1A-1 et seq., increasing the per page fees by $.25 per page for the first 20 pages, and by $.15 per page thereafter, and doubling the self-copying fees.

Social Impact

The proposed readoption of these rules regarding the availability of NJ TRANSIT public records for examination and duplication by members of the public upholds the rights of the public under "The New Jersey Right to Know Law" as declared in N.J.S.A. 27:1A-1 and in NJ TRANSIT's enabling legislation, N.J.S.A. 27:25-1 et seq.

Economic Impact

The proposed readoption of these rules establishes fees for providing copies of NJ TRANSIT's public records in accord with N.J.S.A. 47:1A-2. The fees will defray administrative costs and NJ TRANSIT does not expect to profit from the collection of such fees. The economic impact on those requesting copies will vary on a case-by-case basis.

Regulatory Flexibility Analysis

The rules proposed for readoption specify what records may be examined and sets forth the minimum cost for copies of such records. Any small business impact will be limited to such businesses that may request examination or copying of NJ TRANSIT records. As the fees are intended to defray administrative costs, which do not vary with the business size of the requesting party, no lesser requirements or exceptions are provided for small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:82.

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

16:82-2.1 Examination of NJ TRANSIT Public Records

(a) All NJ TRANSIT public records may be examined by members of the public either by appointment during the regular business hours of the [Assistant Executive Director for Labor Relations and Legal Affairs] **Senior Director, Corporate Affairs** or by demanding the right to inspect such records during the regular business hours maintained by a particular custodian of any such records. Every citizen of the State also has the right to purchase copies of these public records. The [Assistant Executive Director for Labor Relations and Legal Affairs] **Senior Director, Corporate Affairs** will determine the appropriate office where the records may be examined or obtained unless the member of the public demands that the records be made available at the exact location where the records are maintained.

(b) (No change.)

16:82-2.2 Non-public records

(a) Certain records are not considered "NJ TRANSIT public records", and may be made available for examination and purchase only by an individual who demonstrates to the [Assistant Executive Director for Labor Relations and Legal Affairs] **Senior Director, Corporate Affairs** that the person has a legitimate beneficial interest in such a record or the protection of his or her property rights or the protection of any interest the citizen may have in any matter affecting the citizen to which said record is relevant. Such non-public records include those pertaining to:

1.-15. (No change.)

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

(d) Portions of "non-public" records may be made available for examination or copying at the discretion of the [Assistant Executive Director for Labor Relations and Legal Affairs] **Senior Director, Corporate Affairs** where the interests of NJ TRANSIT or its employees are not otherwise negatively affected by such disclosure.

16:82-2.3 Administrative Fees

(a) (No change.)

(b) Costs are as follows:

1. For copies of 8½ inch by 11 inch and 11 inch by 14 inch:

i. First page to 10th page, [$0.50] **$0.75** per page;

ii. Eleventh page to 20th page, [$0.25] **$0.50** per page;

iii. All pages over 20, [$0.10] **$0.25** per page.

2. (No change.)

(c) If the [Assistant Executive Director for Labor Relations and Legal Affairs] **Senior Director, Corporate Affairs** finds that there is no risk of damage, mutilation, or loss of such records, and that it will not be incompatible with the economic and efficient operation of NJ TRANSIT and the transaction of its public business, he or she may permit any citizen who is seeking [the] **to** copy more than 100 pages of records to use his or her own photographic process, approved by the [Assistant Executive Director for Labor Relations and Legal Affairs] **Senior Director, Corporate Affairs**, upon the payment of a reasonable fee, considering the equipment and the time involved, of not less than [$5.00] **$10.00** or more than [$25.00] **$50.00** per day.

(d) When the [Assistant Executive Director for Labor Relations and Legal Affairs] **Senior Director, Corporate Affairs** makes available records that involve a significant amount of research and investigation, additional charges may be imposed to reimburse NJ TRANSIT for the cost of conducting this research and investigation. Cost will be calculated on a worker/hour basis. These charges will be in addition to the charges in (b) and (c) above.

16:82-2.4 Procedure for copy request or record examination

A private citizen may request a copy of a NJ TRANSIT public record, or make an appointment to examine such a record, by contacting:

[Assistant Executive Director
for Labor Relations and Legal Affairs
P.O. Box 10009
Newark, NJ 07101
Telephone (201) 643-7130]

NJ TRANSIT
Senior Director, Corporate Affairs
One Penn Plaza East
Newark, NJ 07105
Telephone (201) 491-7453

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Gaming Equipment
Slot Tokens
Prize Tokens
Slot Machine Hoppers

Reproposed New Rules: N.J.A.C. 19:46-1.34 through 1.36

Reproposed Amendments: N.J.A.C. 19:40-1.2; 19:45-1.1, 1.9, 1.9B, 1.14, 1.15, 1.24, 1.24B, 1.25A, 1.34, 1.35, 1.36, 1.36A, 1.37, 1.38, 1.39, 1.40, 1.40A, 1.40C, 1.41, 1.43, 1.44, 1.46 and 1.46A; 19:46-1.5, 1.6, 1.26 and 1.33; 19:51-1.1 and 1.2

Proposed Amendments: N.J.A.C. 19:45-1.46B; 19:46-1.20; and 19:54-1.6

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

Authority: N.J.S.A. 5:12-63c, 69, 70i, 99 and 100.

Proposal Number: PRN 1994-409.

Submit written comments by August 17, 1994 to:

Leonard J. DiGiacomo, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

On April 4, 1994, the New Jersey Casino Control Commission (Commission) published in the New Jersey Register proposed new rules and related amendments that, among other things, would allow slot machines to have multiple hoppers, one of which could be used to make only payouts of a type of token, called a "prize token," that could not be used to activate slot machine play. See 26 N.J.R. 1447(a). To implement the requirement that prize tokens not activate play, the original proposal required that all prize tokens have a metal content that is different from the metal content of any slot token approved for use by the casino

licensee that issued the prize token, and that all prize tokens have a diameter that is different from the diameter of all approved slot tokens. N.J.A.C. 19:46-1.33(d).

In commenting on the proposal, Global Gaming Distributors, Inc. (Global) noted that the metal content requirement should alone be sufficient to prevent prize tokens from being used to activate play. Consequently, it recommended the elimination of the prohibition on prize tokens having the same diameter as slot tokens. The Division of Gaming Enforcement (Division), in its separate comments, interposed no objection to allowing prize tokens and slot tokens to have the same diameter.

Whether a slot machine rejects a prize token that has the same diameter as an approved slot token will depend exclusively on the ability of the slot machine's coin acceptor to accurately detect the metal content of the prize token. The poorer the coin acceptor is at performing that task, the greater the probability that prize tokens will be accepted to activate play and diverted to a slot drop bucket or slot drop box. Thus, both Global and the Division recommend that any prize tokens that are found in a slot drop bucket or a slot drop box be included at face value in the calculation of a casino licensee's gross revenue, with a consequent increase in the amount that a licensee would be obligated to pay in gross revenue taxes.

Based on the comments from Global and the Division, the Commission will republish the proposal in order to permit prize tokens to have the same diameter as a slot token of like denomination. In doing so, the Commission is nevertheless requiring a prize token, whose face value does not correspond to any denomination of an approved slot token, to have a diameter that either equals the diameter of a slot token with a face value less than that of the prize token, or is different from the diameter for any approved slot token.

Because the metal content of a prize token will now be critical to preventing the token from activating slot machine play, the reproposal, unlike its predecessor, requires prize tokens to have a metal content that is different from the metal content approved for use in the slot tokens of any casino licensee. N.J.A.C. 19:46-1.33(e). Additionally, the reproposal would permit a casino licensee to encase prize tokens in clear plastic in order to reduce the likelihood that a patron would attempt to use the prize token to activate play, provided, among other things, that the licensee redeems the prize token regardless of whether it is wrapped in plastic. N.J.A.C. 19:46-1.33(f).

As both Global and the Division note, republishing the proposal to permit a casino licensee greater flexibility in selecting the diameter of a prize token increases the risk that prize tokens will be used to activate play, with a consequent impact on gross revenue. Accordingly, the reproposal heeds those commenters' suggestions and includes provisions (N.J.A.C. 19:45-1.41, 19:45-1.43 and 19:54-1.6) that will require licensees to count as part of gross revenue, and therefore subject to tax, the face value of any prize tokens that are found in all-purpose hoppers, slot drop buckets or slot drop boxes. The reproposal (N.J.A.C. 19:54-1.6(d)) also clarifies, for purposes of the gross revenue tax, that invalid counter checks are treated as cash received from gaming operations.

Like the original proposal, there are other substantive changes that accompany the reproposal, most notably the elimination of the type of slot token that could be received in a complimentary distribution program to activate slot machine play, but which could not be won as a jackpot dispensed from a slot machine. Such tokens, which were marketed as "Hot Spots" by the former Atlantis Casino Hotel, never achieved industry-wide popularity and were used only at the Atlantis, which has not operated since 1989. Thus, the reproposed amendments would delete from the regulations all references to those types of tokens and thereby preclude a casino licensee, upon adoption of the reproposal, from thereafter offering those tokens as a complimentary service or item.

The reproposed amendments to two definitional sections, N.J.A.C. 19:40-1.2 and 19:45-1.1, are the same as the original proposal in that they create new definitions that are necessitated by the changes to N.J.A.C. 19:46-1.33, and recodify other definitions that are applicable to multiple chapters.

Because prize tokens will not be available as complimentary services or items, the reproposal, like the original, also includes amendments to N.J.A.C. 19:45-1.9, 1.9B, 1.46 and 1.46A that, upon adoption, will implement the restriction.

As with the original proposal, the reproposed amendments to N.J.A.C. 19:45-1.14, 1.15, 1.34 and 1.35 specify the interactions between and among general cashiers, master coin bank cashiers, slot cashiers and changepersons as a result of the amendments to N.J.A.C. 19:46-1.33 on slot tokens and prize tokens. Additionally, amendments to N.J.A.C. 19:45-1.15 are reproposed to clarify that general cashiers are authorized, in the discretion of each casino licensee, to have slot tokens in their imprest inventory, and to receive slot tokens from, and to sell slot tokens to, patrons. Further, N.J.A.C. 19:45-1.34 is reproposed for amendment in order to conform to existing practice whereby casino licensees are permitted to operate one or more slot booths.

After a patron wins a prize token, the patron may redeem the token for cash or a casino check as reproposed in N.J.A.C. 19:46-1.33, but may not use the token to wager anywhere in a casino or a casino simulcasting facility. Because slot tokens are similarly redeemable, the reproposed amendments to N.J.A.C. 19:45-1.24 and 1.24B permit casino licensees to accept slot tokens and prize tokens from patrons to establish cash deposit accounts or to transfer funds electronically by wire, respectively.

Because prize tokens will not be available to activate slot machine play, the reproposed amendments to N.J.A.C. 19:45-1.25A provide that patrons issuing a slot counter check may receive only coin, currency or slot tokens, but not prize tokens, for the instrument.

As with the original proposal, N.J.A.C. 19:46-1.33 is the primary subject of the reproposal through its introduction of prize tokens. Those tokens necessarily will cause a redesign in the slot machines that will be able to accommodate them. Thus, amendments to N.J.A.C. 19:45-1.36, 1.36A and 1.37, and to N.J.A.C. 19:46-1.26, are also being reproposed to address the need for slot machines to have separate hoppers for dispensing prize tokens, and the circumstances under which separate meters are required in order to record the payouts of prize tokens.

In that regard, Global commented that its slot machines in use in other jurisdictions do not have separate jackpot meters for recording the number of prize tokens dispensed as payouts. Rather, those meters convert prize tokens into their coin or slot token equivalent (for instance, a $3.00 prize token equals 12 quarters) and record the payout of a prize token based on its coin or slot token equivalent. Thus, the reproposal (N.J.A.C. 19:45-1.37(b)3 and 19:46-1.26(c)3) affords casino licensees similar flexibility in the information that may be recorded on jackpot meters in slot machines with multiple hoppers, provided there is a separate meter that records the actual number of prize tokens that are paid out.

Global also requested similar flexibility for the information that could be recorded on the win meter, which advises the patron of the number of coins, slot tokens or prize tokens won on a round. The reproposal (N.J.A.C. 19:45-1.37(b)4 and 19:46-1.26(c)5) affords that flexibility, but requires a multiple hopper slot machine that is equipped with a win meter for recording the payouts from both hoppers on the same round to contain a statement that reasonably explains to the patron the information that is reported on the win meter (N.J.A.C. 19:45-1.37(a)4v).

Consistent with the proposal, the reproposal provides that each slot machine can have no more than two hoppers. Although it is anticipated that slot machines that dispense prize tokens will have one all-purpose hopper and one payout-only hopper, the reproposal would preclude slot machines from having two payout-only hoppers. Even though all the prize tokens in any one hopper would have to be of the same denomination, the prize tokens in one hopper could be of a different denomination from the prize tokens in the other hopper, which may afford casino licensees with marketing strategies not heretofore available. Of course, adequate signs would be required to describe for patrons, among other things, what payouts are possible for a particular winning combination.

On the other hand, if both hoppers are all-purpose hoppers, the reproposal, like its predecessor, requires that each hopper contain coins or slot tokens of the same denomination. At this time the Commission believes that to do otherwise would create too great a risk of patron confusion attributable, in part, to the fact that slot machines would be able to accept coins and slot tokens of different denominations, with the potential for extensive record-keeping and monitoring controls that far outweigh any advantage to the casino industry if the restriction were omitted.

Of course, a nominal all-purpose hopper that is incapable of accepting coin or slot tokens is really a payout-only hopper. Thus, the reproposed amendments would permit payout-only hoppers to pay out coin or slot tokens that are placed in that hopper exclusively through hopper fills. As with prize tokens, the reproposal would permit the jackpot meter to record the number of coin or slot tokens that are paid out from a payout-only hopper as if the machine had paid out the equivalent number of coins or slot tokens of the denomination that the machine uses to activate play.

With this flexibility, casino licensees may consider some innovative marketing techniques, such as offering patrons the opportunity of winning silver dollars at a slot machine that only accepts dimes. Likewise, a slot machine that, for example, only accepts quarters but that can pay out both quarters and five dollar tokens may potentially reduce the number of hopper fills to that machine because fewer tokens would be needed to pay out one or more of the machine's larger jackpots.

Of course, whether the number of hopper fills will actually decrease may depend on a number of factors, such as the dollar amount of the jackpots that are offered and the capacity of the hopper to hold a sufficient quantity of coins or tokens of a particular denomination. Despite the uncertainty, the reproposal affords casino licensees the opportunity to experiment with various hopper combinations in the absence of any countervailing regulatory concerns that would require more stringent controls.

N.J.A.C. 19:45-1.38 requires coins and slot tokens to be removed from a slot machine before the machine is taken off the casino floor. The reproposed amendments, with minor stylistic changes, leave those requirements intact while adding the requirement that any prize tokens in those slot machines also be removed in accordance with internal controls approved by the Commission.

At the Division's suggestion, the reproposed amendments to N.J.A.C. 19:45-1.39 would, unlike the original proposal, permit prize tokens to be paid from a progressive slot machine, provided that they are not part of the progressive jackpot prize itself.

The reproposal maintains the prohibition found in N.J.A.C. 19:45-1.40 and 1.40C against prize tokens being available as a hand-paid jackpot or as a multi-casino payout.

N.J.A.C. 19:45-1.41 sets forth the procedures for filling hoppers and hopper storage areas. Consequently, the reproposed amendments, like the original, interlace throughout that section the necessary references to slot tokens, prize tokens, all-purpose hoppers and payout-only hoppers. In addition to minor stylistic changes that are also being reproposed to that section, the amendments conform that section to other regulatory provisions by affording the accounting department the flexibility to process hopper fill slips within a reasonably practicable time after receipt.

Each casino licensee, in organizing its workforce, is obligated to segregate job responsibilities in order to prevent its employees from performing incompatible functions. N.J.A.C. 19:45-1.11(a). Because that obligation pertains throughout a casino licensee's hierarchy, there is no need in each specific instance to reiterate that a particular job may only be performed by an employee for whom that job does not create an incompatible function. Thus, the reproposal, as with the original publication, deletes the reference to incompatible function found in N.J.A.C. 19:45-1.41(b)3ii, it being understood that the casino licensee is nevertheless obligated, pursuant to N.J.A.C. 19:45-1.11(a), to ensure that only those employees with no incompatible functions are to perform the tasks enumerated in N.J.A.C. 19:45-1.41(b)3ii.

As was true of the original proposal, the reproposed amendments to N.J.A.C. 19:46-1.5 and 1.6 recodify the portions of those sections that deal with slot tokens and coins. Thus, the exchange, redemption, receipt, inventory, etc., of gaming chips and plaques will, upon adoption of the reproposal, be the subject of those sections, whereas several new rules, N.J.A.C. 19:46-1.34 through 1.36, will cover those topics regarding slot tokens and prize tokens. As part of that recodification, "change machine" is added to the list in N.J.A.C. 19:46-1.33(a)1iii of permissible locations from which a casino licensee may issue slot tokens, which is consistent with the definition of change machine.

Finally, N.J.A.C. 19:46-1.33 is being amended, consistent with existing practice, to prohibit a casino licensee from using slot tokens or prize tokens that it knows, or reasonably should know, are materially different from the approved sample of the token. In this way, use of the actual token must await the approval of the sample, and thereby regulatory resources are conserved because the sample, rather than each token, is reviewed for compliance with the Act and the Commission's regulations. Conversely, if a casino licensee finds a token that is materially different from its approved sample, that token is no longer fit for casino use and must be removed from circulation.

This reproposal supersedes the earlier prize token proposal that was published at 26 N.J.R. 1447(a). Accordingly, any comments received in response to the prior proposal will not be considered in connection with the reproposal unless those comments are timely submitted in writing during the current comment period. Of course, the original commenters, and any other interested persons, are welcome to submit additional written comments, provided that they do so timely in accordance with this reproposal.

Social Impact

Obviously, the direct impact of the reproposed amendments and rules will be on casino licensees, which may elect to develop new strategies for marketing their slot machine operations to the gaming public as a result of this proposal. Although the consequent impact on those customers is impossible to predict, the Commission anticipates that the flexibility created by the amendments and rules may increase the enjoyment that patrons apparently derive from the gaming experience.

Economic Impact

Under the reproposed new rules and related amendments, no casino licensee is required to offer slot tokens or prize tokens. The choice to do so remains with the individual licensees, and therefore any administrative costs, which the Commission anticipates will be nominal in any event, that a casino licensee may incur in complying with the reproposal will be directly attributable to the business discretion of the individual licensee rather than the reproposal itself.

Should one or more casino licensee exercise the option to offer prize tokens, it is impossible to predict the economic impact on those licensees, or on those that elect not to offer the tokens. However, any such economic consequences are a result of normal market forces common in the casino industry over which the reproposed amendments are likely to have little, if any, control.

In the event there is a demand for the new form of token that the reproposed new rules and amendments would permit, there may be an economic impact on those companies that manufacture, distribute or supply prize tokens, or the slot machines that will be able to accommodate them. However, quantifying that impact is impossible to predict with any certainty because of the number of variables involved, not the least of which is whether any casino licensee will elect to use such tokens and, assuming that there is at least one that does, the extent to which there is any patron demand to play the types of slot machines at which the new tokens will be used.

Regulatory Flexibility Statement

Under the Commission's existing regulations, casino service industries, some of which may be a "small business" as defined in the Regulatory Flexibil[illegible] Act, N.J.S.A. 52:14B-16, et seq., are required to be licensed in order to provide casino applicants or licensees with goods and services, such as tokens and slot machines, that directly relate to casino, simulcast wagering or gaming activity. The reproposed amendments do not modify those licensing requirements.

Further, casino service industries that provide tokens, or the slot machines that accommodate them, to casino licensees are currently required to adhere to existing standards on the design and manufacture of those products. Although the reproposed amendments provide greater flexibility by permitting a new type of token, licensure as a casino service industry will continue, consistent with existing requirements, to be required for those enterprises, including those that are small businesses, that will provide casino licensees with any form of token or with the slot machines in which those tokens are used.

Accordingly, no regulatory flexibility analysis is required because the reproposed new rules and related amendments impose no additional reporting, record-keeping or other compliance requirements on any such casino service industries, and because none of the casino licensees that will be directly affected by the proposed amendments is a small business.

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

19:40-1.2 Definitions

(a) (No change.)

(b) The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise:

...

"All-purpose slot machine hopper" or "all-purpose hopper" is defined in N.J.A.C. 19:45-1.36.

...

"Bill changer" means any mechanical, electrical, or other device, contrivance or machine designed to interface mechanically, electrically or electronically with a slot machine for the purpose of

dispensing from an all-purpose hopper an amount of coins or slot tokens that is equal to the amount of currency or the denomination of a coupon inserted into the bill changer.

...

"Casino check" means a check which is drawn by a casino licensee upon the licensee's account at any New Jersey banking institution and made payable to a person in redemption of the licensee's gaming chips, pursuant to N.J.S.A. 5:12-100(k), in return, either in whole or in part, of a person's deposit on account with the casino licensee pursuant to N.J.S.A. 5:12-101(b), or for winnings from slot machine or simulcast wagering payoffs, and which is identifiable in a manner approved by the Commission as a check issued for one of these purposes. At a minimum, such identification method shall include an endorsement or imprinting on the check which indicates that the check is issued in redemption of gaming chips, in return of funds on account with the casino licensee or for winnings from slot machine or simulcast wagering payoffs.

...

"Change machine" means any mechanical, electrical, or other device which operates independently of a slot machine which, upon insertion of currency therein, shall dispense an equivalent amount of loose or rolled coin or slot tokens.

"Changeperson" means a person employed in the operation of a casino to possess an imprest inventory of coin, currency and slot tokens received pursuant to N.J.A.C. 19:45-1.35(d) and used for the even exchange with slot machine patrons of coupons, coin, currency, gaming chips, slot tokens and prize tokens.

"Coin acceptor" means the slot and accompanying device, approved by the Commission, that is the part of a slot machine into which a patron, in the normal course of operating the machine, inserts a coin or slot token for the purpose of activating play and which is designed to identify those coins or slot tokens so inserted that are appropriate for use in that machine and to reject all slugs, prize tokens and other non-conforming objects so inserted.

...

"Hopper" is defined in N.J.A.C. 19:45-1.36.

...

"Machine denomination equivalent" is defined in N.J.A.C. 19:45-1.37.

...

"Payout-only jackpot meter" and "payout-only win meter" are defined in N.J.A.C. 19:45-1.37.

"Payout-only slot machine hopper" or "payout-only hopper" is defined in N.J.A.C. 19:45-1.36.

...

"Prize token" is defined in N.J.A.C. 19:46-1.33.

...

"Slot token" is defined in N.J.A.C. 19:46-1.33.

"Slug" means any object, other than coin appropriately used to activate play, that is found in a slot machine hopper, slot drop bucket or slot drop box and that is not approved pursuant to N.J.A.C. 19:46-1.33.

...

19:45-1.1 Definitions

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

...

["Bill changer" means any mechanical, electrical, or other device, contrivance or machine designed to interface mechanically, electrically or electronically with a slot machine for the purpose of dispensing an amount of coins or slot tokens from the slot machine hopper equal to the amount of currency or the denomination of a coupon inserted into the bill changer.]

...

["Casino check" means a check which is drawn by a casino licensee upon the licensee's account at any New Jersey banking institution and made payable to a person in redemption of the licensee's gaming chips, pursuant to N.J.S.A. 5:12-100(k), in return, either in whole or in part, of a person's deposit on account with the casino licensee pursuant to N.J.S.A. 5:12-101(b), for winnings from slot machine or simulcast wagering payoffs, and which is identifiable in a manner approved by the Commission as a check issued for one of these purposes. At a minimum, such identification method shall include an endorsement or imprinting on the check which indicates that the check is issued in redemption of gaming chips, in return of funds on account with the casino licensee or for winnings from slot machine or simulcast wagering payoffs.]

...

["Change machine" means any mechanical, electrical, or other device which operates independently of a slot machine which, upon insertion of currency therein, shall dispense an equivalent amount of loose or rolled coin or slot tokens.

"Changeperson" means a person employed in the operation of a casino to possess an imprest inventory of coin, currency and slot tokens received pursuant to N.J.A.C. 19:45-1.35(d) and used for the even exchange with slot machine patrons of coupons, coin, currency, gaming chips and slot tokens.]

...

["Hopper" is defined in N.J.A.C. 19:45-1.41.]

...

"Patron cash deposit" means an amount of cash, cash equivalents, **slot tokens, prize tokens,** gaming chips or plaques deposited with a casino **licensee** by a patron for his **or her** subsequent use **pursuant to N.J.A.C. 19:45-1.24.**

...

["Slug" is defined as a metal disk having no cash value.]

...

19:45-1.9 Complimentary services or items

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

(i) Prize tokens shall not be offered or provided as a complimentary service or item.

19:45-1.9B Procedures for complimentary cash and noncash gifts

(a) No casino licensee shall offer or provide, either directly or indirectly, any complimentary cash or noncash gift to any person or his or her guests except in accordance with the provisions of N.J.S.A. 5:12-102m and this section. For the purposes of this section, "complimentary cash or noncash gift" does not refer to any complimentary service or item which is provided pursuant to N.J.S.A. 5:12-102m (1) through (3), N.J.A.C. 19:45-1.9(f), 19:45-1.9(h) or 19:45-1.46. Complimentary cash gifts shall include, without limitation:

1.-2. (No change.)

3. Slot tokens issued to any person; **provided, however, that prize tokens shall not be offered or provided as a complimentary service or item;**

4.-5. (No change.)

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

19:45-1.14 Cashiers' cage; satellite cages; master coin bank; coin vaults

(a) (No change.)

(b) Each establishment shall have within the cage or in such other area as approved by the Commission a physical structure known as a master coin bank to house master coin bank cashiers. The master coin bank shall be designed and constructed to provide maximum security for the materials housed therein and the activities performed therein and serve as the central location in the casino for the following:

1. The custody of currency, coin, **prize tokens,** slot tokens, forms, documents and records normally generated or utilized by master coin bank cashiers, slot cashiers, [changepeople] **changepersons**, and slot attendants;

2. The exchange of currency, coin, coupons, **prize tokens** and slot tokens for supporting documentation;

3. The responsibility for the overall reconciliation of all documentation generated by master coin bank cashiers, slot cashiers, [changepeople] **changepersons**, and slot attendants;

4.-5. (No change.)

(c) The cage shall be designed and constructed to provide maximum security for the materials housed therein and the activities performed therein; such design and construction shall be, at a minimum, as effective as the following:

1. Fully enclosed except for openings through which materials such as gaming chips and plaques, **slot tokens and prize tokens,** patron checks, cash, records, and documents can be passed to service the public, gaming tables, and slot booths;

2.-4. (No change.)

(d) (No change.)

(e) Each establishment may have separate areas for the storage of coin, **prize tokens** and slot tokens ("coin vaults") in locations outside the cage or master coin bank, as approved by the Commission.

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

19:45-1.15 Accounting controls for the cashiers' cage, satellite cages, master coin bank, and coin vaults

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

(c) The cashiers' cage and any satellite cage shall be physically segregated by personnel and function as follows:

1. General cashiers shall operate with individual imprest inventories of cash **and, at the discretion of the casino licensee, slot tokens,** and such cashiers' functions shall [be] **include**, but are not limited to, the following:

i. (No change.)

ii. Receive gaming chips, **slot tokens and prize tokens** from patrons in exchange for cash;

iii. Receive **cash,** traveler's checks and other cash equivalents from patrons in exchange for currency, **slot tokens** or coin;

iv. (No change.)

v. Receive cash, cash equivalents, **slot tokens, prize tokens** and gaming chips from patrons in exchange for Customer Deposit Forms;

vi. (No change.)

vii. Receive Customer Deposit Forms from patrons in exchange for cash **or slot tokens**;

viii. Receive coupons from patrons in exchange for currency, **slot tokens** or coin, in conformity with N.J.A.C. 19:45-1.46[(i)]**(j)**.

ix.-x. (No change.)

xi. Receive from check, chip bank, **master coin bank** and reserve cash [cashiers'] **cashiers** documentation with signatures thereon, required to be prepared for the effective segregation of functions in the cashiers' cage;

xii. (No change.)

xiii. Exchange Slot Counter Checks in accordance with N.J.A.C. 19:45-1.25A; [and]

xiv. Prepare Jackpot Payout Slips in accordance with N.J.A.C. 19:45-1.40; **and**

xv. Receive slot tokens from, and transmit slot tokens and prize tokens to, the master coin bank in exchanges supported by proper documentation.

2. Check cashiers shall not have access to cash, gaming chips and plaques and such cashiers' functions shall [be] **include**, but are not limited to, the following:

i.-vii. (No change.)

3. Chip bank cashiers shall not have access to currency or cash equivalents, but shall operate with a limited inventory of $0.50 and $0.25 cent coins which may only be used to facilitate odds payoffs or vigorish bets. Such cashiers' functions shall [be] **include**, but are not limited to, the following:

i.-v. (No change.)

4. Reserve cash ("main bank") cashiers' functions shall [be] **include**, but are not limited to, the following:

i. Receive cash, cash equivalents, issuance copies of Slot Counter Checks, original copies of Jackpot Payout Slips, personal checks received for non-gaming purposes, **slot tokens, prize tokens,** gaming chips and plaques from general cashiers in exchange for cash;

ii.-x. (No change.)

5. Master coin bank cashiers' functions shall [be] **include**, but are not limited to, the following:

i. Receive currency, coin, slot tokens, **prize tokens,** gaming chips, and coupons from slot cashiers in exchange for proper documentation;

ii. (No change.)

iii. Provide slot cashiers with currency, coin, **prize tokens** and slot tokens in exchange for proper documentation;

iv.-v. (No change.)

vi. Prepare the daily bank deposit of excess cash [and coin]; [and]

vii. Prepare Jackpot Payout Slips in accordance with N.J.A.C. 19:45-1.40; **and**

viii. Receive slot tokens and prize tokens from, and transmit slot tokens to, general cashiers in exchanges supported by proper documentation.

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

(f) Coin vaults authorized pursuant to N.J.A.C. 19:45-1.14(e) shall be under the control of the casino accounting department. The storage of coin, **prize tokens** or slot tokens in, or the removal of coin, **prize tokens** or slot tokens from, any coin vaults shall be properly documented, and the amount of coin, **prize tokens** and slot tokens in each coin vault shall be reconciled at the end of each gaming day.

19:45-1.24 Procedure for acceptance, accounting for and redemption of [patron's] **patron** cash deposits

(a) Whenever a patron requests [that the] **a** casino **licensee to** hold his **or her** cash, cash equivalents, **slot tokens, prize tokens,** gaming chips or plaques for subsequent use [he], **the patron** shall [deposit] **deliver** the cash, cash equivalents, **slot tokens, prize tokens,** gaming chips or plaques [with] **to** a general cashier **who, after converting any of those non-cash items into cash, shall deposit the cash for credit to the patron cash deposit account established for that patron pursuant to this section.**

(b)-(g) (No change.)

(h) On the original and duplicate of the Customer Deposit Form, or in stored data, the general cashier shall record, at a minimum, the following information.

1.-4. (No change.)

5. Nature of the amount received (cash, cash equivalents, chips, plaques, **slot tokens, prize tokens** or wire transfer).

(i)-(q) (No change.)

19:45-1.24B Procedure for sending funds by wire transfer

(a) Whenever a patron requests a casino licensee to send funds by wire transfer to a financial institution on behalf of the patron, the patron shall present to the general cashier the cash, cash equivalents, casino check, chips, plaques, **slot tokens** or **prize** tokens representing the amount sought to be transferred, or, in the case of a cash deposit, request that the unused balance of the cash deposit be transferred. In the case of a cash deposit, the procedures set forth in N.J.A.C. 19:45-1.24 for redemption of a cash deposit shall be observed.

(b) The general cashier shall obtain from the reserve cash cashier a Wire Transfer Request Form, a four-part serially prenumbered form, and shall record thereon, at a minimum, the information required by (b)1 through (b)7 below:

1.-3. (No change.)

4. The source of funds to be transferred (cash, cash equivalent, casino check, chips, plaques, **slot tokens, prize** tokens or cash deposit);

5.-8. (No change.)

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

19:45-1.25A Procedure for exchange of slot counter checks by slot patrons

(a) A casino licensee may offer credit to slot patrons pursuant to N.J.A.C. 19:45-1.27. Slot Counter Checks may be prepared by slot cashiers at slot booths and coin redemption locations and by general cashiers at the cashiers' cage **in exchange for which patrons may receive any combination of coin, currency or slot tokens.** For casino licensees which issue credit to slot players, the following procedures and requirements over Slot Counter Checks shall be observed:

1.-3. (No change.)

(b) For each Slot Counter Check exchanged, in accordance with (a) above, the general cashier or slot cashier shall:

1.-5. (No change.)

6. Receive the signed original and all duplicate copies of the Slot Counter Check directly from the patron. The general cashier or slot cashier shall, if verification occurs in accordance with (b)1i above, compare the patron's signature on the signed Slot Counter Check to the form referenced in (b)1 above and sign the form referenced in (b)1 above if the signatures appear to agree. In no instance shall currency, coin or slot tokens be given to the patron prior to the receipt of the signed copy of the Slot Counter Check by the general cashier or slot cashier. Distribution of the Slot Counter Check copies shall be as follows:

i. The issuance copy of the Slot Counter Check, which shall serve as documentation of the exchange of currency, coin or **slot** tokens for the Slot Counter Check and shall be maintained by the general cashier or slot cashier in his or her imprest fund immediately after the issuance of currency, coin or **slot** tokens to the patron.

ii.-iii. (No change.)

(c) Nothing in this section shall preclude a casino licensee from issuing a Slot Counter Check to a patron directly at a slot machine, provided the casino licensee follows the procedures and requirements established below:

1.-3. (No change.)

4. The accounting department representative, with no incompatible functions, shall verify the currency, coin and/or **slot** tokens against the amount recorded on the Slot Counter Check and the Request. If in agreement, the accounting department representative shall sign the original and duplicate copy of the Request and return the duplicate copy of the Request to the general cashier or slot cashier.

5. (No change.)

6. Once the currency, coin and/or **slot** tokens has been verified in accordance with (c)4 above, the funds shall be secured in a sealed envelope or container along with the original and all copies of the Slot Counter Check and the original Request for transportation to the patron by the accounting department representative in the presence of the slot supervisor referenced in (c)1 above.

7.-10. (No change.)

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

19:45-1.34 Slot booths

(a) Each establishment may have on or immediately adjacent to the gaming floor [a] **one or more** physical [structure] **structures, each to be** known as a slot booth, to house [the] **one or more** slot [cashier] **cashiers** and to serve as the central location in the casino **or, when there are multiple slot booths, in that portion of the casino,** for the following:

1. (No change.)

2. The exchange by patrons of coin for currency or slot tokens [issued pursuant to N.J.A.C. 19:46-1.33(c)1];

3. The exchange by patrons of currency for coin or slot tokens [issued pursuant to N.J.A.C. 19:46-1.33(c)1];

4. The exchange by patrons of gaming chips, **prize tokens** or slot tokens [issued pursuant to N.J.A.C. 19:46-1.33(c)1] for currency, **slot tokens** or coin;

5. The exchange by patrons of coupons for currency, coin or slot tokens in conformity with N.J.A.C. 19:45-1.46[(i)]**(j)**;

[6. The exchange by patrons of slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 for coupons which are redeemable for goods or services offered by, or on behalf of, the casino licensee in accordance with N.J.A.C. 19:46-1.5(f)2;]

[7.]**6.** The exchange by patrons of signed Slot Counter Checks for currency, coin or slot tokens, **or any combination thereof,** in conformity with N.J.A.C. 19:45-1.25A;

Recodify 8.-11. as **7.-10.** (No change in text.)

[12.]**11.** The exchange with the [cashiers' cage or] master coin bank of any coin, currency, slot tokens, **prize tokens,** chips, plaques, issuance copies of Slot Counter Checks and documentation and the related preparation of a Slot Booth Exchange Slip, which shall be a two-part, serially prenumbered form signed by the [cage cashier or] master coin bank cashier, slot cashier, and the security department member responsible for transporting the funds. Except for the exchanging of coin, currency, **prize tokens** and slot tokens with changepersons, the slot booth shall not be allowed to obtain coin, currency, **prize tokens** or slot tokens, from other than patrons, through exchange or otherwise, from any source other than [the cashiers' cage,] the master coin bank[,] or a coin vault approved pursuant to N.J.A.C. 19:45-1.14(e). An exchange with the [cashiers' cage, main] **master** coin bank or coin vault must be accompanied by [the] **a** Slot Booth Exchange Slip or by a Fill Slip authorizing the distribution of coins, **prize tokens** or slot tokens to the slot booth. An exchange with a changeperson must be documented in accordance with procedures approved by the Commission.

(b) (No change.)

19:45-1.35 Accounting controls for slot booths and change machines

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

(d) The slot booth inventory may be used to supply changepersons with an imprest inventory of coin, currency and slot tokens, provided that such inventory shall only be used to accept **any combination of** currency, coin, gaming chips, slot tokens [and], **prize tokens or** coupons presented by a patron in exchange for an equivalent amount of **any combination of** currency, coin[, and] **or** slot tokens. The slot booth inventory may also be used to provide a changeperson with coin, currency and slot tokens in exchange for an equal amount of **any combination of** coin, currency, coupons [and], **prize tokens or** gaming chips. The exchange of coupons shall be in accordance with N.J.A.C. 19:45-1.46[(i)]**(j)**. If a changeperson's inventory is obtained from a location other than a slot booth, the location and the procedures for the issuance and maintenance of the inventory shall be approved by the Commission.

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

19:45-1.36 Slot machines and bill changers; coin and slot token containers; slot cash storage boxes; entry authorization logs

(a) Each slot machine located in a casino shall have the following coin, **prize token** or slot token containers:

1. [A container,] **At least one but no more than two containers, each to be** known as a payout reserve container ("hopper"), in which coins, **prize tokens** or slot tokens are retained by the slot machine to automatically pay jackpots or to dispense change as directed by a bill changer connected to the slot machine[,]; provided, however, that [the hopper shall not retain slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2]**:**

i. Coins or slot tokens shall be retained in a separate hopper, known as an "all-purpose hopper," that is designed to accept coin or slot tokens of the same denomination, and only such coin or slot tokens, upon insertion thereof into the slot machine's coin acceptor, and that is capable of paying out or dispensing only coin or slot tokens of the same denomination as jackpots or as change; provided, however, that any coins or slot tokens that are accepted by the coin acceptor and that exceed the capacity of the hooper shall be diverted to the slot drop bucket, and if applicable, the slot drop box;

ii. Prize tokens shall be retained only in a separate hopper, known as a "payout-only hopper," that is capable of retaining and making jackpot payouts only of prize tokens of the same denomination, and that is incapable of making change or of accepting any coin or slot token upon insertion thereof into the slot machine's coin acceptor, which shall divert coins or slot tokens that it has accepted to the slot drop bucket or any applicable slot drop box.

iii. No slot machine shall have more than one all-purpose hopper unless each hopper accepts the same denomination of coin or slot token;

iv. Notwithstanding (a)1ii above, coins or slot tokens of the same denomination that are placed in a payout-only hopper exclusively through hopper fills may be retained in that hopper to make payouts to winnings patrons, subject to the Division's inspection and the Commission's approval of the machine as part of the review of that machine and of the internal controls therefor;

v. Unless both hoppers on slot machines with multiple hoppers either each contain the same denomination of coin, slot tokens or prize tokens, or are connected to win meters that satisfy the requirements of N.J.A.C. 19:45-1.37(b)4i and 19:46-1.26(c)5i or 19:45-1.37(b)4ii and 19:46-1.26(c)5ii, each automatic pay jackpot of coins, slot tokens or prize tokens that is made from a multiple hopper slot machine on a round of play shall be paid out only on the round of play when the winning combination is hit and only from one, but not both, of the machine's hoppers for any winning combination that is hit on that round, and no casino licensee shall offer or provide a jackpot at such slot machine that will be paid out from both hoppers for any winning combination that is hit on the same round; and

vi. Prize tokens shall not be placed in or retained by a payout-only hopper that retains coins or slot tokens pursuant to (a)1iv above;

2.-3. (No change.)

(b) (No change.)

(c) A slot drop box shall have:

1. A slotted opening through which coins and **slot** tokens can be deposited;

2.-3. (No change.)

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

[(f) Each slot machine equipped to accept slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 shall contain a separate slot drop bucket or slot drop box to collect and retain all such slot tokens that are inserted into the slot machine.]

Recodify (g)-(k) as **(f)-(j)** (No change in text.)

19:45-1.36A Slot machines; hopper storage areas

(a) A hopper storage area may be used in connection with the operation of the slot machine, for the purpose of temporarily storing coins, **prize tokens** or slot tokens[,] **that are** to be deposited only into [that corresponding] **the** slot machine's [payout reserve container ("hopper")] **hopper that corresponds with the coin or type of token stored in the hopper storage area.**

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

19:45-1.37 Slot machines and bill changers; identifications; signs, meters

(a) Unless otherwise authorized by the Commission, each slot machine in a casino shall have the following identifying features:

1.-3. (No change.)

4. A display on the front of the slot machine that provides fair notice of the following:

i. The rules of play, character combinations which will award payouts and the related payouts; [and]

ii. If the slot machine offers a payout of merchandise or some other thing of value, a clear description of the merchandise or thing of value including its cash equivalent value (unless the payout is an annuity jackpot), the dates the merchandise or thing of value will be offered if the casino licensee establishes a time limit for offering the merchandise or thing of value as provided in N.J.A.C. 19:45-1.40A, and the availability or unavailability to the patron of the optional cash equivalent value authorized by N.J.A.C. 19:45-1.40A(m). The display need only contain the name or a brief description of the merchandise or thing of value offered, provided that a sign containing all of the information specified in (a)4ii above shall be displayed in a location near the slot machine as approved by the Commission; [and]

iii. If the slot machine offers a progressive jackpot, the dates the progressive jackpot will be offered and the payout limit, if the casino licensee establishes a time limit or payout limit as provided in N.J.A.C. 19:45-1.39. If no time limit or payout limit is established, the display shall state that the casino licensee reserves the right to change or discontinue the progressive slot machine upon 30 days notice. The display need not contain this information provided that a sign which does contain this information shall be displayed in a location near the slot machine as approved by the Commission[.];

iv. If the slot machine is equipped with a payout-only hopper, a statement either that:

(1) Any prize tokens that are paid out as a jackpot from that hopper cannot be used to activate play at any slot machine; or

(2) Any coins or slot tokens that are paid out from that hopper cannot be used to activate play at that slot machine; and

v. If the slot machine is equipped with multiple hoppers and has the win meter permitted by (b)4ii below and N.J.A.C. 19:46-1.26(c)5, a statement, approved by the Commission in consultation with the Division, that reasonably explains to patrons the information disclosed by the win meter.

5.-7. (No change.)

(b) Unless otherwise authorized by the Commission, each slot machine in a casino shall be equipped with the following:

1. (No change.)

2. A mechanical, electrical or electronic device, to be known as a "drop meter," that continuously and automatically counts the number of coins or slot tokens **that are** dropped into the machine's slot drop bucket or slot drop box; [provided, however, that for machines equipped to accept slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2, a separate "drop meter" shall count the number of such slot tokens dropped into the separate slot drop bucket or slot drop box required by N.J.A.C. 19:45-1.36(i)];

3. [A] **For each hopper in a slot machine, a separate** mechanical, electrical or electronic device, to be known as a "jackpot meter," that continuously and automatically counts, **for that hopper only,** the number of coins, **prize tokens** or slot tokens **that are** automatically paid by the machine from the **corresponding** hopper **and that displays the aggregate number so counted;** [and] **provided, however, that:**

i. In lieu of the jackpot meter for a payout-only hopper displaying the aggregate number of coins, slot tokens or prize tokens paid out from that hopper, each casino licensee that uses a slot machine which is capable of converting the number of coins, slot tokens or prize tokens paid out from a payout-only hopper into the equivalent number of coins or slot tokens that match the denomination of the coin or slot token which that slot machine is designed to accept in order to activate play (the "machine denomination equivalent"), may, in accordance with internal controls approved by the Commission, set the jackpot meter connected to each payout-only hopper in that slot machine to continuously and automatically count and display the aggregate number of coins, slot tokens or prize tokens paid out from that hopper by its machine denomination equivalent (for example, the jackpot meter on a 25¢ slot machine may display the payout of one $3.00 prize token as the payout of "12" quarters); and

ii. Each slot machine with multiple hoppers may have a single jackpot meter to count and display the aggregate number of coins, slot tokens or prize tokens paid out from that machine's hoppers provided that:

(1) Each hopper is connected to that meter;

(2) The jackpot meter counts and displays, in accordance with (b)3i above, the aggregate number of coins, slot tokens or prize tokens paid out from a payout-only hopper by its machine denomination equivalent; and

(3) Each payout-only hopper has a separate jackpot meter, to be known as a "payout-only jackpot meter," that counts and displays the aggregate number of coins, slot tokens or prize tokens actually paid out from that hopper only;

4. A mechanical, electrical or electronic device, to be known as a "win meter," visible from the front of the machine, that, **upon a player hitting a winning combination,** advises the player **of** the number of coins, **prize tokens** or slot tokens **for that round** that have been paid to [him] **the player** by the machine [upon hitting a winning combination] **from the corresponding hopper; provided, however, that multiple win meters, as provided in (b)4i or ii below after approval of the casino licensee's internal controls therefor, shall be used on each multiple hopper slot machine whenever one or more winning combinations that are hit on the same round of play at that machine entitle the winning player to automatically receive coins, slot tokens or prize tokens from both hoppers and each hopper contains a different denomination of coins, slot tokens or prize tokens, as follows:**

i. A separate win meter for each hopper that, for the round in which a winning combination is hit, advises the winning player of the actual number of coins, slot tokens or prize tokens won from that hopper only; or

ii. A win meter to which each hopper is connected that advises the winning player of the aggregate number of coins, slot tokens or prize tokens won that round from both hoppers after first converting the aggregate number of any coins, slot tokens or prize tokens won on that round from a payout-only hopper into its machine denomination equivalent, and a separate win meter, to be known as a "payout-only win meter," connected to each payout-only hopper that advises the player of the number of coins, slot tokens or prize tokens actually won on that round from the corresponding hopper only (for example, a win meter on a multiple hopper 25¢ slot machine may, pursuant to this paragraph, record the payout, on the same round of play, of one $3.00 prize token and two quarters as the payout of "14" quarters, provided there is a separate payout-only win meter advising the player that one prize token was paid out).

(c) Unless otherwise authorized by the Commission each slot machine which does not totally and automatically pay the full amount of a jackpot to a patron shall be equipped with a mechanical, electrical or electronic device to be known as a "manual jackpot meter" that continuously and automatically records a pulse(s) for a predetermined number of coins or slot tokens **that are** to be paid manually[, provided, however, that the manual payout shall not include slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2].

(d) (No change.)

(e) Unless otherwise authorized by the Commission, each slot machine that has an attached bill changer shall also be equipped with mechanical, electrical or electronic devices as follows:

1. A "change meter," that continuously and automatically counts the number of coins or slot tokens **that are** vended from the slot machine's **all-purpose** hopper to make change, whether for currency or coupons;

2.-3. (No change.)

(f) All meters described [herein] **in this section and in N.J.A.C. 19:46-1.26** shall be placed in a position so that **the** numbers thereon can be read and recorded without opening the slot machine.

(g) [The] **Each** casino licensee shall set each **of its** slot [machine] **machines** to pay out, at a minimum, 83 percent of the amount of coins, currency or **slot** tokens **that are** placed by patrons into [the] **that** slot machine and shall maintain a record of each slot machine setting and theoretical payout percentage. No payout of any merchandise or thing of value or payment of cash in lieu of any merchandise or thing of value pursuant to N.J.A.C. 19:45-1.40A shall be included in determining whether a slot machine meets the 83 percent minimum payout requirement.

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

19:45-1.38 Slot machines and bill changers; location; movements

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

(d) Prior to removing a slot machine from the gaming floor[, the]**:**

1. The machine's slot drop bucket or slot drop box shall be removed and transported to the count room[, and all]**;**

2. All meters shall be read and recorded in conformity with the procedures set forth in N.J.A.C. 19:45-1.42[.]**; and**

3. Any coins or **slot** tokens in [the payout reserve container and] **any of the slot machine's hoppers or in** the corresponding hopper storage area shall be removed, transported, and counted with the slot drop bucket or slot drop box[. Notwithstanding the foregoing,] **; provided, however, that** a slot machine may be removed from the casino with coins or **slot** tokens contained therein [when removal] **so long as:**

i. Removal of [such] **the** coins **or the slot tokens, or any combination thereof,** is precluded by mechanical or electrical difficulty[. If]**;**

ii. The casino licensee records in a slot machine movement log whether coins or **slot** tokens remain in [a] **the** slot machine [when it] **that** is removed from the casino, [this fact] and **also records in that log the nature of the mechanical or electrical difficulty,** the date and time that [such] **the** coins or **slot** tokens are removed from the slot machine and transported to the count room [shall be recorded in the machine movement log.]**, the date and time that the slot machine is removed from the casino, and the date and time that the slot machine is opened; and**

iii. The removal and transportation to the count room of [such] **the** coins or **slot** tokens [must be] **is** completed immediately after the slot machine is opened**; and**

4. Any prize tokens in a payout-only hopper or in a corresponding hopper storage area shall be removed, transported and counted in accordance with procedures and internal controls submitted to and approved by the Commission pursuant to N.J.A.C. 19:45-1.3.

(e) (No change.)

19:45-1.39 Progressive slot machines

(a)-(k) (No change.)

(l) Except as otherwise authorized by this section, a progressive slot machine removed from the gaming floor shall be returned to or replaced on the gaming floor within five gaming days. The amount on the progressive meter(s) on the returned or replacement machine shall not be less than the amount on the progressive meter(s) at the time of removal. If the machine is not returned or replaced, then the progressive meter(s) amount at the time of removal shall, within five days of the slot machine's removal, be added to a slot machine approved by the Commission which machine offers the same or a greater probability of winning the progressive jackpot, and accepts a denomination of coin or **slot** token not greater than the denomination accepted by the slot machine which was removed. Any time limit for the offering of a progressive jackpot shall be extended by the number of days during which the progressive jackpot was not offered as the result of any action taken by a casino licensee pursuant to this subsection.

(m) Progressive slot machines may have payout-only hoppers from which prize tokens may be paid as jackpots; provided, however, that prize tokens shall not be available as a payout on a winning progressive jackpot combination.

19:45-1.40 Jackpot payouts of cash or slot tokens that are not paid directly from the slot machine

(a)-(o) (No change.)

(p) No casino licensee shall offer a jackpot of prize tokens unless that jackpot is totally and automatically paid directly from the slot machine.

19:45-1.40A Jackpot payouts of merchandise or other things of value

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

(m) Except when the payout is an annuity jackpot, the casino licensee may permit a winning patron to request and receive the exact cash equivalent value of the merchandise or thing of value as determined in (b)1-4 above in lieu of the merchandise or thing of value. However, any cash so provided shall not be included in determining gross revenue or in determining the minimum 83 percent payout of any slot machine as required by N.J.A.C. 19:45-1.37[(f) and 19:46-1.26(e)] **(g)**. If a licensee chooses to offer a patron this option, the licensee shall advise the patron in advance of actual play pursuant to N.J.A.C. 19:45-1.37(a)4 and 19:46-1.26(a)5.

(n)-(p) (No change.)

(q) Except as otherwise authorized by this section, a slot machine which offers merchandise or some other thing of value as a payout which is removed from the gaming floor shall be returned to or replaced on the gaming floor within five days. If the machine is not returned or replaced, the merchandise or thing of value shall, within five days of the slot machine's removal, be offered as a payout on a slot machine approved by the Commission which offers the same or a greater probability of winning the merchandise or thing of value, and accepts a denomination of coin or **slot** token not greater than the denomination accepted by the slot machine which was removed. Any time limit for offering a jackpot of merchandise or other thing of value shall be extended by the number of days during which the merchandise or thing of value was not offered as the result of any action taken by a casino licensee pursuant to this subsection.

19:45-1.40C Multi-casino slot system jackpot payouts of cash

(a) Any slot machine jackpot payout of cash or **slot** tokens which will be included in the calculation of gross revenue by two or more casino licensees as part of a multi-casino progressive slot system shall be subject, except as otherwise provided in this section, to any procedural or documentation requirement established in N.J.A.C. 19:45-1.40. All forms utilized in the preparation or payment of a multi-casino progressive slot system jackpot shall be clearly identified as forms used for such purpose.

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

(d) If a multi-casino slot machine system will not permit slot department personnel employed by the casino licensee where the jackpot is won to determine from the slot machine or the progressive display the actual amount of the jackpot payout of cash or **slot** tokens won by the patron, the following additional requirements shall apply:

1. The slot cashier who is responsible for preparing the Multi-Casino Payout shall request the slot system operator to provide documentation of the actual amount of the jackpot payout of cash or **slot** tokens won by the patron;

2.-3. (No change.)

(e) Prize tokens shall not be available as a Multi-Casino Payout.

19:45-1.41 Procedure for filling payout reserve containers of slot machines and hopper storage areas

(a) [The payout reserve container ("hopper")] **Each hopper** of a slot machine may be filled by requesting coin, **slot tokens** or **prize** tokens, **which are compatible** with **the hopper to be filled, on** a Hopper Fill Slip, or by utilizing coin, **slot tokens** or **prize** tokens **that are compatible with the hopper to be filled and that are** stored in its corresponding hopper storage area pursuant to N.J.A.C. 19:45-1.36A.

(b) The filling of a hopper or a hopper storage area by means of a Hopper Fill Slip shall be accomplished as follows:

1. Whenever a slot supervisor, attendant or mechanic requests coins, **slot tokens** or **prize** tokens to fill a [payout reserve container ("Hopper")] **hopper** or a hopper storage area of a slot machine, he or she shall obtain a properly completed and signed Hopper Fill Slip ("Hopper Fills") from a slot [booth] cashier [("Slot Cashier")].

2. Hopper Fills shall be serially prenumbered forms, each series of Hopper Fills shall be used in sequential order, and the series numbers of all Hopper Fills received by a casino **licensee** shall be accounted for by employees independent of the cashiers' cage and the slot department. All original and duplicate void Hopper Fills shall be marked "VOID" and shall require the signature of [the] **a** slot [booth] cashier [("Slot Cashier")]. Notwithstanding the above, a serially prenumbered combined Jackpot Payout/Hopper Fill form may be utilized in conjunction with N.J.A.C. 19:45-1.40(b), as approved by the Commission, provided that the combined form shall be used in a manner which otherwise complies with the procedures and requirements established by this section.

3. For establishments in which Hopper Fills are manually prepared, the following procedures and requirements shall be observed:

i. (No change.)

ii. Access to the triplicates shall be maintained and controlled at all times by employees responsible for controlling and accounting for the unused supply of Hopper Fills, placing Hopper Fills in the dispensers, and removing from the dispensers the triplicates remaining therein. [These employees shall have no incompatible functions.]

4. (No change.)

5. On originals, duplicates and triplicates or in stored data, the Hopper Fill shall include, at a minimum, the following information:

i. The asset number of the slot machine to which the coins, **slot tokens or prize tokens** are to be distributed;

ii. The date and shift during which the coins, **slot tokens or prize token** are distributed;

iii. The denomination of **the** coin, **slot tokens or prize tokens that are** to be distributed;

iv. The amount of coins, **slot tokens or prize tokens that are** to be distributed;

v. The location from which the coins, **slot tokens or prize tokens** are distributed;

vi. (No change.)

vii. The signature or identification code of the person requesting coins, **slot tokens or prize tokens** to fill the hopper (on the original and the duplicate only); and

viii. Whether the coins, **slot tokens or prize tokens** are to be placed in the slot machine's **all-purpose** hopper[,] **or payout-only hopper,** or in its corresponding hopper storage area.

6. (No change.)

7. All coins, **slot tokens** and **prize** tokens distributed from a slot booth to a slot machine or its corresponding hopper storage area shall [be transported], **during their transportation directly to the machine and until their deposit into the appropriate hopper, remain** in pre-wrapped secured bags; **provided, however, that:**

i. A casino security department member shall transport the pre-wrapped secured bags containing loose coin, **slot tokens** or **prize** tokens directly to the slot machine or its corresponding hopper storage area, **accompanied** by [a casino security department member who shall at the same time transport] the duplicate Hopper Fill for signature[.];

ii. The secured bags in which prize tokens are transported shall have sufficient identifying features, approved by the Commission, to distinguish those bags and their contents from the secured bags in which coins or slot tokens are transported; and

iii. The casino security department member shall observe the deposit of the coins, **slot tokens** or **prize** tokens in the **appropriate** slot machine hopper or the slot machine's corresponding hopper storage area, and the closing and locking of the slot machine or its corresponding hopper storage area by the slot mechanic or slot attendant before obtaining the signature of the slot mechanic or attendant on the duplicate copy of the Hopper Fill.

8. A slot mechanic who participates in [Hopper Fill transactions] **filling a slot machine hopper** shall inspect the slot machine and determine if the empty [Hopper] **hopper** resulted from a machine malfunction. [When a] **A** slot attendant [participates] **participating** in [Hopper Fills, he] **a hopper fill** shall review the Machine Entry Authorization Log and alert a slot mechanic to inspect the slot machine if the entries in the log indicate a consistent malfunction problem.

9. Signatures attesting to the accuracy of the information contained on the Hopper Fill shall be, at a minimum, of the following personnel at the following times:

i. The original:

(1) The slot cashier—upon preparation; and

(2) The security department member transporting the coins, **slot tokens or prize tokens** to the slot machine—upon receipt from the cashier of the coins, **slot tokens or prize tokens** to be transported; and

ii. The duplicate[;]**:**

(1) The slot cashier—upon preparation;

(2) The security department member transporting the coins, **slot tokens or prize tokens** to the slot machine—upon receipt from the cashier of coins, **slot tokens or prize tokens** to be transported; and

(3) The slot mechanic or attendant—after depositing the coins, **slot tokens or prize tokens** in the **appropriate hopper of the** slot machine and closing and locking the slot machine.

10. Upon meeting the signature requirements as described in [(b)9i and ii] **(b)9** above, the security department member shall maintain and control the duplicate and the slot cashier shall maintain and control the original **of the Hopper Fill Slip.**

11. At the end of each gaming day, at a minimum, the original and duplicate Hopper Fill Slip shall be forwarded as follows:

i. The original Hopper Fill Slip shall be forwarded to the cashiers' cage by the slot cashier for exchange for coin, currency or credit, after which the original shall be forwarded to the accounting department [for agreement], **which, as reasonably practicable after receipt, shall confirm that the information on the original Hopper Fill agrees** with the **information on the** triplicate or **in** stored data.

ii. The duplicate Hopper Fill Slip shall be forwarded directly to the accounting department [for recording], **which, as reasonably practicable after receipt, shall record the information from the Hopper Fill Slip** on the Slot Win Sheet, [agreement] **and shall**

confirm that the information recorded on the Hopper Fill Slip agrees with the meter readings recorded on the Slot Meter Sheet[,] and [agreement] with the **information on the** triplicates or **in** stored data.

(c) [The filling of the hopper of a] **Each** slot machine **hopper may be filled** from its corresponding hopper storage area [shall be accomplished] as follows:

1. Whenever a slot machine's hopper requires coin, **slot tokens** or **prize** tokens, a slot attendant or mechanic, **after confirming that the hopper storage area contains the necessary coin, slot tokens or prize tokens to replenish the hopper to be filled,** may, in the presence of a member of the security department, transfer the necessary coin, **slot tokens** or **prize** tokens from that slot machine's hopper storage area directly to the **appropriate** hopper of the corresponding slot machine. The security department member shall observe the deposit of the coins, **slot tokens** or **prize** tokens in the **appropriate** slot machine hopper and the closing and locking of the slot machine and its corresponding hopper storage area by the slot mechanic or attendant.

2. After transferring the coins, **slot tokens** or **prize** tokens to the slot machine's **appropriate** hopper, the slot attendant or mechanic shall make the entries required on the slot machine's log, [indicating the] **which, at a minimum, shall include the following:**

i. The date[,] **and** time [and] **of the transfer;**

ii. The type of hopper in the slot machine to which the coins, slot tokens or prize tokens were transferred;

iii. The amount of coins, **slot tokens** or **prize** tokens **that were** placed in [the] **that** hopper[, as well as his or her]; **and**

iv. The name and license number **of the slot attendant or slot mechanic who made the transfer.**

(d) (No change.)

(e) Each casino licensee shall submit and have approved internal controls for detecting and removing prize tokens from the all-purpose hoppers of its slot machines. Each casino licensee so removing a prize token shall count it, for purposes of calculating its gross revenue pursuant to N.J.S.A. 5:12-24, as cash received from gaming operations for the face amount of the prize token.

19:45-1.43 Slot count; procedure for counting and recording contents of slot drop buckets and slot drop boxes

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

(i) Procedures and requirements for conducting the hard count shall be as follows:

1. (No change.)

2. All slot tokens in denominations of $25.00 or more shall be counted or weighed at the beginning of the hard count, in the presence of the Commission inspector. The casino licensee may count or weigh other denominations of coins or slot tokens at the same time, provided that the high denomination slot token count proceeds to completion without interruption, except as otherwise provided herein. The Commission inspector shall, independently of the casino licensee, record on a countdown sheet the total amount of each slot token in a denomination of $25.00 or more which is counted or weighed. The inspector shall compare the totals on his or her countdown sheet with the amounts of those **slot** tokens recorded by the hard count team on the Slot Win Sheet, and verify that the amounts are in agreement and are correct, and if not, shall either satisfactorily account for any discrepancies, if possible, or document the incident and promptly report it to the Division. At the conclusion of the hard count, the inspector shall recompare the totals on the countdown sheet with the final totals determined by the casino licensee.

3.-4. (No change.)

5. The contents of each slot drop bucket or slot drop box shall be emptied separately into either a machine that automatically counts the coins or slot tokens or a scale that automatically weighs the coins or slot tokens; **provided, however, that any prize tokens shall be manually counted and separately recorded on the Slot Win Sheet.**

6. (No change.)

7. As the contents of each slot drop bucket or slot drop box are counted by the counting machine or weighed by the scale, one member of the count team shall record **the following information** on the Slot Win Sheet or a supporting document[, the]:

i. The asset number of the slot machine to which the slot drop bucket or slot drop box contents corresponds, if not preprinted thereon[, and the];

ii. The number of coins or slot tokens, or the weight of the coins or slot tokens contained in the slot drop bucket or slot drop box[. If]; **provided, however, that if** the value of the coins or slot tokens is not converted into dollars and cents until after the counting process is completed, the conversion shall be calculated and the dollar value of the drop shall be entered by denomination on the Slot Win Sheet; **and**

iii. The number and dollar value of each denomination of prize token issued by any casino licensee, and the total dollar value of all prize tokens issued by any casino licensee.

8.-13. (No change.)

14. Each prize token issued by any casino licensee that is removed from a slot drop bucket or a slot drop box and counted pursuant to this section shall be counted, for purposes of calculating gross revenue pursuant to N.J.S.A. 5:12-24, as cash received by the casino licensee from gaming operations for the face amount of the prize token, and, notwithstanding the prohibition on prize tokens activating slot machine play, no adjustment to the amount recorded on the Slot Win Sheet in accordance with (i)7iii above shall be allowed.

(j) Procedures and requirements at the conclusion of the hard count shall be as follows:

1.-3. (No change.)

4. The **prize tokens,** wrapped coin and slot tokens removed from the slot drop buckets and slot drop boxes shall be recounted in the count room by a cage cashier or master coin bank cashier, in the presence of a count team member and the Commission inspector, prior to the cashier having access to the information recorded on the Slot Win Sheet.

5. The inspector shall then compare the amounts of the slot tokens **and prize tokens** listed on his or her countdown sheet with the amounts of **each of** those tokens shown on the Slot Win Sheet, and verify that the amounts are in agreement and are correct, and if not, either satisfactorily account for any discrepancies, if possible, or document the incident and promptly report it to the Division.

6. The cage cashier or master coin bank cashier shall then attest by signature on the Slot Win Sheet to the accuracy of the amount of coin, **prize tokens** and slot tokens received from the slot machines. The inspector shall then sign the Slot Win Sheet evidencing the inspector's presence and the fact that the inspector, the cashier and count team have agreed on the total amount of coin, **prize tokens** and slot tokens counted. The coin, **prize tokens** and slot tokens thereafter shall remain in the custody of cage cashiers or master coin bank cashiers.

7. A casino security department employee, in the presence of the Commission inspector, shall:

i. (No change.)

ii. Conduct a thorough inspection of the entire count room and all equipment located therein, for unsecured coins, **prize tokens** and slot tokens.

8. (No change.)

9. The preparation of the Slot Win Sheet shall be completed by accounting department employees who shall:

i. Compare for agreement, for each slot machine, the number of coins or slot tokens counted and recorded by the count team to the drop meter reading recorded on the Slot Meter Sheet; **provided, however, that the accounting department, in making the comparison, shall account for any prize tokens that were counted pursuant to this section after being improperly accepted by the coin acceptor and diverted to the slot drop bucket or slot drop box;**

ii.-vi. (No change.)

10. (No change.)

19:45-1.44 Computer recordation and monitoring of slot machines

(a) (No change.)

(b) The computer permitted by (a) above shall be designed and operated to automatically perform the functions relating to slot machine meters in the casino as follows:

1. (No change.)

2. Record the number and total value of coins or slot tokens [issued pursuant to N.J.A.C. 19:46-1.33(c)1] deposited in the slot drop bucket or slot drop box of the slot machine;

[3. Record the number and total value of slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 deposited in the separate slot drop bucket or slot drop box of the slot machine required by N.J.A.C. 19:45-1.36(i);]

[4.]**3.** Record the number and total value of coins, **prize tokens** or slot tokens automatically paid by the slot machine as the result of a jackpot;

Recodify 5. as **4.** (No change in text.)

[6.]**5.** Record the number and total value of coins or slot tokens vended from the slot machine **all-purpose** hopper to make change;

Recodify 7.-9. as **6.-8.** (No change in text.)

(c) (No change.)

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

(a)-(o) (No change.)

(p) Prize tokens shall not be distributed as complimentary services or items pursuant to this section.

19:45-1.46A Procedures and requirements for the use of an automated coupon redemption machine

(a)-(p) (No change.)

(q) Prize tokens shall not be dispensed from automated coupon redemption machines.

19:45-1.46B Procedures and requirements for a bill changer which can accept coupons

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

(d) Unless the slot machine to which the bill changer is attached contains the coupon meters identified in N.J.A.C. 19:45-1.37(e)3 and 19:46-1.26(d)[3], a bill changer which can accept coupons shall be equipped with mechanical, electrical or electronic devices as follows:

1.-2. (No change.)

(e)-(g) (No change.)

19:46-1.5 Nature and exchange of gaming chips, [slot tokens and] plaques[,] and match play coupons

(a) All wagering on authorized games**, other than slot machines,** in a casino or casino simulcasting facility shall be conducted with gaming chips or plaques; provided however, that [slot tokens or coins shall be permitted for use in slot machines or simulcast wagering and] match play coupons shall be permitted for use in wagering at authorized games in accordance with N.J.A.C. 19:45-1.18 and 19:45-1.46. Gaming chips previously issued by a casino licensee which are not in active use by that casino licensee shall not be used for wagering at authorized table games or casino simulcasting, and shall not be accepted nor exchanged for any purpose at a gaming table or a casino simulcast counter. Such chips shall only be redeemed at the cashiers' cage pursuant to (f) below.

(b) Gaming chips or plaques shall be issued to a person only at the request of such person and shall not be given as change in any other but a gaming transaction. Gaming chips and plaques shall only be issued to casino patrons at the gaming tables and shall only be redeemed at the cashiers' cage; provided, however, that gaming chips may be exchanged by a patron at the slot booths or with changepersons for currency, coin or slot tokens [issued pursuant to N.J.A.C. 19:46-1.33(c)1] to play the slot machines, and may be used for simulcast wagering.

[(c) Slot tokens shall not be issued to a patron from a slot booth, cashiers' cage, bill changer or by a slot change person. Slot tokens shall only be issued upon the request of a patron; provided, however, complimentary slot tokens may be issued by a casino licensee in accordance with a complimentary distribution program authorized pursuant to N.J.A.C. 19:45-1.46. Slot tokens shall only be redeemed at a coin redemption booth, a slot booth or the cashiers' cage.]

[(d)]**(c)** Except as provided in [(i)] **(h)** below and as otherwise may be specifically approved by the Commission, **each casino licensee shall redeem its** gaming chips[, tokens] and plaques [shall] only [be redeemed by a licensee] from its patrons and shall not [be] knowingly [redeemed] **redeem its gaming chips and plaques** from any non-patron source.

[(e) Gaming chips, tokens and plaques shall be considered solely as evidence of a debt owed to their custodian by the casino licensee and shall be considered at no time the property of anyone other than the casino licensee issuing them.]

(d) Each gaming chip and plaque is solely evidence of a debt that the issuing casino licensee owes to the person legally in possession of the gaming chip or plaque, and shall remain the property of the issuing casino licensee, which shall have the right at any time to demand that the person in possession of the gaming chip or plaque surrender the item upon the casino licensee exercising its right of redemption in accordance with (f) below.

[(f)]**(e)** Each casino licensee shall redeem promptly its own genuine gaming chips and plaques [by]**, except when the gaming chips or plaques were obtained or being used unlawfully. A casino licensee shall redeem its gaming chips or plaques by exchanging them for an equivalent amount of** cash or [by]**, upon request by a patron who surrenders gaming chips or plaques in any amount over $25.00, for a casino** check **of that casino licensee in the amount of the chips or plaques surrendered and** dated the day of such redemption [on an account of the casino licensee as requested by the patron, except when the gaming chips or plaques were obtained or being used unlawfully. Slot tokens shall be redeemed or exchanged in the following manner:

1. Slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)1 shall be redeemed promptly by the issuing casino at the request of the patron for:

i. Cash; or

ii. Check dated the day of such redemption on an account of the casino licensee;

2. Slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 shall be exchangeable for a coupon which is redeemable for goods or services offered by, or on behalf of, the casino licensee; provided, however, that a casino licensee shall require that the amount of tokens exchangeable be equal to the face value of the coupon, the denomination of which shall be approved by the Commission].

[(g)]**(f)** Each casino licensee shall have the right to demand the redemption of its gaming chips[, slot tokens] or plaques from any person in possession of them and such person shall redeem said chips[, slot tokens] or plaques upon presentation [of an equivalent amount of cash] by the casino **licensee of cash in an equivalent amount**[; provided, however, that slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 shall be exchanged in accordance with (f)2 above].

[(h)]**(g)** [No] **Each** casino licensee shall **accept, exchange, use or redeem only gaming chips or plaques that it has issued and shall not** knowingly accept, exchange, use or redeem gaming chips[, tokens] or plaques**, or objects purporting to be gaming chips or plaques, that have been** issued by [another casino licensee] **any other person,** except that a casino licensee may redeem from its patrons [foreign] gaming chips[, tokens] or plaques **issued by another legally operated casino licensee** upon the representation of a patron that [such tokens had been received by the patron from payout chutes of slot machines on the premises or] such chips[, tokens] or plaques had been purchased or received as payment in a gaming transaction from an employee of such licensee working on the premises.

[(i)]**(h)** [A]**Each** casino licensee shall redeem promptly its own genuine gaming chips[, tokens] and plaques [from] **presented to it by any** other legally operated casino [licensees] **licensee** upon the representation that such chips[, tokens] and plaques were received or accepted unknowingly, inadvertently or in error[, were unavoidably received in slot machines through patron play] or were redeemed from patrons. Each casino licensee shall submit to the Commission for approval a system for the exchange**, with other legally operated casino licensees,** of [foreign] gaming chips[, tokens] and plaques**:**

1. That are in its possession and that have been issued by any other legally operated casino licensee; and

2. That it has issued and that are presented to it for redemption by any other legally operated casino licensee.

Recodify (j) as (i) (No change in text.)

[(k) Each casino licensee shall cause to be posted and remain posted in a prominent place on all slot booths and coin redemption booths a sign that reads as follows:

"It is a violation of Federal law to use tokens issued by this casino outside these premises or to use tokens issued by another casino here."]

19:46-1.6 Receipt of gaming chips[, tokens] or plaques from manufacturer or distributor; inventory, security, storage and destruction of chips[, tokens] and plaques

(a) When gaming chips[, tokens] or plaques are received from the manufacturer or distributor thereof, they shall be opened and checked by at least three people, one of whom shall be from the accounting or auditing department of the casino licensee. Any deviation between the invoice accompanying the chips[, tokens] and plaques and the actual chips[, tokens] or plaques received or any defects found in such chips[, tokens] or plaques shall be reported promptly to the Commission and Division.

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

[(i) The casino licensee shall submit to the Commission for approval procedures to record the receipt, inventory, storage and destruction of gaming tokens.]

19:46-1.20 Approval of gaming and simulcast wagering equipment; retention by Commission or Division; evidence of tampering

(a) Each casino licensee shall submit to the Commission, for its review, inspection and approval after consultation with the Division, each piece of gaming and simulcast wagering equipment, and any other related device, prior to its use, whether initially or following any modification thereto or replacement or movement thereof, in a casino, casino simulcasting facility or hub facility. Each such item, including, without limitation, gaming tables, layouts, roulette wheels, pokette wheels, roulette balls, drop boxes, big sic wheels, sic bo shakers, sic bo electrical devices, pai gow shakers, chip holders, racks and containers, scales, count room equipment and counting devices, trolleys, slip dispensers, dealing shoes, dice, cards, pai gow tiles, locking devices, card reader devices, **slot tokens, prize tokens,** data processing equipment, slot machines and slot bases (see N.J.A.C. 19:41-9.6(b) and N.J.A.C. 19:46-1.28), pari-mutuel machines, self-service pari-mutuel machines, credit voucher machines and totalisators, shall be subject to review, inspection and approval for, at a minimum, quality, design, integrity, fairness, honesty and suitability.

(b) (No change.)

(c) Any evidence that gaming equipment or other devices used in a casino, casino simulcasting facility or hub facility including, without limitation, gaming tables, layouts, roulette wheels, pokette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, pai gow shakers, gaming chips, plaques, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, locking devices, card reader devices, data processing equipment, **slot tokens, prize** tokens, slot machines, pari-mutuel machines, self-service pari-mutuel machines, credit voucher machines and totalisators have been tampered with or altered in any way which would affect the integrity, fairness, honesty or suitabiity of the gaming equipment or other device for use in a casino, casino simulcasting facility or hub facility shall be immediately reported to an agent of the Commission and the Division. A member of the casino licensee's casino security department shall be required to insure that the gaming equipment or other device and any evidence required to be reported pursuant to this subsection is maintained in a secure manner until the arrival of an agent of the Division. Rules concerning evidence of tampering with dice, cards and pai gow tiles may be found at N.J.A.C. 19:46-1.16, 19:46-1.18 and 19:46-1.19B, respectively.

(d) (No change.)

19:46-1.26 Slot machines and bill changers; identification; signs; meters; other devices

(a) (No change.)

(b) Unless otherwise authorized by the Commission, each bill changer shall have the following identifying features:

1.-2. (No change.)

3. A display on the front of the bill changer that clearly indicates the amount of coins **or slot tokens** dispensed by the slot machine **all-purpose** hopper after currency or a coupon has been inserted and accepted; and

4. (No change.)

(c) Unless otherwise authorized by the Commission, each slot machine in a casino shall be equipped with the following:

1. (No change.)

2. A mechanical, electrical or electronic device, to be known as a "drop-meter," that continuously and automatically counts the number of coins or slot tokens **that are** dropped into the machine's slot drop bucket or slot drop box; [provided, however, for machines equipped to accept slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2, a separate "drop meter" shall count the number of such slot tokens dropped into the separate container required by N.J.A.C. 19:45-1.36(i);]

3. [A] **For each hopper in a slot machine, a separate** mechanical, electrical or electronic device, to be known as a "jackpot meter," that continuously and automatically counts**, for that hopper only,** the number of coins**, prize tokens** or slot tokens **that are** automatically paid by the machine from the **corresponding** hopper **and that displays the aggregate number so counted; provided, however, that:**

i. In lieu of the jackpot meter for a payout-only hopper displaying the number of coins, slot tokens or prize tokens paid out from that hopper, each casino licensee that uses a slot machine which is capable of converting the number of coins, slot tokens or prize tokens paid out from a payout-only hopper into its machine denomination equivalent, may, in accordance with its internal controls approved by the Commission, set the jackpot meter connected to each payout-only hopper in that slot machine to continuously and automatically count and display the aggregate number of coins, slot tokens or prize tokens paid out from that hopper by its machine denomination equivalent (for example, the jackpot meter on a 25¢ slot machine may record the payout of one $3.00 prize token as the payout of "12" quarters); and

ii. Each slot machine with multiple hoppers may have a single jackpot meter to count and display the aggregate number of coins, slot tokens or prize tokens paid out from that machine's hoppers provided that:

(1) Each hopper is connected to that meter;

(2) The jackpot meter counts and displays, in accordance with (c)3i above, the aggregate number of coins, slot tokens or prize tokens paid out from a payout-only hopper by its machine denomination equivalent; and

(3) Each payout-only hopper has a separate payout-only jackpot meter;

4. A mechanical, electrical or electronic device, to be known as a "manual jackpot meter," that continuously and automatically records the number of coins or slot tokens to be paid manually[, provided, however, that the manual payout shall not include slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2];

5. A mechanical, electrical or electronic device, to be known as a "win meter," visible from the front of the machine, that, **upon a player hitting a winning combination,** advises the player **of** the number of coins**, prize tokens** or slot tokens **for that round** that have been paid to [him] **the player** by the machine [upon hitting a winning combination;] **from the corresponding hopper; provided, however, that multiple win meters, as provided in (c)5i or ii below after approval of the casino licensee's internal controls therefore, shall be used on each multiple hopper slot machine whenever one or more winning combinations that are hit on the same round of play at the machine entitle the winning player to automatically receive coins, slot tokens or prize tokens from both hoppers and each hopper contains a different denomination of coins, slot tokens or prize tokens, as follows:**

i. A separate win meter for each hopper that, for the round in which a winning combination is hit, advises the winning player of

the actual number of coins, slot tokens or prize tokens won from that hopper only; or

ii. A win meter to which each hopper is connected that advises the winning player of the aggregate number of coins, slot tokens or prize tokens won on that round from both hoppers after first converting the aggregate number of any coins, slot tokens or prize tokens won on that round from a payout-only hopper into its machine denomination equivalent, and a separate payout-only win meter connected to each payout-only hopper (for example, a win meter on a 25¢ slot machine may, pursuant to this paragraph, record the payout, on the same round of play, of one $3.00 prize token and two quarters as the payout of "14" quarters, provided there is a separate payout-only win meter advising the patron that one prize token was paid out); and

6. (No change.)

(d) Unless otherwise authorized by the Commission, each slot machine that has an attached bill changer shall also be equipped with **the** mechanical, electrical or electronic devices [as follows:

1. A "change meter," that continuously and automatically counts the number of coins or slot tokens vended from the slot machine's hopper to make change, whether for currency or coupons;

2. A number of "bill meters" that continuously, automatically and separately count, for each denomination of currency accepted by the bill changer, the actual number of bills accepted by the bill changer; and

3. If the attached bill changer can accept coupons, but does not contain the coupon meters identified in N.J.A.C. 19:45-1.46B:

i. A "numerical coupon meter," that continuously, automatically and separately counts the total number of all coupons accepted by the bill changer; and

ii. A "value coupon meter," that continuously, automatically and separately counts the total dollar value of all coupons accepted by the bill changer.] **that are required by N.J.A.C. 19:45-1.37(e).**

[(e) Unless otherwise authorized by the Commission, each slot machine that accepts currency shall have meters that accomplish the objective set forth in (c) above.

(f) All meters described herein shall be placed in a position so that the numbers thereon can be read and recorded without opening the slot machine.

(g) A casino licensee shall set each slot machine to payout at a minimum 83 percent of the amount of coins, currency or tokens placed by patrons into the slot machine and shall maintain a record of each slot machine setting and theoretical payout percentage. No payout of any merchandise or thing of value or payment of cash in lieu of any merchandise or thing of value pursuant to N.J.A.C. 19:45-1.40A shall be included in determining whether a slot machine meets the 83 percent minimum payout requirement.

(h) Each slot machine in a casino shall have such test connections as may be specified by the Division and approved by the Commission for the on-site inspection, examination and testing of such machine.]

Recodify (i) as **(e)** (No change in text.)

19:46-1.33 Inssuance and use of **slot** tokens for gaming **and simulcast wagering; prize tokens**; slot token **and prize token** specifications

(a) [A] **Each** casino licensee may, with Commission approval, issue **the following types of** metal [tokens designed] **disks having two faces and an edge:**

1. A "slot token" that is:

i. Designed for gaming use in [its] **the hoppers of the casino licensee's** slot machines and in simulcast wagering[, provided that each such slot token:] **within the casino licensee's casino simulcasting facility;**

ii. Capable, upon insertion into the coin acceptor of a designated slot machine operated by the casino licensee that issued the slot token, of activating the play of that slot machine;

iii. Issuable, in an exchange with a patron upon request, only from a slot booth, the cashiers' cage, a change machine or bill changer, or by a changeperson; provided, however, that each casino licensee may issue slot tokens as complimentary services or items in accordance with a distribution program authorized pursuant to N.J.A.C. 19:45-1.46;

iv. Exchangeable, by a patron at the casino where the slot token was issued, in the manner provided by N.J.A.C. 19:45-1.34 and 19:45-1.35; and

v. Redeemable, by the issuing casino licensee promptly upon request of the patron surrendering one or more slot tokens, only at a coin redemption booth, a slot booth or the cashiers' cage for an equivalent amount of cash or for a casino check of that casino licensee in the amount of the slot tokens surrendered and dated the day of the redemption; and

2. A "prize token" that is:

i. Designed to be awarded and issued only as a payout from a payout-only hopper of a designated slot machine that is operated by the casino licensee using the token;

ii. Incapable of activating slot machine play;

iii. Unavailable for use in simulcast wagering;

iv. Redeemable, by the issuing casino licensee promptly upon request of the patron surrendering one or more prize tokens, only at a coin redemption booth, a slot booth or the cashiers' cage for an equivalent amount of cash or for a casino check of that casino licensee in the amount of the prize tokens surrendered and dated the day of the redemption;

v. Exchangeable, by a patron at the casino where the prize token was issued, in the manner provided by N.J.A.C. 19:45-1.34 and 19:45-1.35;

vi. Unavailable as a manually paid jackpot;

vii. Unavailable as a payout on a winning progressive jackpot combination;

viii. Unavailable as a multi-casino jackpot; and

ix. Unavailable as a complimentary service or item.

(b) Each slot token and each prize token shall be designed so that it:

1.-2. (No change.)

3. Contains **on each face, in the case of a slot token only,** a statement [that the token is acceptable only at the casino issuing it], **approved by the Commission as to form and content, that notifies a patron that the slot token will be accepted to activate play only in slot machines operated by the casino licensee that issued it;**

4.-11. (No change.)

12. Contains **on each face, in the case of a prize token only,** a statement [that it is not redeemable for cash, if the slot token is issued pursuant to section (d)2 below], **approved by the Commission as to form and content, that notifies a patron that the prize token does not activate play.**

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

[(c) No casino licensee shall issue or cause to be utilized in its casino any tokens for gaming use in slot machines unless and until such tokens are approved by the Casino Control Commission. In requesting approval of any slot tokens, a casino licensee shall first submit to the Commission a detailed schematic of its proposed token which shall show the front, back and edge of the token, its diameter, thickness and any logo, design and wording thereon, all of which shall be depicted on the schematic as they will appear, both as to size and location, on the actual slot token. Once the design schematic is approved by the Casino Control Commission or its designee, no slot token shall be issued or utilized until and unless a sample of the token is also submitted to and approved by the Commission.

(d) A slot token shall be capable of insertion into and activating the play of a designated slot machine operated by the casino licensee which issued the slot token.

1. A slot token that is redeemable by the patron pursuant to N.J.A.C. 19:46-1.5(f)(1) shall:

i. Be issued upon a patron's request, or be issued in accordance with a complimentary distribution program authorized pursuant to N.J.A.C. 19:45-1.46;

ii. Be available as a payout from the slot machine payout reserve container (hopper); and

iii. Be available for use in simulcast wagering.

2. A slot token that is exchangeable only for a coupon pursuant to N.J.A.C. 19:46-1.5(f)2 shall:

i. Be issued only in accordance with a complimentary distribution program authorized pursuant to N.J.A.C. 19:45-1.46;

ii. Not be available as a payout from the slot machine hopper;
iii. Be retained in a separate slot drop bucket or slot drop box, pursuant to N.J.A.C. 19:45-1.36(i); and
iv. Not be available for use in simulcast wagering.]

(d) For each denomination of prize token for which there is an identical denomination of approved slot token, the diameter of each of those prize tokens shall equal the diameter of the approved slot token of like denomination. For every other denomination of prize token, each prize token of the same denomination shall have a diameter that:

1. Is either:

i. Equal to the diameter of any approved slot token with a face value that is less than the face value of the prize token; or

ii. Different from the diameter:

(1) Of any slot token approved for use by any casino licensee; and

(2) Authorized for each denomination of slot token as enumerated in (c) above; and

2. Is exclusively used for each prize token of that denomination once the diameter is initially determined pursuant to (d)1 above.

(e) Each prize token shall have a metal content that is different from the metal content of any slot token approved for use by any casino licensee.

(f) Each casino licensee, in accordance with its internal controls approved by the Commission, may encase its prize tokens in clear plastic provided that:

1. The plastic does not hamper the payout of prize tokens from a payout-only hopper;

2. A patron with reasonable ease can remove the prize token from the plastic; and

3. The casino licensee:

i. Redeems each prize token under the same terms and conditions whether or not the prize token, when presented for redemption, is encased in plastic as originally issued by the casino licensee; and

ii. Reasonably notifies its patrons that prize tokens that are encased in plastic when originally issued to the patron may be redeemed without removing the plastic.

(g) No slot token or prize token shall be issued by a casino licensee or utilized in a casino or casino simulcasting facility unless and until:

1. The design specifications of the proposed slot token or prize token are, prior to the manufacture of the slot token or prize token, submitted to and approved by the Commission, which submission shall include a detailed schematic depicting the actual size of the token's diameter and thickness and, as appropriate, location of the following:

i. Each face;

ii. The edge; and

iii. Any words, logos, designs, graphics or security measures contained on the slot token or prize token; and

2. A sample slot token or prize token, manufactured in accordance with its approved design specifications, is submitted to and approved by the Commission.

(h) No casino licensee shall issue, use or allow a patron to use in its casino or casino simulcasting facility any slot token or prize token that it knows, or reasonably should know, is materially different from the sample of that slot token or prize token approved by the Commission.

19:46-1.34 Wagering at slot machines; use of slot tokens and prize tokens

(a) All wagering at slot machines in a casino shall be conducted with coins or slot tokens; provided, however, that currency may be accepted through bill changers.

(b) Slot tokens may be used to make simulcast wagers.

(c) Prize tokens shall not be used for simulcast wagering or to activate play at slot machines.

19:46-1.35 Redemption of slot tokens and prize tokens from non-patrons; duty of patrons to surrender slot tokens and prize tokens upon demand

(a) Except as provided in (e) below and as may be specifically approved by the Commission, each casino licensee shall redeem its slot tokens and prize tokens only from its patrons and shall not knowingly redeem its slot tokens and prize tokens from any non-patron source.

(b) Each slot token and prize token is solely evidence of a debt that the issuing casino licensee owes to the person legally in possession of the slot token or prize token, and shall remain the property of the issuing casino licensee, which shall have the right at any time to demand that the person in possession of the slot token or prize token surrender the item upon the casino licensee exercising its right of redemption in accordance with (c) below.

(c) Each casino licensee, upon demand, shall have the right to redeem its slot tokens and prize tokens from any person in possession of them, who shall surrender the slot tokens and prize tokens upon the casino licensee presenting the person with an equivalent amount of cash.

(d) Each casino licensee shall accept, exchange, use or redeem only slot tokens or prize tokens that it has issued and shall not knowingly accept, exchange, use or redeem slot tokens or prize tokens, or objects purporting to be slot tokens or prize tokens, that have been issued by any other person, except that each casino licensee may redeem from its patrons slot tokens or prize tokens issued by any other legally operated casino licensee upon a patron's representation that he or she received such tokens from the payout chutes of slot machines on the casino licensee's premises, or that the patron purchased or received such tokens as payment in a gaming transaction from an employee of the casino licensee during the normal course of the employee's duties on the premises while at work.

(e) Each casino licensee shall redeem promptly its own genuine slot tokens and prize tokens presented to it by any other legally operated casino licensee upon the representation that such slot tokens and prize tokens were received or accepted unknowingly, inadvertently or in error, were unavoidably received in slot machines through patron play, or mistakenly were redeemed from patrons. Each casino licensee shall submit to the Commission for approval a system for the exchange, with other legally operated casino licensees, of slot tokens and prize tokens:

1. That are in its possession and that have been issued by any other legally operated casino licensee; and

2. That it has issued and that are presented to it for redemption by any other legally operated casino licensee.

(f) Each casino licensee shall cause to be posted and remain posted in a prominent place on all slot booths and coin redemption booths a sign that reads as follows:

"It is a violation of Federal law to use tokens issued by this casino outside these premises or to use tokens issued by another casino here."

19:46-1.36 Slot tokens and prize tokens; receipt, inventory, security, storage and destruction

(a) Each casino licensee shall inspect all slot tokens or prize tokens, or any combination thereof, upon receipt from the manufacturer or distributor to ensure, at a minimum, that:

1. The quantity and denomination of slot tokens or prize tokens that are actually received from the manufacturer or distributor agrees with the amount of such tokens listed on the shipping documents; and

2. There are no physical defects in the slot tokens or prize tokens that were so received.

(b) The inspection required by (a) above shall be conducted by at least three people (the "inspection team"). Each inspection team shall consist of at least one representative from the following categories:

1. The accounting or auditing department of the casino licensee;

2. The casino security department of the casino licensee; and

3. With prior Commission approval, a casino employee from any of the casino licensee's other departments.

(c) Each casino licensee shall report to the Commission and the Division promptly after an inspection required by (a) above discloses any discrepancy in the shipment including, but not limited to, the following:

1. The shipment contains defective slot tokens or prize tokens; or

2. The quantity and denomination of the slot tokens or prize tokens actually received does not agree with the amount listed on the shippping documents.

(d) Each casino licensee shall submit to the Commission for approval procedures to record and process the receipt, inventory, storage and destruction of slot tokens and prize tokens.

19:51-1.1 Definitions

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

"Gaming equipment" means any mechanical, electrical or electronic contrivance or machine used in connection with gaming or any game and includes, without limitation, roulette wheels, roulette tables, big six wheels, craps tables, tables for card games, layouts, slot machines, **slot tokens, prize tokens,** cards, dice, chips, plaques, match play coupons, card dealing shoes, drop boxes, and other devices, machines, equipment, items or articles determined by the Commission to be so utilized in gaming as to require licensing of the manufacturers, distributors or [services] **servicers,** or as to require Commission approval in order to contribute to the integrity of the gaming industry or to facilitate the operation of the Commission or the Division.

...

19:51-1.2 Gaming-related casino service industry

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

(c) Enterprises required to be licensed in accordance with subsections 92a and b of the Act and (a) above shall include, without limitation, the following:

1. Manufacturers, suppliers, distributors, servicers and repairers of roulette wheels, roulette balls, big six wheels, gaming tables, slot machines, cards, dice, gaming chips, gaming plaques, slot tokens, **prize tokens,** dealing shoes, drop boxes, computerized gaming monitoring systems, totalisators, pari-mutuel machines, self-service pari-mutuel machines and credit voucher machines;

2.-3. (No change.)

19:54-1.6 Computation of tax

(a) The gross revenue[s] tax shall be eight percent of gross revenue[s]. The gross revenue[s] for the tax year, or portion thereof, shall be the amount obtained from the following calculation:

1. The [sum] **total** of [the totals] **all sums** for the tax year, or portion thereof, [which appear in the casino department accounts for revenues from table games, the casino department accounts for revenues from coin-operated devices, and the casino department accounts for any other authorized games approved by the Commission, which accounts are to be maintained in accordance with generally accepted accounting principles as part of the uniform chart of accounts for casino departments] **that are actually received by a casino operator from its gaming operations, which sums include, but are not limited to, cash, slot tokens, prize tokens counted at face value pursuant to N.J.A.C. 19:45-1.41 and 19:45-1.43, checks received by a casino operator pursuant to N.J.S.A. 5:12-101 whether collected or not, and coupons counted pursuant to N.J.A.C. 19:45-1.33 regardless of validity, less only the total of all sums paid out as winnings to patrons;**

2. Minus only the lesser of the following:

i. (No change.)

ii. The amount shown in the casino department account entitled "Provision for Uncollectible Patron Checks," which account shall be maintained in accordance with generally accepted accounting principles as part of the uniform chart of accounts required for casino departments **pursuant to N.J.S.A. 5:12-70m and N.J.A.C. 19:45-1.2(b).**

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

(d) Each casino operator shall treat each check which it receives in that year but which is invalid and unenforceable pursuant to N.J.S.A. 5:12-101f as cash received from gaming operations, and no deduction for the amount thereof shall be allowed in computing gross revenue.

(a)

CASINO CONTROL COMMISSION

Persons Doing Business with Casino Licensees Application for Initial Casino Service Industry License and License Renewal

Reproposed New Rules: N.J.A.C. 19:51-1.3A and 1.3B

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

Authority: N.J.S.A. 5:12-63c, 69a, 70a, 89b, 90b, 91b, 92 and 102c.

Proposal Number: PRN 1994-410.

Submit written comments by August 17, 1994 to:

Ruth S. Morgenroth, Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency reproposal follows:

Summary

The reproposed new rules codify the various forms, documents and fees required to be filed by applicants seeking an initial or a renewal casino service industry license.

These rules are being reproposed because substantive changes were made to the rules as proposed on April 18, 1994 at 26 N.J.R. 1617(a). These changes involve the forms required to be filed by nongaming-related casino service industries required pursuant to N.J.A.C. 19:51-1.2A(f) to be licensed prior to conducting business with casino licensees. In the former proposed new rules applicants for initial licensure were required to submit Federal and State tax returns for one year preceding application. The current proposed new rules require tax returns for the three years preceding application in conformance with current practice. The former proposed new rules also required applicants for renewal licenses to submit Federal and State tax returns for both the applicant enterprise and for qualifiers of the enterprise. The current proposed new rules entirely eliminate this requirement because the Commission has determined that, once licensed, casino service industries subject to N.J.A.C. 19:51-1.2A(f) should not be treated differently from other nongaming-related casino service industries.

Social Impact

The Commission requires applicants for licensure as a casino service industry to provide information concerning their business organization, owners, management and supervisory personnel. This information is used to determine whether these companies and individuals possess the character, financial and business qualifications required by the Casino Control Act and Commission rules. As such, the application procedures proposed herein protect the casino industry and the gaming public and enable the Commission to fulfill its statutory mandate to strictly regulate all persons related to the operations of licensed casino enterprises and all related casino service industries.

Economic Impact

Applicants for licensure as a casino service industry are currently required to file applications in the manner specified. Compiling and submitting the information required as part of the application process necessarily involves the expenditure of an applicant's time. In certain instances an applicant may also incur costs for clerical and professional assistance. However, the Commission believes these expenditures are justified by the Commission's and Division's need for the information requested. Without this information, the legislative directive prohibiting the participation of unfit persons and entities could not be satisfied.

Regulatory Flexibility Analysis

Some of the enterprises which will be filing applications for licensure as a casino service industry may qualify as small businesses as defined

in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These enterprises will incur the costs involved in filing an application for such licensure and renewal, including the required license fees (see N.J.A.C. 19:41-9). Although professional services may be used by some applicants, the Commission believes that the required application forms can be prepared without professional assistance.

The licensing process is necessary to enable the Commission to ensure the integrity of the casino industry and related industries as mandated by the Casino Control Act. Without the information submitted as part of the application process, it would be impossible to ensure that persons with known criminal records, habits or associations are excluded therefrom. Licensing procedures must be applied uniformly to all applicants. Developing separate standards for small businesses might endanger the public interest.

Full text of the reproposed new rules follows:

19:51-1.3A Application for initial casino service industry license

(a) An application for an initial casino service industry license pursuant to N.J.S.A. 5:12-92a and b shall consist of the fee specified in N.J.A.C. 19:41-9.8 and a completed original and one copy of the following:

1. A Business Entity Disclosure (BED) form for the applicant as follows:

i. For a corporation, a BED-Corporate as set forth in N.J.A.C. 19:41-5.6; or

ii. For a partnership or sole proprietor, a BED-Partnership as set forth in N.J.A.C. 19:41-5.6A;

2. The appropriate BED form in (a)1i or ii above for each holding company of the applicant;

3. A complete application in accordance with N.J.A.C. 19:41-7.1A, including a Personal History Disclosure Form—1A (PHD-1A) as set forth in N.J.A.C. 19:41-5.2, for each person required to be qualified pursuant to N.J.S.A. 5:12-92a and b and N.J.A.C. 19:51-1.14(a)1; and

4. Both of the following in a format prescribed by the Commission:

i. A notarized acknowledgment of the equal employment and business opportunity obligations imposed by N.J.A.C. 19:53-3 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor, as applicable; and

ii. A statistical report of the composition of the applicant's work force.

(b) An application for an initial casino service industry license pursuant to N.J.S.A. 5:12-92c shall consist of the fee specified in N.J.A.C. 19:41-9.9 and a completed original and one copy of the following:

1. A Business Entity Disclosure Form-3 (BED-3) as set forth in N.J.A.C. 19:41-5.7 for the applicant;

2. A BED-Holding Company (BED-HC) as set forth in N.J.A.C. 19:41-5.8 for each holding company of the applicant;

3. A completed application in accordance with N.J.A.C. 19:41-7.1A, including a Qualifier Disclosure Form (QDF) as set forth in N.J.A.C. 19:41-5.9, for each person required to be qualified pursuant to N.J.S.A. 5:12-92c and N.J.A.C. 19:51-1.14(a)2;

4. If the applicant is required pursuant to N.J.A.C. 19:51-1.2A(f) to obtain a license prior to conducting business with a casino licensee or applicant, two copies of the following documents:

i. The applicant's Federal tax returns and related documents for the three years and State tax returns and related documents for the one year preceding application; and

ii. The Federal tax returns and related documents for the one year preceding application for each person required to be qualified pursuant to N.J.A.C. 19:51-1.14(a)2;

5. Both of the following in a format prescribed by the Commission:

i. A notarized acknowledgment of the equal employment and business opportunity obligations imposed by N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor, as applicable; and

ii. A statistical report of the composition of the applicant's work force.

19:51-1.3B Application for renewal of casino service industry license

(a) An application for renewal of a casino service industry license pursuant to N.J.S.A. 5:12-92a and b shall consist of the fee specified in N.J.A.C. 19:41-9.8 and an original and one copy of the following:

1. A Business Entity Disclosure (BED) form for the applicant as follows:

i. For a corporation, a BED-Corporate as set forth in N.J.A.C. 19:41-5.6 except that documents in N.J.A.C. 19:41-5.6(a)28i, ii, iv, viii and ix, (a)29 and (a)31 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein; and

ii. For a partnership or sole proprietor, a BED-Partnership as set forth in N.J.A.C. 19:41-5.6A except that documents in N.J.A.C. 19:41-5.6A(a)23 through 25 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein;

2. The appropriate form in (a)1i or ii above for each holding company of the applicant;

3. A completed application, including a Personal History Disclosure Form-1A (PHD-1A) as set forth in N.J.A.C. 19:41-5.2, for each person required to be qualified pursuant to N.J.S.A. 5:12-92a and b and N.J.A.C. 19:51-1.14(a)1 who has not previously been found qualified;

4. An Employee License Renewal Application, as set forth in N.J.A.C. 19:41-14.3(b), for each person required to be qualified pursuant to N.J.S.A. 5:12-92a and b and N.J.A.C. 19:51-14(a)1 who has previously been found qualified;

5. Both of the following, in a format prescribed by the Commission:

i. A notarized affidavit of compliance with the equal employment and business opportunity requirements of N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor of the applicant, as applicable; and

ii. A statistical report of the composition of the applicant's work force;

(b) An application for renewal of a casino service industry license pursuant to N.J.S.A. 5:12-92c shall consist of the fee specified in N.J.A.C. 19:41-9.9 and an original and one copy of following:

1. A BED-3 as set forth in N.J.A.C. 19:41-5.7(a) for the applicant except that documents in N.J.A.C. 19:41-5.7(a)5 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein;

2. A BED-Holding Company (BED-HC) as set forth in N.J.A.C. 19:41-5.8 for each holding company of the applicant except that documents in N.J.A.C. 19:41-5.8(a)5 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein;

3. A completed application, including a Qualifier Disclosure Form (QDF) as set forth in N.J.A.C. 19:41-5.9, for each person required to be qualified pursuant to N.J.S.A. 5:12-92c and N.J.A.C. 19:51-1.14(a)2 who has not previously been found qualified;

4. A Qualifier Renewal Form (QRF) as set forth in N.J.A.C. 19:41-5.10 for each person required to be qualified pursuant to N.J.S.A. 5:12-92c and N.J.A.C. 19:51-1.14(a)2 who has previously been found qualified;

5. Both of the following, in a format prescribed by the Commission:

i. A notarized affidavit of compliance with the equal employment and business opportunity requirements of N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor of the applicant, as applicable; and

ii. A statistical report of the composition of the applicant's work force.

HEALTH

(a)

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICES

Worker and Community Right to Know Act Rules

Proposed Readoption with Amendments: N.J.A.C. 8:59

Authorized By: Len Fishman, Acting Commissioner, Department of Health.

Authority: N.J.S.A. 34:5A-1 et seq., specifically 34:5A-30.

Proposal Number: PRN 1994-403.

A **public hearing** concerning the proposal will be held on Wednesday, August 10, 1994 from 10:00 A.M. to 4:00 P.M. and 7:00 P.M. to 9:00 P.M. at:

First Floor Conference Room
Health and Agriculture Building
John Fitch Plaza
Market Street
Trenton, New Jersey

Submit written comments by August 17, 1994 to:

Richard Willinger, Program Manager
Right to Know Program
New Jersey Department of Health
CN 368
Trenton, New Jersey 08625-0368
(609) 984-2202

The agency proposal follows:

Summary

N.J.A.C. 8:59 was originally adopted on October 1, 1984 to implement the requirements of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq. It was readopted on September 29, 1989, and was amended on August 2, 1993 and January 3, 1994. Pursuant to Executive Order No. 66(1978), this chapter expires on September 29, 1994.

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 system includes an inventory of hazardous substances at public employer facilities on survey forms, the labeling of containers at covered private and public facilities, the education and training of public employees and emergency responders who are exposed or potentially exposed to the hazardous substances, and the availability of surveys and hazardous substance fact sheets to employees, emergency responders and community residents.

The Act was passed to reduce the significant incidence of illnesses and injuries to workers in the public and private sectors and to emergency responders, as well as known and potential illnesses and 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 can make reasoned decisions and take informed action about their employment and living conditions.

The Act's goals are to train public workers how to handle hazardous substances properly and respond to spills and other emergencies, to train emergency responders how to respond to spills and other emergencies, to inform public employees, emergency responders and community residents about the health hazards of hazardous substances to avoid illness and injury in the future and to address any current health effects they may be suffering from hazardous substances, and to inform community residents about the health hazards of substances that may be contaminating or potentially may contaminate their environment and adversely affect their health.

The Department conducted an internal review of the rules prior to noticing for readoption. In its review of the rules, the Department determined that the rules adequately and reasonably provide the ability to execute the intent of the State statute. Additional review of the rules by the public will occur as a result of this readoption process.

The rules have been effective in implementing the goals of the Act since the last readoption in 1989. They have resulted in hazardous substance surveys (Right to Know Surveys) being provided to emergency responders, public employees and community residents for all the public facilities in New Jersey, for emergency planning, education and training, and health and safety purposes; hundreds of thousands of public employees being trained and re-trained about the hazardous substances they work with, or in close proximity to, which has protected them from illness and injury from exposure to these hazards; and the dissemination of hundreds of thousands of Hazardous Substance Fact Sheets to firefighters, hospitals, health departments, public employees, community residents, unions, and public and private employers which has increased their knowledge about the health and safety hazards of hazardous substances.

The rules are necessary and should be continued because of the ongoing need for public employees, emergency responders, and community residents to know where hazardous substances are located in their community and workplace, what their hazards are and how to deal with them, and whether they should seek medical attention, change work practices, or change their living conditions, as a result of exposure or potential exposure to these hazardous substances.

The rules have been amended three times since September 29, 1989. On June 17, 1991, the rules were amended to add Subchapter 12, requiring the certification of consultant trainers and consulting agency training programs who provide Right to Know education and training programs to public employees for remuneration. (See 22 N.J.R. 1892(a) and 23 N.J.R. 1939(a).) These rules implemented an amendment to the Act which required such certification, and were intended to insure that public employers who paid for training from consulting agencies received a program that met the requirements of the law.

On August 2, 1993, the rules were extensively amended in the areas of research and development laboratories, labeling, education and training programs, and consultants/consulting agencies. (See 25 N.J.R. 864(a) and 25 N.J.R. 3543(a).) Regarding research and development laboratories (R&D laboratories), an application process for employers to become designated as R&D laboratories was codified, pilot plants were included within the definition of an R&D laboratory, and R&D laboratories were allowed to label containers pursuant to the Occupational Safety and Health Administration and Public Employees Occupational Safety and Health Act (PEOSHA) Laboratory Standard in lieu of Right to Know labeling.

In the area of labeling, major changes were that the use of United States Department of Transportation hazardous materials labeling was allowed for all non-direct use shipping containers, offices used for office work were exempt from Right to Know labeling, the labeling exemption for Food, Drug and Cosmetic Act regulated products was increased from five gallons to "less than 55 gallons or 450 pounds," and a container size threshold of two kilograms (4.4 pounds) or two liters (0.53 gallons) was set, at or below which Right to Know labeling was not required except for Special Health Hazard Substances.

In the area of education and training programs, the required course content of the annual Right to Know (RTK) training program was codified, the documentation of initial and annual RTK training programs required to be maintained by a public employer was more clearly explained, the amount of time in which volunteers needed to receive initial RTK training was increased from one month to six months, and the relationship of the PEOSHA Hazardous Waste Operations and Emergency Response training standard to RTK training for firefighters and police officers was explained.

The amended rules also set a two year limitation on the full certification granted to a consultant or consulting agency, after which time it has to be renewed, set forth the procedure to be followed subsequent to the revocation or suspension of a certification, and set forth the expiration of provisional certification if a consultant or consulting agency does not notify the Department of Health of a training program being conducted within a two year period.

Also on August 2, 1993, the Department of Health adopted amendments to the trade secret rules jointly with the Department of Environmental Protection and Energy. (See 25 N.J.R. 858(a) and 25 N.J.R. 3537(a).) In regard to trade secrets and labeling, the amendments eliminated the requirement of private employers to file trade secret claims with the Department of Health and substituted in its place a one-time notification by letter to the Department, allowed employers to assign their own trade secret registry numbers, allowed trade secret numbers to be assigned to a product rather than to each secret ingredient in the product, and enabled employers to retrieve their trade secret claims already filed.

On January 3, 1994, the rules were amended to require labeling of Special Health Hazard Substances, those chemicals which cause cancer, genetic mutations, and birth defects, and are corrosive, highly flammable, and highly reactive/explosive, on containers that are below the new two kilogram/two liter threshold. (See 25 N.J.R. 3441(a) and 26 N.J.R. 217(a).)

In addition, on February 7, 1994, the Department proposed changes to the Right to Know Hazardous Substance List and Special Health Hazard Substance List. (See 26 N.J.R. 540(a).) These amendments would add and delete individual substances, generic categories, synonyms, and Special Health Hazard codes, from both lists. The changes were originally preproposed on March 1, 1993 at 25 N.J.R. 792(b).

It is now proposed to further amend the rules that are being readopted to make three changes that were inadvertently omitted last August, and to reflect definitions adopted by the Department of Environmental Protection and Energy on January 3, 1994 at 26 N.J.R. 200(a) to their Right to Know rules, that impact upon the Department of Health rules.

The following amendments are being proposed:

The definitions of "Community Right to Know Survey," "Local Emergency Planning Committee," "pilot plant" and "Superfund Amendments and Reauthorization Act" are being added.

The definition of "Emergency Services Information Survey" is being deleted.

Minor word changes are being made to the definitions of "designated county lead agency," "environmental hazardous substance" and "environmental hazardous substance list."

The definitions of "environmental survey" and "trade secret docket number" are being modified to reflect the new names of Community Right to Know Survey and Release and Pollution Prevention Report used by DEPE.

Three additional exclusions from the definition of "hazardous substance" are being added as 10 through 12, to make the definition identical to the exclusions from labeling listed in N.J.A.C. 8:59-5.6(a). These three categories of materials are now exempt from all provisions of the Act, not just labeling.

The definition of "public employee" is being placed in its appropriate alphabetical location in the list of definitions, and the definition of "employee" is being referenced to the definition of "public employee." No changes were made in the definition.

The definition of "research and development laboratory" is being amended so that the wording is more similar to DEPE's definition of the same term. No substantive changes have been made to the definition.

The definition of "technically qualified person" is being amended to include a separate paragraph for research and development laboratories to be similar to DEPE's definition, to clarify that paragraphs 1 through 5 only apply to education and training programs, to add Certified Industrial Hygienists as qualified trainers, and to clarify that a Master's degree in an appropriate field is acceptable even though a person's Bachelor's degree was not in an appropriate field.

The Department has always interpreted the "good faith effort" needed to find out the ingredients of products to mean at least two contacts by letter and/or documented phone call to the product's manufacturer or supplier. This interpretation is being codified in N.J.A.C. 8:59-2.2(e), regarding completion of the Right to Know Survey by public employers, and in N.J.A.C. 8:59-5.1(c), regarding labeling of containers by both public and private employers.

Two typos are being corrected in N.J.A.C. 8:59-10.1(c), in subchapter 10 which deals with the Special Health Hazard Substance List. The word "of" is substituted for "or," and the word "warn" is substituted for "worn."

In Subchapter 11 which regulates community right to know labeling by private employers, the definition of "employer" in N.J.A.C. 8:59-11.3(b) has been slightly amended to bring it into conformance with DEPE's definition of "employer." (See DEPE adoption in this issue of the New Jersey Register.)

Social Impact

The social impact of these rules has been positive, by improving the health and welfare of New Jersey's public employees, emergency responders and community residents. Since enactment of these rules, hundreds of thousands of public employees have been trained and retrained about the health and safety hazards of the hazardous substances with which they work and are exposed or potentially exposed to, how to handle these substances properly, and what actions to perform in the case of a spill or other emergency. Thousands of firefighters, police officers and other emergency responders have been trained how to handle spills and other emergencies involving hazardous substances.

As a result of these rules, in concert with other State and Federal laws, there has been a substantial amount of education of public employees, emergency responders and community residents about the hazards of hazardous chemicals. Such education can only serve to improve the health and safety of public employees, emergency responders and member of the public. The rules enable firefighters, police, local government agencies and the public to evaluate risks to community safety and public health and plan for emergencies. Education and information are critical to helping people protect themselves from being injured, property being destroyed, and the environment contaminated. It will prevent the deaths and illnesses caused by exposure to asbestos, benzene, silica, and other chemicals in the past, from occurring in the future. The Worker and Community Right to Know Act recognizes that society will always use hazardous substances in the workplace and transport them on the roads. Because of this, education and training about hazardous substances will always be needed for new employees and to convey new information to existing employees, emergency responders, and the public.

The worker protection provisions of the rules benefit 1,576 public employers and 500,000 public employees, although not all public employees are directly affected, since some work at facilities where there are no hazardous substances and not all provisions of the Act apply to those facilities. Tens of thousands of emergency responders in fire and police departments throughout the State also benefit from the rules.

Economic Impact

The Right to Know law increases the cost of doing business for private companies having Standard Industrial Classification Codes covered by the law, and for public agencies. The costs include the annual fee assessment of $2.00 per employee ($50.00 minimum) established in the Worker and Community Right to Know Act and the cost of labeling containers which are purchased and/or manufactured. The cost of compliance increases with the number of containers that need to be labeled and could range from under a dollar for an employer which purchases containers already properly labeled, to thousands of dollars for employers which need to label many containers of manufactured product or of purchased containers that need to be relabeled. Likewise, those employers hiring consultants to perform the job of labeling will find the cost of compliance to be proportional to the number of containers in the workplace.

For public employers, costs are incurred in allocating staff time to perform inventories and fill out surveys, allowing employees to attend training sessions, sending staff to training programs to become in-house trainers, and allocating staff time to label containers, or hiring consultants to perform the above activities.

These actions that have been taken by private and public employers have reduced illnesses and injuries among public employees including pain and suffering, have prevented and reduced damage to physical facilities and the environment, and have enabled emergency responders to respond more appropriately and quickly to reduce the extent of physical property and environmental damage from fires and spills of hazardous materials.

The 1991 amendments have economically benefited public employers by insuring that the services they receive from a consultant or consulting agency which they hire to perform Right to Know training will be complete and accurate and in compliance with the law. The 1993 amendments have economically benefited private and public employers by reducing the costs of compliance with labeling, especially for research and development laboratories and for those private employers who were required to file trade secrets claims with the Department.

The amendments to the proposed readopted rules will not cause any additional costs to be incurred by public or private employers.

Regulatory Flexibility Analysis

It is estimated that approximately 33,000 private employers are currently covered by the Worker and Community Right to Know Act. Of these, the vast majority are considered to be small businesses, as the term is defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These small businesses are affected by the existing rules through the labeling requirements, which will continue to apply through the readoption with amendments. This impact has been significantly reduced by the labeling amendments adopted on August 2, 1993. The labeling threshold, in particular, and other amendments adopted at that time

benefit small businesses to a greater extent than large businesses. The costs incurred as in compliance with the rules are as discussed in the Economic Impact above.

In developing the proposed readoption of N.J.A.C. 8:59 with amendments, the Department balanced the need to protect public safety and the environment against the economic impact of the readoption with amendments and has determined that to further minimize the impact of the rules on small businesses would endanger the environment, public safety, and the health and safety of emergency responders, and, therefore, no further exemptions are provided based on business size. The minor amendments to the proposed readopted rules will not cause any additional costs to be incurred by small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:59.

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

8:59-1.3 Definitions

The following words and terms 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, and the Superfund Amendments and Reauthorization Act, Section 312.

...

"Designated county lead agency" means a health agency or office of emergency management designated by the county clerk to be responsible for conducting all county health department activities required by [this act] **the Act** in the county.

...

["Emergency Services Information Survey" or "ESI Survey" means a written form prepared by the Department of Environmental Protection and transmitted to an employer, on which the employer shall provide certain information concerning each of the hazardous materials at its facility, including, but not limited to, the following: the name of the hazardous material and its United States Department of Transportation identification number, the United States Department of Transportation designated hazard class, the approximate range of maximum inventory quantity, the units of measure, the major methods of storage or types of containers, and whether the substance is present in a mixture. The ESI Survey is incorporated into the Right to Know Survey.]

"Employee" [or "public employee" means any paid full-time or part-time salaried, seasonal or hourly worker of a covered public employer, and shall include volunteer firefighters and volunteers who work for a covered public employer.] **shall have the same meaning as "public employee."**

...

"Environmental hazardous substance" **or "EHS"** means any substance [on the environmental hazardous substance list] **designated by the Department of Environmental Protection and Energy in N.J.A.C. 7:1G-2.**

"Environmental hazardous substance list" means the list of environmental hazardous substances developed by the Department of Environmental Protection **and Energy** pursuant to N.J.S.A. 34:5A-4 **and N.J.A.C. 7:1G-2.** The environmental hazardous substance list is incorporated into the Right to Know Hazardous Substance List.

"Environmental survey" means a written form, [entitled Part I or Part II, as the case may be,] **comprised of the Community Right to Know Survey, and 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 [his] **the** facility. The [environmental survey] **Community Right to Know Survey** is incorporated into the Right to Know Survey.

...

"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.-7. (No change.)

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[.];

10. Materials gathered as evidence by a law enforcement agency and maintained in an evidence locker or room;

11. Hazardous 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.

...

"Local Emergency Planning Committee" means a committee formed pursuant to Title III of the Federal Superfund Amendments and Reauthorization Act.

...

"Pilot plant" means pilot facility as that term is defined at N.J.S.A. 13:1D.

...

"Public employee" means any paid full-time or part-time salaried, seasonal or hourly worker of a covered public employer, and shall include volunteer firefighters and volunteers who work for a covered public employer.

...

"Research and development **(R&D)** 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, in which hazardous substances**, in the case of public employers,** or environmental hazardous substances**, in the case of private employers,** are used by or under the direct supervision of a technically qualified person. **For the purpose of reporting on the Right to Know Survey and labeling,** ["Primarily"] **"primarily"** means greater than 50 percent.

...

"Superfund Amendments and Reauthorization Act" or "SARA" means the Federal Act (PL 99-499) establishing the "Emergency Planning and Community Right to Know Act of 1986" at Title III (42 USC 11001).

"Technically qualified person" means

1. [A] **For training purposes, a** person who is a registered nurse **or a Certified Industrial Hygienist,** or has a bachelor's degree **or higher** 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] **For training purposes, 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.-4. (No change.)

5. [A] **For training purposes, a** person who has received certification pursuant to N.J.A.C. 8:59-12[.];

6. In a research and development laboratory, a person who has a bachelor's degree in industrial hygiene, environmental science, chemistry, or a related field, and understands the health risks associated with exposure to the hazardous substances used in the research and development laboratory.

...

"Trade secret docket number" means a code number temporarily or permanently assigned to the identity of information on the [environmental survey] **Community Right to Know Survey or Release and Pollution Prevention Report** by the Department of Environmental Protection.

8:59-2.2 Completion of Right to Know Survey

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

(e) If a public employer does not know the chemical name and Chemical Abstracts Service number of the components of a substance, mixture, or intermediate, at the time of receipt of the annual Right to Know survey, it shall make a good faith effort to obtain this information from the manufacturer or supplier. **A good faith effort shall consist of two contacts by letter and/or documented phone call to the manufacturer or supplier.** The public employer shall maintain **this** written documentation of its good faith effort.

(f)-(i) (No change.)

8:59-5.1 General provisions

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

(c) Every container at an employer's facility shall bear a label indicating the chemical name and Chemical Abstracts Service number of all hazardous substances in the container, and all other substances which are among the five most predominant substances in the container, or the trade secret registry number assigned to the substance. This is commonly referred to as "universal labeling." Common names specified in N.J.A.C. 8:59-5.7 may be substituted for the chemical name of the substance. **If an employer does not know the chemical name and Chemical Abstracts Service number of the components in a container, it shall make a good faith effort to obtain this information from the manufacturer or supplier. A good faith effort shall consist of two contacts by letter and/or documented phone call to the manufacturer or supplier. The employer shall maintain this written documentation of its good faith effort.**

(d)-(q) (No change.)

8:59-10.1 General provisions

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

(c) The absence of any substance from the Special Health Hazard Substance List shall not imply that a substance is not carcinogenic, mutagenic, teratogenic, flammable, reactive/explosive, or corrosive. Such absence, or the provision [or] **of** any information by an employer to an employee or any other person pursuant to the provisions of the Act, shall not in any way affect any other liability of an employer with regard to safeguarding the health and safety of an employee or any other person exposed to the substance, nor shall it affect any other duty or responsibility of an employer to [worn] **warn** ultimate users of a substance of any potential special health hazards associated with the use of the substance pursuant to the provisions of any law or rule or regulation adopted pursuant thereto.

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

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, **regardless of whether he pays employees,** in the State, engaged in business operations[, including an owner/operator with no employees, which has] **having** 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 **473—Arrangement of Transportation of Freight and Cargo,** 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] **Parking**, 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.

RULE ADOPTIONS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Investments

Adopted New Rules: N.J.A.C. 3:11

Proposed: May 16, 1994 at 26 N.J.R. 1909(a).
Adopted: June 20, 1994 by Elizabeth Randall, Commissioner, Department of Banking.
Filed: June 24, 1994 as R.1994 d.377, **without change.**

Authority: N.J.S.A. 17:2-10; 17:9A-24.13, 25(12), 25.3, 26(7), 60, 62H, and 182.1 through 182.2.

Effective Date: July 18, 1994.
Expiration Date: July 18, 1999.

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

Full text of the adopted new rules can be found in the New Jersey Administrative Code at N.J.A.C. 3:11.

Full text of the adopted amendments follows:

3:11-1.1 Approval to exceed 10 percent limitation

(a) (No change.)

(b) Persons which may become liable to a bank or obligations in which a bank may invest in excess of 10 percent, but not in excess of 25 percent of the capital funds of such bank subject to the exercise of prudent banking judgment.

1. A list of such obligations as the Commissioner may from time-to-time prescribe shall be kept on file in the office of the Commissioner of Banking.

i. The following is the current listing of obligations subject to the provisions of this paragraph:

(1)-(7) (No change.)

(8) Port Authority of New York and New Jersey (secured by general reserve fund only).

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

3:11-2.1 Exclusion from liabilities of controlling corporation

(a) (No change.)

(b) A list of subsidiaries approved under the above subsection follows:

1. General Motors Acceptance Corporation; and
2. Sears Roebuck Acceptance Corporation.

(b)

DIVISION OF REGULATORY AFFAIRS

Mutual Holding Companies

Adopted New Rules: N.J.A.C. 3:13-5 and 3:32-3

Proposed: March 7, 1994 at 26 N.J.R. 1213(a).
Adopted: June 20, 1994 by Elizabeth Randall, Commissioner, Department of Banking.
Filed: June 23, 1994 as R.1994 d.373, **without change.**

Authority: N.J.S.A. 17:1-8, 17:1-8.1, 17:9A-8.1 et seq., 17:9A-382 et seq. and 17:12B-319.

Effective Date: July 18, 1994.
Expiration Date: January 21, 1997, N.J.A.C. 3:13;
November 1, 1998, N.J.A.C. 3:32.

Summary of Public Comments and Agency Responses:

The Department received comments from the following persons:

Samuel J. Damiano, President, New Jersey Council of Savings Institutions, and

Robert M. Jaworski, Esq., Reed Smith Shaw & McClay.

COMMENT: A provision of the proposed rules, N.J.A.C. 3:13-5.7(b), provides that the Commissioner may, if he or she deems the surplus held by a mutual savings bank holding company to be excessive, order the savings bank holding company to distribute the surplus to the depositors of its subsidiary capital stock savings bank. This may be inconsistent with existing law.

RESPONSE: This provision is merely a restatement of N.J.S.A. 17:9A-395, which specifically authorizes the Commissioner to order a distribution to depositors if the surplus is in excess of the amount required for the operations of the mutual savings bank holding company or to maintain the safety and soundness of the mutual savings bank holding company.

COMMENT: N.J.A.C. 3:13-5.5(a) provides that the board of directors of a mutual savings bank holding company shall be managed by a board of not less than six nor more than 21 directors. This may be inconsistent with recently revised statutes lowering the required number of board members for a State chartered savings bank to five.

RESPONSE: P.L. 1992, c.187, amended N.J.S.A. 17:9A-188 to provide that a savings bank be managed by not less than five managers. However, this law did not change the number of directors required of a mutual savings bank holding company. The statute still provides for a minimum of six directors of a mutual savings bank holding company (see N.J.S.A. 17:9A-392).

COMMENT: The Summary to the rules states that a mutual savings bank holding company is owned by the depositors of the depository or depositories controlled by the holding company. Since this proposal, there has been much discussion, independent from these rules, regarding the ownership of a mutual savings bank. It has been the consensus that a mutual savings bank is owned by the managers or directors. Accordingly, it is suggested that the Summary be changed to reflect that the holding company is owned by the directors as fiduciaries for the depositors.

RESPONSE: The rules themselves, apart from the Summary, do not indicate who owns a mutual savings bank holding company or a mutual savings bank. Further, it was not intended that the Summary or these rules conclusively answer that issue. Accordingly, no change is made based on this comment.

Statutory law provides that, upon the formation of a mutual savings bank holding company, depositors of the organizing mutual savings bank retain the same interests in the assets of the mutual savings bank holding company as they had in the organizing mutual savings bank (see: N.J.S.A. 17:9A-396). These rules are not intended to expand on those interests.

Full text of the adoption follows:

SUBCHAPTER 5. MUTUAL SAVINGS BANK HOLDING COMPANIES

3:13-5.1 Definitions

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

"Board of directors" may be used to mean "board of managers."

"Capital stock savings bank" means any savings bank chartered pursuant to the provisions of P.L. 1982, c.9 (N.J.S.A. 17:9A-8.1 et seq.).

"Commissioner" means the Commissioner of the Department of Banking.

"Department" means the New Jersey Department of Banking.

"Director" may be used to mean "manager" or "trustee."

"Organizing mutual savings bank" means a mutual savings bank which has its principal office of business in this State, the board of directors of which propose to form a mutual savings bank pursuant to this subchapter.

"Mutual savings bank holding company" means a mutual savings bank holding company formed pursuant to N.J.S.A. 17:9A-382 et seq., which has its principal office of business in this State.

"Subsidiary capital stock savings bank" means a capital stock savings bank which has been incorporated by the directors of a mutual savings bank holding company, a majority of the stock of which subsidiary capital stock savings bank is held by a mutual savings bank holding company.

3:13-5.2 Formation of mutual savings bank holding company

(a) The board of directors of an organizing mutual savings bank may apply to the Commissioner to form a mutual savings bank holding company in any of the following ways:

1. Plan 1: The board of directors may apply to incorporate a mutual savings bank holding company, transfer a portion of the organizing mutual savings bank's assets to the holding company, and then convert the organizing mutual savings bank to a subsidiary capital stock savings bank;

2. Plan 2: The board of directors may apply to incorporate a mutual savings bank holding company, form a subsidiary capital stock savings bank, and either merge the organizing mutual savings bank into the subsidiary capital stock savings bank or sell or transfer the assets and liabilities of the organizing mutual savings bank to the subsidiary capital stock savings bank and liquidate the organizing mutual savings bank;

3. Plan 3: The board of directors may apply to form a mutual savings bank holding company by incorporating a subsidiary capital stock savings bank, and by transferring a substantial part of the assets and liabilities of the organizing mutual savings bank to the newly formed subsidiary capital stock savings bank in return for a majority of its capital stock; or

4. Any other method of reorganization approved by the Commissioner.

3:13-5.3 Application

(a) The board of directors of an organizing mutual savings bank may apply to form a mutual savings bank holding company by submitting the following to the Commissioner:

1. A description of the proposed formation of the mutual savings bank holding company;

2. A certified copy of the resolution of the board of directors of the organizing mutual savings bank authorizing the application by a ⅔ vote of the board;

3. A certificate of incorporation for the mutual savings bank holding company containing:

i. The name by which the mutual savings bank holding company shall be known;

ii. The street, street number, and municipality where the principal office of the mutual savings bank holding company is to be located;

iii. The names and addresses of the directors of the organizing mutual savings bank;

iv. The number of directors of the mutual savings bank holding company;

v. The names of persons who are to act as directors of the mutual savings bank holding company until their successors are elected and qualified;

vi. The amount of capital deposits and surplus which are to be transferred from the organizing mutual savings bank to the mutual savings bank holding company;

vii. A provision allowing for the retention of any interests of the respective depositors of the organizing mutual savings bank in the assets of the organizing mutual savings bank, according to a fair valuation, including assets which are proposed to be transferred from the organizing mutual savings bank to the mutual savings bank holding company; and

viii. A provision providing for the establishment of a liquidation account;

4. Biographical statements for each director of the subsidiary capital stock savings bank and mutual savings bank holding company;

5. A completed form from the New Jersey State Police requesting criminal history record information for each director for the subsidiary capital stock savings bank and mutual savings bank holding company;

6. Proposed by-laws of the subsidiary capital stock savings;

7. A business plan for the mutual savings bank holding company and subsidiary capital stock savings bank;

8. A copy of any applications for establishment of a mutual savings bank holding company filed with any Federal regulator; and

9. An application fee of $10,000.

(b) Within 60 days after its execution, the directors shall submit a certificate of incorporation for any subsidiary capital stock savings bank setting forth the following:

1. The name by which the subsidiary capital stock savings bank shall be known;

2. The street, street number and municipality in which the principal office of the subsidiary capital stock savings bank is to be located;

3. The names and addresses of the directors of the mutual savings bank holding company who will be the incorporators of the subsidiary capital stock savings bank;

4. The number of directors on the board of directors;

5. The names of the persons who will serve as directors until their successors are elected and qualified;

6. The amount of capital stock, the number or shares into which it is divided, and the par value of each share, not less than a majority of the total outstanding shares of which will be held in the name of the mutual savings bank holding company; and

7. The amount of surplus with which the subsidiary capital stock savings bank will commence business.

(c) Along with the certificate of incorporation, each incorporator of the subsidiary capital stock savings bank shall submit an affidavit setting forth the following:

1. That no fee, commission, or other compensation has been paid, directly or indirectly, by the mutual savings bank holding company or by the subsidiary capital stock savings bank in the course of organizing the subsidiary capital stock savings bank, and that no promotion fees or charges have been provided or are contemplated;

2. A complete disclosure of all fees paid or agreed to be paid in the matter of chartering and organizing the proposed subsidiary capital stock savings bank;

3. That at least a majority of the shares of the authorized stock of the subsidiary capital stock savings bank is held by the mutual savings bank holding company; and

4. That the subsidiary capital stock savings bank proposes to either:

i. Merge with the organizing mutual savings bank;

ii. Purchase the assets of the organizing mutual savings bank; or

iii. Receive the assets and liabilities of the organizing mutual savings bank.

(d) Within 10 days after the date upon which a completed application is filed with the Commissioner, the applicant shall cause to be published a notice of application containing:

1. The name and address of the applicant;

2. A brief statement of the nature of the application; and

3. A statement advising that objections to the application can be filed with the New Jersey Commissioner of Banking, along with the address of the Commissioner.

3:13-5.4 Approval of application

(a) The Commission shall approve the application for a mutual savings bank holding company upon a finding of the following factors:

1. The establishment of a mutual savings bank holding company is in the best interests of the depositors of the mutual savings bank;

2. The qualifications, experience and character of the proposed officers and directors of the mutual savings bank holding company are sufficient to result in the successful operation of the mutual savings bank holding company;

3. The interests of the public will be served by the establishment of a mutual savings bank holding company;

4. The mutual savings bank holding company is adequately capitalized; and

5. The establishment of the mutual savings bank holding company meets the requirements of law.

(b) The Commissioner shall approve the charter application of a subsidiary capital stock savings bank filed with an application for a mutual savings bank holding company upon a finding of the following factors:

1. The qualifications, experience and character of the proposed officers and directors of the subsidiary capital stock savings bank

are sufficient to result in the successful operation of the subsidiary capital stock savings bank;

2. The interests of the public will be served by the establishment of the subsidiary capital stock savings bank; and

3. The capital stock of the subsidiary capital stock savings bank is in accordance with the amount required for banks pursuant to N.J.S.A. 17:9A-4.

3:13-5.5 Board of directors

(a) The board of directors of a mutual savings bank holding company shall be managed by a board of not less than six nor more than 21 directors.

(b) Directors of a mutual savings bank holding company shall be elected by a plurality of the members of the board of the mutual savings bank holding company at the annual meeting for a term of up to three years, as provided in the bylaws.

(c) A vacancy on the board of directors may be filled by a plurality of the members of the board of directors for the remainder of the unexpired term. If the board fails to fill a vacancy for one year, the Commissioner may appoint a member to the board.

(d) Directors of a mutual savings bank holding company may be paid reasonable compensation. The compensation paid to directors shall be fixed by a majority vote of the board. The Commissioner may direct that the amount of compensation paid to directors be reduced if it is deemed to be excessive. The Commissioner shall consider the duties, experience, education and responsibilities of the director, and any other relevant factors, when making this determination.

3:13-5.6 Officers

(a) The board of directors of a mutual savings bank holding company at the first meeting following each annual meeting may elect a Chairman of the Board and shall elect a President, both of whom shall be directors. The board of directors shall select the Chairman of the Board, President or another officer who is a director to be the chief executive officer. The board of directors shall also appoint a Secretary and a Treasurer, neither of whom need be directors.

(b) A mutual savings bank holding company may pay its officers any reasonable compensation as may be from time to time fixed by the board of directors. The Commissioner may direct that the amount of compensation paid to officers be reduced if it is deemed to be excessive. The Commissioner shall consider the duties, experience, education and responsibilities of the officer, and any other relevant factors, when making this determination.

3:13-5.7 Division of surplus

(a) The board of a mutual savings bank holding company may, by a majority vote of the directors, divide any surplus which is in excess of the amount required for the operations of the mutual savings bank holding company and which is not necessary to maintain the safety and soundness of the mutual savings bank holding company, and may distribute this surplus to the depositors of its subsidiary capital stock savings bank or banks. All such distributions shall be made equitably based on the amount deposited by each depositor in the subsidiary capital stock savings bank or banks.

(b) The Commissioner may, if he or she deems the surplus held by a mutual savings bank holding company to be excessive, either upon petition or on the Commissioner's own initiative, order the savings bank holding company to distribute the surplus to the depositors of its subsidiary capital stock savings bank or banks.

SUBCHAPTER 3. MUTUAL STATE ASSOCIATION HOLDING COMPANIES

3:32-3.1 Definitions

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

"Capital stock state association" means any association chartered pursuant to the provisions of P.L.1974, c.137 (N.J.S.A. 17:12B-244 et seq.).

"Commissioner" means the Commissioner of the Department of Banking.

"Department" means the New Jersey Department of Banking.

"Mutual state association" means a mutual association which has its principal place of business in this State.

"Mutual state association holding company" means a mutual state association holding company which has its principal office of business in this State and which has been formed by a mutual state association pursuant to N.J.S.A. 17:12B-298 through N.J.S.A. 17:12B-318.

"Organizing mutual state association" means a mutual state association which has its principal office or business in this State, the board of directors of which propose to form a mutual state association holding company pursuant to the provisions of this subchapter.

"State association" means any savings and loan association or any corporation, however named, now or hereafter chartered pursuant to P.L.1963, c.144 (N.J.S.A. 17:12B-1 et seq.).

"Subsidiary capital stock state association" means a capital stock state association which has been incorporated by the directors of a mutual state association holding company, a majority of the stock of which subsidiary capital stock state association is held by a mutual state association holding company.

3:32-3.2 Formation of mutual state association holding company

(a) The board of directors of an organizing mutual state association may apply to the Commissioner to form a mutual state association holding company in any of the following ways:

1. Plan 1: The board of directors may apply to incorporate a mutual state association holding company, transfer a portion of the organizing mutual state association's assets to the mutual state association holding company, and then convert the organizing mutual state association to a capital stock state association;

2. Plan 2: The board of directors may apply to incorporate a mutual state association holding company, form a subsidiary capital stock state association, and either merge the organizing mutual state association into the capital stock state association or sell or transfer the assets and liabilities of the organizing mutual state association to the capital stock state association and liquidate the organizing mutual state association;

3. Plan 3: The board of directors may apply to form a mutual state association holding company by incorporating a subsidiary capital stock state association, and by transferring a substantial part of the assets and liabilities of the organizing mutual state association to the newly formed capital stock state association in return for a majority of its capital stock; or

4. Any other method of reorganization approved by the Commissioner.

3:32-3.3 Application

(a) The board of directors of an organizing mutual state association may apply to form a mutual state association holding company by submitting the following to the Commissioner:

1. A description of the proposed formation of the mutual state association holding company;

2. A certified copy of the resolution of the board of directors of the organizing mutual state association authorizing the application by a ⅔ vote of the board.

3. A certificate of incorporation for the mutual state association holding company containing:

i. The name by which the mutual state association holding company shall be known;

ii. The street, street number, and municipality where the principal office of the mutual state association holding company is to be located;

iii. The names and addresses of the directors of the organizing mutual state association;

iv. The number of directors of the mutual state association holding company;

v. The names of persons who are to act as directors of the mutual state association holding company, until their successors are elected and qualified;

vi. The amount of capital deposits and surplus which are to be transferred from the organizing mutual state association to the mutual state association holding company;

vii. A provision allowing for the retention of any interests of the respective depositors of the organizing mutual state association in the assets of the organizing mutual state association, according to a fair valuation, including assets which are proposed to be transferred from the organizing mutual state association to the mutual state association holding company; and

viii. A provision providing for the establishment of a liquidation account;

4. Biographical statements for each director of the subsidiary capital stock state association and mutual state association holding company;

5. A completed form from the New Jersey State Police requesting criminal history record information for each director of the subsidiary capital stock state association and mutual state association holding company;

6. Proposed by-laws of the subsidiary capital stock state association and mutual state association holding company;

7. A business plan for the subsidiary capital stock state association and mutual state association holding company;

8. A copy of any applications for establishment of a mutual state association holding company filed with any Federal regulator; and

9. An application fee of $10,000.

(b) Within 60 days after its execution, the directors shall submit a certificate of incorporation for any subsidiary capital stock state association setting forth the following:

1. The name by which the subsidiary capital stock state association shall be known;

2. The street, street number and municipality in which the principal office of the subsidiary capital stock state association is to be located;

3. The names and addresses of the directors of the mutual state association holding company who will be the incorporators of the subsidiary capital stock state association;

4. The number of directors on the board of directors;

5. The names of the persons who will serve as directors until their successors are elected and qualified;

6. The amount of capital stock, the number or shares into which it is divided, and the par value of each share, not less than a majority of the total outstanding shares of which will be held in the name of the mutual state association holding company; and

7. The amount of surplus with which the subsidiary capital stock state association will commence business.

(c) Along with the certificate of incorporation, each incorporator of the subsidiary capital stock state association bank shall submit an affidavit setting forth the following:

1. That no fee, commission, or other compensation has been paid, directly or indirectly, by the mutual state association holding company or by the subsidiary capital stock state association in the course of organizing the subsidiary capital stock state association, and that no promotion fees or charges have been provided or are contemplated;

2. A complete disclosure of all fees paid or agree to be paid in the matter of chartering and organizing the proposed subsidiary capital stock state association;

3. That at least a majority of the shares of the authorized stock of the subsidiary capital stock state association is held by the mutual state association holding company; and

4. That the subsidiary capital stock state association proposes to either:

i. Merge with the organizing mutual state association;

ii. Purchase the assets of the organizing mutual state association; or

iii. Receive the assets and liabilities of the organizing mutual state association.

(d) Within 10 days after the date upon which a completed application is filed with the Commissioner, the applicant shall cause to be published a notice of application containing:

1. The name and address of the applicant;

2. A brief statement of the nature of the application; and

3. A statement advising that objections to the application can be filed with the New Jersey Commissioner of Banking, along with the address of the Commissioner.

3:32-3.4 Approval of application

(a) The Commissioner shall approve the application for a mutual state association holding company upon a finding of the following factors:

1. The establishment of a mutual state association holding company is in the best interests of the depositors of the mutual state association;

2. The qualifications, experience and character of the proposed officers and directors of the mutual state association holding company are sufficient to result in the successful operation of the mutual state association holding company;

3. The interests of the public will be served by the establishment of a mutual state association holding company;

4. The mutual state association holding company is adequately capitalized; and

5. The establishment of the mutual state association holding company meets the requirements of law.

(b) The Commissioner shall approve the charter application of a subsidiary capital stock state association filed with an application for a mutual state association holding company upon a finding of the following factors:

1. The qualifications, experience and character of the proposed officers and directors of the subsidiary capital stock state association are sufficient to result in the successful operation of the subsidiary capital stock state association;

2. The interests of the public will be served by the establishment of the subsidiary capital stock state association; and

3. The capital stock of the subsidiary capital stock state association is in accordance with the amount required for state associations pursuant to N.J.S.A. 17:12B-248.

3:32-3.5 Board of directors

(a) The board of directors of a mutual state association holding company shall be managed by a board of not less than six nor more than 21 directors.

(b) Directors of a mutual state association holding company shall be elected by a plurality of the members of the board of the mutual association holding company at the annual meeting for a term of up to three years, as provided in the bylaws.

(c) A vacancy on the board of directors may be filled by a plurality of the members of the board of directors for the remainder of the unexpired term. If the board fails to fill a vacancy for one year, the Commissioner may appoint a member to the board.

(d) Directors of a mutual association holding company may be paid reasonable compensation. The compensation paid to directors shall be fixed by a majority vote of the board. The Commissioner may direct that the amount of compensation paid to directors be reduced if it is deemed to be excessive. The Commissioner shall consider the duties, experience, education and responsibilities of the director, and any other relevant factors, when making this determination.

3:32-3.6 Officers

(a) The board of directors of a mutual state association holding company at the first meeting following each annual meeting may elect a Chairman of the Board and shall elect a President, both of whom shall be directors. The board of directors shall select the Chairman of the Board, President or another officer who is a director to be the chief executive officer, and may elect a Secretary and a Treasurer, neither of whom need be directors.

(b) A mutual state association holding company may pay its officers any reasonable compensation as may be from time to time fixed by the board of directors. The Commissioner may direct that the amount of compensation paid to officers be reduced if it is deemed to be excessive. The Commissioner shall consider the duties, experience, education and responsibilities of the officer, and any other relevant factors, when making this determination.

3:32-3.7 Division of surplus

(a) The board of a mutual state association holding company may, by a majority vote of the directors, divide any surplus which is in excess of the amount required for the operations of the mutual state association holding company and which is not necessary to maintain the safety and soundness of the mutual state association holding company, and may distribute this surplus to the depositors of its subsidiary capital stock state association or associations. All such distributions shall be made equitably based on the amount deposited by each depositor in the mutual state association or associations.

(b) The Commissioner may, if he or she deems the surplus held by a mutual state association holding company to be excessive, either upon petition or on the Commissioner's own initiative, order the state association holding company to distribute the surplus to the depositors of the subsidiary capital stock state association or associations.

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Health Maintenance Organizations

Adopted New Rules: N.J.A.C. 8:38-1 through 3

Proposed: April 18, 1994 at 26 N.J.R. 1624(a).
Adopted: June 17, 1994 by Leonard Fishman, Acting Commissioner of Health (with approval of the Health Care Administration Board).
Filed: June 17, 1994 as R.1994 d.365, **without change.**

Authority: N.J.S.A. 26:2J-1 et seq.

Effective Date: July 18, 1994.
Expiration Date: July 18, 1997.

Summary of Public Comments and Agency Responses:

The Department of Health received three written comments. The commenters include the Division of Mental Health and Hospitals, the New Jersey Optometric Association, and Scott Krasny (Furlong and Krasny), writing as legal counsel to the New Jersey Podiatric Medical Society.

COMMENT: The New Jersey Optometric Association wrote in support of adoption of the rules and also expressed their interest in serving on the advisory group to be convened by the Department.

RESPONSE: The Department appreciates the commenter's support and interest in assisting the Department in the development of rules that reflect contemporary managed care issues. Decisions on membership have not yet been made, as the committee will be convened later in 1994.

COMMENT: Mr. Krasny commented that the rules fail to assure enrollees a choice of health care practitioners and requested inclusion of language to allow enrollees the choice to have services provided by a licensed podiatrist, unless such services are medically required or outside the scope of practice of podiatry.

RESPONSE: The Department acknowledges the commenter's concern and anticipates that the issue of provider choice will be given consideration during the development of new rules. The suggested new language represents a substantive change to the rules, requiring additional publication and opportunity for public comment. Consequently, the Department is unable to amend the rules as requested at this time.

COMMENT: The Division of Mental Health and Hospitals commented that the rules should explicitly require health maintenance organizations to develop a network of care which ensures appropriate geographic and clinical access for all levels of covered care. The commenter is particularly concerned about the care of persons with mental health treatment needs and cited several examples of difficulties encountered by enrollees accessing such services.

RESPONSE: The Department concurs that access and availability of services are critical components of any health care delivery system. The Department acknowledges the concerns raised by the commenter and will include access to mental health services as an issue for discussion by the advisory committee.

Full text of the adopted new rules can be found in the New Jersey Administrative Code at N.J.A.C. 8:38-1 through 3.

(b)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Acoholism Treatment Facilities Standards for Licensure

Readoption: N.J.A.C. 8:42A

Proposed: April 18, 1994 at 26 N.J.R. 1625(a).
Adopted: June 17, 1994, by Leonard Fishman, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: June 17, 1994, as R.1994 d.366, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: June 17, 1994.
Expiration Date: June 17, 1999.

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. 8:42A.

(c)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Rehabilitation Hospitals Standards for Licensure

Readoption: N.J.A.C. 8:43H

Proposed: April 18, 1994 at 26 N.J.R. 1628(a).
Adopted: June 17, 1994 by Leonard Fishman, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: June 17, 1994, as R.1994 d.367, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: June 17, 1994.
Expiration Date: June 17, 1999.

Summary of Public Comments and Agency Responses:

The Department received five letters of comment in response to the proposal. These included letters from representatives of the New Jersey Hospital Association, Kessler Rehabilitation Corporation, JFK Johnson Rehabilitation Institute, Bacharach Rehabilitation Hospital, and the New Jersey Recreation and Park Association.

COMMENT: Three of the commenters supported the readoption of the rules to avert their expiration pursuant to the sunset provision of Executive Order No. 66(1978). Both the Hospital Association and the Kessler commenters supported the convening of an advisory committee to discuss appropriate changes to N.J.A.C. 8:43H, and asked that representatives from the NJHA Physical Rehabilitation Service Committee and from Kessler participate if such a committee is formed. The commenter from Kessler indicated that the regulations concerning licensure and certificate of need of rehabilitation hospitals "provide clear definitions for personnel requirements and service delivery." However, the Kessler commenter believes that "there is a need to integrate these standards to ensure consistency with other licensure/CON regulations (e.g. long-term care and ambulatory care regulations) where there currently is ambiguity regarding service delivery and staffing requirements." The commenter from JFK-Johnson Rehabilitation Institute also strongly supported "the need to convene an advisory board to discuss necessary changes and recommend amendments that would better reflect current practice patterns and philosophies." JFK requested that a time table not to exceed one year from the readoption be established for amending the rules. The commenter from Bacharach offered support for and

assistance with "review and revision of any standards that would lead to increased cost effectiveness, integration of services and maintenance of quality care by accredited and licensed rehabilitation centers."

RESPONSE: The Department appreciates the contributions which were made by representatives from the New Jersey Hospital Association, Kessler, JFK Johnson Rehabilitation Institute, and Bacharach Rehabilitation Hospital to the New Jersey Comprehensive Rehabilitation Advisory Committee which was convened in 1989 by the Department. This Committee had been charged with the responsibility to make recommendations regarding revised Certificate of Need rules and licensure rules. The Department believes that the current rules have functioned effectively to assure patient safety and to promote high quality care in New Jersey's licensed rehabilitation hospitals. If a new advisory committee is formed to reassess these standards, the Department will certainly incorporate representation from providers of rehabilitation services in New Jersey. Any advisory committee which may be formed would review both the current licensure rules for rehabilitation hospitals and licensure rules regarding rehabilitation in other health care facilities in order to assure consistency among licensure rules. Although the Department will not convene a committee to specifically reassess rehabilitation hospital standards at this time, issues concerning rehabilitation hospitals will be addressed as it continues to evaluate regulatory priorities, quality and access to services during the coming year.

COMMENT: The New Jersey Recreation and Park Association recommended that N.J.A.C. 8:43H-1.20, Qualifications of recreational therapists, be revised to include the eligibility standards established by the National Council for Therapeutic Recreation Certification. In addition, the Association recommended that N.J.A.C. 8:43H-14.1, Provision of recreational therapy services, include language to allow that the recreational therapist be "provided with the opportunity to treat the patient on an individual basis in order to assist the patient to realize and adjust the leisure activities in their lives to their new abilities," by helping the patient to locate barrier free facilities, day programming, or community organizations as an alternative to dependence on health care facilities.

RESPONSE: The Department appreciates the comments from the Recreation and Park Association, and agrees with the Association that recreational services should be provided by qualified individuals who can assist patients to develop leisure activities which will enhance their lives following discharge. However, the Department allows individual Rehabilitation Hospitals some flexibility to choose the best qualified persons to function as recreational therapists. The Department is not at this time enumerating any of the national certifying associations in its specification of minimum educational and experiential requirements for recreational therapists. N.J.A.C. 8:43H-14.1 requires that each patient be provided with a planned, diversified program of recreational activities. The rules do not preclude provision of recreational services on an individual basis, if appropriate. Each patient's recreational therapy plan is developed as part of the multidisciplinary treatment plan, based on assessments of his or her needs by the multidisciplinary team and the recreational therapist, in accordance with N.J.A.C. 8:43H-7.1 and 14.3. The Department believes that this multidisciplinary approach to care planning will encourage and help patients to access available community services and to develop life skill activities as part of their goals to achieve maximum levels of functioning. Therefore, no changes have been made to the rules.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:43H.

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: May 2, 1994 at 26 N.J.R. 1821(a).

Adopted: June 14, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.

Filed: June 21, 1994 as R.1994 d.368, **with portions of the proposal not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: July 18, 1994.

Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:

The Drug Utilization Review Council received the following comments pertaining to the products affected by this adoption.

COMMENT: From Wyeth-Ayerst Laboratories, in opposition to the syntex levonorgestrel with ethinyl estradiol tablets:

Wyeth-Ayerst raised concern of the criteria utilized by the Council (and the FDA) to determine bioequivalency. It is suggested that since mean data is evaluated, there is a potential for problems for subjects with high or low values. Wyeth-Ayerst argued that since the testing design allows for a 20 percent range of variability for brand, which is used as a reference, a lower range accepted brand could potentially allow for a subtherapeutic generic to pass the criteria. It was also contended that supratherapeutic generics could be accepted as bioequivalent, if a brand at the upper acceptable range was utilized. Wyeth-Ayerst concluded that sub- or supra-therapeutic generics would defeat the premise of cost containment with therapeutic failures, which cause expenditures for abortion or child delivery and rearing.

Wyeth-Ayerst suggested that compliance would be negatively impacted by the change in appearance of the oral contraceptive packaging. Wyeth-Ayerst informed the Council of patient education and counseling services provided to patients taking the brand, Nordette, which increases compliance and potentially reduces sexually transmitted diseases.

RESPONSE: The Council deferred taking action to further study the bioequivalency data and comment.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on May 23, 1994. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. Seven persons attended the hearing. One comment was offered as summarized above. The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted** in accordance to the reformatting of N.J.A.C. 8:71 which follows a standardized format for each drug product listed:

The name of the substituted brand name drug:
The generic name of the drug product:
The strength of the drug product:
The dosage delivery system of the drug product (for example, cream, capsule, tablet):
The name of the generic drug's manufacturer:

ATARAX
Hydroxyzine HCl
10 mg
Tablet
Royce

ATARAX
Hydroxyzine HCl
25 mg
Tablet
Royce

ATARAX
Hydroxyzine HCl
50 mg
Tablet
Royce

BELLERGAL-S
Belladonna alkaloids/ ergotamine tartrate/ Phenobarbital
0.2/0.6/40 mg
Tablet
Lini

BETAGAN
Levobunolol HCl
0.25%
Ophth solution
Bausch & Lomb

BETAGAN
Levobunolol HCl
0.5%
Ophth solution
Bausch & Lomb

BETAGAN
Levobunolol HCl
0.5%
Ophth solution
Pacific Pharma

CALAN SR
Verapamil HCl
180 mg
Tablet
BASF/Knoll

CALAN SR
Verapamil HCl
240 mg
Tablet
BASF/Knoll

CALAN SR
Verapamil HCl
180 mg
Tablet
Baker

DEMULEN 1/50
Ethynodiol diacetate with ethinyl estradiol
1 mg/50 mcg
Tablet
Watson

DEMULEN 1/35
Ethynodiol diacetate with ethinyl estradiol
1 mg/35 mcg
Tablet
Watson

DURICEF
Cefadroxil
500 mg
Capsule
Zenith

DURICEF
Cefidroxil
1000 mg
Tablet
Zenith

LIQUID PRED
Prednisone
5 mg per 5 ml
Oral solution
Roxane

LIORESAL
Baclofen
10 mg
Tablet
Royce

LIORESAL
Baclofen
20 mg
Tablet
Royce

LOPRESSOR
Metoprolol tartrate
50 mg
Tablet
Bristol-Myers

LOPRESSOR
Metoprolol tartrate
100 mg
Tablet
Bristol-Myers

LURIDE
Sodium fluoride (0.5 mg F)
1.1 mg
Tablet
Amide

LURIDE
Sodium fluoride (1 mg F)
2.2 mg
Tablet
Amide

PERCOCET
Oxycodone HCl with acetaminophen
5/325 mg
Tablet
Dupont Merck

PERCODAN
Oxycodone HCl, oxycodone terephthlate, aspirin
4.5/0.38/325 mg
Tablet
Dupont Merck

PROPINE
Dipivefrin HCl
0.1%
Ophth solution
Pacific Pharma

RYNTATAN
Chlorpheniramine 8 mg, phenylephrine 25 mg, pyrilamine 25 mg (each as the tannate)
Per tablet
Amide

SINEMET
Carbidopa with levodopa
25/100
Tablet
Merck

SINEMET
Carbidopa with levodopa
25/250
Tablet
Merck

SINEMET
Carbidopa with levodopa
10/100
Tablet
Merck

TAGAMET
Cimetidine
200 mg
Tablet
Dupont Pharma

TAGAMET
Cimetidine
300 mg
Tablet
Dupont Pharma

TAGAMET
Cimetidine
400 mg
Tablet
Dupont Pharma

TAGAMET
Cimetidine
800 mg
Tablet
Dupont Pharma

WYTENSIN
Guanabenz acetate
4 mg
Tablet
Watson

WYTENSIN
Guanabenz acetate
8 mg
Tablet
Watson

YOCON
Yohimbine HCl
5.4 mg
Tablet
Royce

The following products and their manufacturers were **not adopted and are still pending**:

Alprazolam tabs 0.25 mg, 0.5 mg, 1 mg, 2 mg	Zenith
Cefaclor capsules 250 mg, 500 mg	Lederle
Cefaclor susp 125 mg/5 ml, 187 mg/5 ml	Lederle
Cefaclor susp 250 mg/5 ml, 375 mg/5 ml	Lederle
Cimetadine 300 mg/2 ml injection	Dupont Pharma
Cimetadine 300 mg/5 ml oral solution	Dupont Pharma
Clobetasol propionate 0.05% cream	Copley
Clobetasol propionate 0.05% ointment	Copley
Diltiazem CD caps 60 mg, 90 mg, 120 mg	Blue Ridge
Diltiazem tabs 30 mg, 60 mg, 90 mg, 120 mg	Mutual
Glipizide tablets 5 mg, 10 mg	Dupont Pharma
Guanabenz acetate tabs 4 mg, 8 mg	Zenith
Hyoscyamine sulfate ER tabs 0.375 mg	Contract
Indapamide tabs 2.5 mg	Zenith
Isoniazid 100 mg, 300 mg tabs	Barr
Materna vitamin tabs substitute	Anabolic
Metoprolol tartrate tabs 50 mg, 100 mg	Copley
Naproxen sodium tabs 275 mg, 550 mg	Purepac
Nordette tabs substitute	Syntex
Pindolol tabs 5 mg, 10 mg	Novopharm
Piroxicam caps 10 mg, 20 mg	Novopharm
Piroxicam caps 10 mg, 20 mg	Zenith
Prenate 90 vitamin tabs substitute	Lini
Sucralfate tablets 1 gm	Blue Ridge
Sulfadiazine tabs 500 mg	Eon
Terfenadine tabs 60 mg	Blue Ridge
Terfenadine/pseudoephrine tabs 60/120	Blue Ridge

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: May 2, 1994 at 26 N.J.R. 1822(a).
Adopted: June 14, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.
Filed: June 21, 1994 as R.1994 d.369, **with portions of the proposal not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: July 18, 1994.
Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:

The Drug Utilization Review Council received the following comments pertaining to the products affected by this adoption.

COMMENT: From Sidmak Laboratories, in opposition to the proposed deletion of its products from the Formulary:

Mr. Arun Kulkarni, representing Sidmak Laboratories, reviewed Sidmak's recent regulatory compliance history. After receiving a warning letter from the FDA concerning cGMPs (current Good Manufacturing Practices), Sidmak responded by providing documentation and enlisting consultants to resolve the issues. Sidmak's cooperation with the FDA has been voluntary and without legal injunction or consent decree. Mr. Kulkarni noted that the FDA recently completed an inspection and approved the control testing of Banner Pharmacaps products at Sidmak. Sidmak's packaging facility also recently received FDA approval. Mr. Kulkarni stated that the favorable results of the FDA's recent inspections will upgrade Sidmak's cGMP compliance status.

RESPONSE: The Council deferred taking action until the next meeting to allow for the resolution of the cGMP noncompliance issues with the FDA or, if necessary, the completion of an inspection, conducted by an independent expert who is approved by the Council, and paid for by the manufacturer, to be completed by August 9, 1994.

COMMENT: From Camall Company, in opposition to the deletion of its products from the Formulary:

Eugene Schmall, representing Camall Company, stated, via telephone, that the issues raised in the latest FDA 483 report were addressed and resolved. Mr. Schmall also noted that the Camall products have not been subject to any recalls. Mr. Schmall is contacting the FDA to resolve the

report of cGMP noncompliance. Camall requested that the Council defer this issue pending the clarification from the FDA on cGMP compliance.

RESPONSE: The Council deferred taking action until the next meeting to allow for the resolution of the cGMP noncompliance issues with the FDA or, if necessary, the completion of an inspection, conducted by an independent expert who is approved by the Council, and paid for by the manufacturer, to be completed by August 9, 1994.

COMMENT: From Biocraft Laboratories, in opposition to the proposed deletion of its products from the Formulary:

Mr. Leonard Bustamante, representing Biocraft Laboratories, submitted a sworn affidavit which reviewed the recent cGMP noncompliance issues and the action taken to resolve them. On May 9, 1994, the FDA initiated a re-inspection of the Biocraft facilities. Biocraft requested that the Council defer action pending the outcome of the FDA's inspection.

RESPONSE: The Council deferred taking action until the next meeting, pending the outcome of this cGMP inspection by the FDA.

COMMENT: From Nutripharm Laboratories, in opposition to the proposed deletion of its Midrin substitute from the Formulary:

Nutripharm forwarded a copy of its recent FDA 483 report and responses in support of retaining its product in the Formulary.

RESPONSE: The Council deferred taking action until the next meeting to allow for the resolution of the cGMP noncompliance issues with the FDA or, if necessary, the completion of an inspection, conducted by an independent expert who is approved by the Council, and paid for by the manufacturer, to be completed by August 9, 1994.

COMMENT: From Bio-Pharm, in opposition to the proposed deletion of its Tigan suppository substitute from the Formulary:

Bio-Pharm forwarded a copy of its recent FDA 483 report and responses in support of retaining its product in the Formulary. Bio-Pharm also noted that no action has been taken against its products by any Federal, State or Municipal agency.

RESPONSE: The Council deferred taking action until the next meeting to allow for the resolution of the cGMP noncompliance issues with the FDA or, if necessary, the completion of an inspection, conducted by an independent expert who is approved by the Council, and paid for by the manufacturer, to be completed by August 9, 1994.

COMMENT: From Ambix Laboratories, in opposition to the proposed deletion of its products from the Formulary:

Ambix stated that it is working with the FDA to meet cGMP compliance.

RESPONSE: The Council deferred taking action until the next meeting to allow for the resolution of the cGMP noncompliance issues with the FDA or, if necessary, the completion of an inspection, conducted by an independent expert who is approved by the Council, and paid for by the manufacturer, to be completed by August 9, 1994.

COMMENT: From Chase Laboratories, in opposition to the proposed deletion of its products from the Formulary:

Chase forwarded a copy of its recent FDA 483 report and responses in support of retaining its product in the Formulary. Chase requested deferral of deletion of its products pending the FDA's re-inspection in the near future.

RESPONSE: The Council deferred taking action until the next meeting to allow for the resolution of the cGMP noncompliance issues with the FDA or, if necessary, the completion of an inspection, conducted by an independent expert who is approved by the Council, and paid for by the manufacturer, to be completed by August 9, 1994.

COMMENT: From Halsey Drug Company, in opposition to the proposed deletion of its products from the Formulary:

Mr. Bernard Sandiford, representing Halsey Drug Company, submitted a sworn affidavit which reviewed the recent cGMP noncompliance issues and the action taken to resolve them. Halsey did not object to the deletion of products that it is no longer manufacturing. Halsey requested that the Council defer taking action on the products it is currently manufacturing pending the outcome of FDA's action.

RESPONSE: The Council deleted those products not being manufactured, based on cGMP issues. For the remaining Halsey products, the Council deferred taking action until the next meeting to allow for the resolution of the cGMP noncompliance issues with the FDA or, if necessary, the completion of an inspection, conducted by an independent expert who is approved by the Council, and paid for by the manufacturer, to be completed by August 9, 1994.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on May 23, 1994. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. Seven persons attended the hearing. Eight comments were offered as summarized above. The hearing officer recommended that the decisions be made based upon the available information and evidence. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study.

The **deletion** of the following products and their manufacturers were **adopted** in accordance to the reformatting of 8:71 which follows a standardized format for each drug product listed:
The name of the substituted brand name drug:
The generic name of the drug product:
The strength of the drug product:
The dosage delivery system of the drug product (for example, cream, capsule, tablet):
The name of the generic drug's manufacturer:

ALDOMET
Methyldopa
125 mg
Tablet
Halsey

ALDOMET
Methyldopa
250 mg
Tablet
Halsey

ALDOMET
Methyldopa
500 mg
Tablet
Halsey

APRESOLINE
Hydralazine HCl
10 mg
Tablet
Richlyn

ATIVAN
Lorazepam
0.5 mg
Tablet
Halsey

ATIVAN
Lorazepam
1 mg
Tablet
Halsey

ATIVAN
Lorazepam
2 mg
Tablet
Halsey

BENADRYL
Diphenhydramine HCl
50 mg
Capsule
Halsey

BUTISOL
Butabarbital sodium
15 mg
Tablet
Halsey

BUTISOL
Butabarbital sodium
30 mg
Tablet
Halsey

DEMEROL
Meperidine
50 mg
Tablet
Halsey

DEMEROL
Meperidine
100 mg
Tablet
Halsey

DIABINESE
Chlorporpamide
100 mg
Tablet
Halsey

DIABINESE
Chlorporpamide
250 mg
Tablet
Halsey

DILAUDID
Hydromorphone HCl
1 mg
Tablet
Halsey

DILAUDID
Hydromorphone HCl
2 mg
Tablet
Halsey

DILAUDID
Hydromorphone HCl
3 mg
Tablet
Halsey

DILAUDID
Hydromorphone HCl
4 mg
Tablet
Halsey

DONNATAL
Belladonna alkaloids with phenobarbital
Tablet
Halsey

EMPIRIN WITH CODEINE
Aspirin with codeine (#2) 15 mg
Tablet
Halsey

EMPIRIN WITH CODEINE
Aspirin with codeine (#3) 30 mg
Tablet
Halsey

EMPIRIN WITH CODEINE
Aspirin with codeine (#4) 60 mg
Tablet
Halsey

EQUANIL
Meprobamate
400 mg
Tablet
Halsey

EQUANIL
Meprobamate
200 mg
Tablet
Richlyn

EQUANIL
Meprobamate
400 mg
Tablet
Richlyn

HYDRODIURIL
Hydrochlorothiazide
25 mg
Tablet
Halsey

HYDRODIURIL
Hydrochlorothiazide
50 mg
Tablet
Halsey

HYDRODIURIL
Hydrochlorothiazide
100 mg
Tablet
Richlyn

INDOCIN
Indomethacin
25 mg
Capsule
Halsey

INDOCIN
Indomethacin
25 mg
Capsule
Halsey

LANOXIN
Digoxin
0.125 mg
Tablet
Halsey

LANOXIN
Digoxin
0.25 mg
Tablet
Halsey

LIBRIUM
Chlordiazepoxide HCl
5 mg
Capsule
Halsey

LIBRIUM
Chlordiazepoxide HCl
10 mg
Capsule
Halsey

LIBRIUM
Chlordiazepoxide HCl
25 mg
Capsule
Halsey

LIBRIUM
Chlordiazepoxide HCl
10 mg
Capsule
Richlyn

LOMOTIL
Diphenoxylate HCl with atropine sulfate
2.5/0.025 mg
Tablet
Halsey

PERIACTIN
Cyproheptadine HCl
4 mg
Tablet
Halsey

REGLAN
Metoclopramide
10 mg
Tablet
Halsey

ROBAXIN
Methocarbamol
500 mg
Tablet
Richlyn

ROBAXIN
Methocarbamol
750 mg
Tablet
Richlyn

TYLENOL WITH CODEINE
Acetaminophen with codeine (#2)
300/15 mg
Tablet
Halsey

TYLENOL WITH CODEINE
Acetaminophen with codeine (#3)
300/30 mg
Tablet
Halsey

TYLENOL WITH CODEINE
Acetaminophen with codeine (#4)
300/60 mg
Tablet
Halsey

VICODIN
Hydrocodone bitartrate 5 mg with Acetominophen 500 mg
Per Tablet
Tablet
Halsey

The deletion of the following products and their manufacturers **was not adopted** and, therefore, the products have been retained in the Formulary:

ANUSOL HC
Hydrocortisone acetate
25 mg
Suppository
Able

AZULFIDINE
Sulfasalazine
0.5 mg
Tablet
Lederle

DISALCID
Salsalate
500 mg
Tablet
Able

DISALCID
Salsalate
750 mg
Tablet
Able

HYDERGINE
Ergoloid mesylate
1.0 mg
Tablet, subling
Sandoz

PYRIDIUM
Phenazopyridine HCl
100 mg
Tablet
Able

PYRIDIUM
Phenazopyridine HCl
200 mg
Tablet
Able

TIGAN
Trimethobenzamide HCl
100 mg
Suppository
Able

TIGAN
Trimethobenzamide HCl
200 mg
Suppository
Able

TRANXENE
Clorazepate dipotassium
3.75 mg
Tablet
Able

TRANXENE
Clorazepate dipotassium
7.5 mg
Tablet
Able

TRANXENE
Clorazepate dipotassium
15 mg
Tablet
Able

TRILISATE
Choline magnesium salicylate
500 mg
Tablet
Able

TRILISATE
Choline magnesium salicylate
750 mg
Tablet
Able

TRILISATE
Choline magnesium salicylate
1 gm
Tablet
Able

The following products and their manufacturers were **deferred, and still pending**:

Ambix:	
Antiprine 54mg, benzocaine 14 mg sol. per ml	Ambix
Hydrocortisone cream 1%, 2.5%	Ambix
Hydrocortisone ointment 1%	Ambix
Biocraft:	
Albuterol sulfate tabs 2 mg, 4 mg	Biocraft
Amiloride HCl, hydrochlorothiazide tabs 5/50 mg	Biocraft
Amitriptyline tabs 10 mg, 25 mg, 50 mg, 75 mg, 100 mg	Biocraft
Amoxicillin as the trihydrate caps 250 mg, 500 mg	Biocraft
Amoxicillin as the trihydrate tabs 250 mg	Biocraft
Amoxicillin as the trihydrate susp 250 mg/5 mg	Biocraft
Amoxicillin as the trihydrate susp 125 mg/5 ml	Biocraft
Ampicillin/ampicillin trihydrate susp 250 mg/5 ml	Biocraft
Ampicillin/ampicillin trihydrate susp 125 mg/5 ml	Biocraft
Ampicillin/ampicillin trihydrate caps 250 mg	Biocraft

Ampicillin/ampicillin trihydrate caps 500 mg	Biocraft
Baclofen tabs 10 mg, 20 mg	Biocraft
Cephalexin susp 125 mg/5 ml, 250 mg/5 ml	Biocraft
Cephalexin caps 250 mg, 500 mg	Biocraft
Cephalexin tabs 250 mg, 500 mg	Biocraft
Cephadrine caps 250 mg, 500 mg	Biocraft
Cephadrine susp 125 mg/5 ml, 250 mg/5 ml	Biocraft
Cinoxacin caps 250 mg, 500 mg	Biocraft
Cloxacillin sodium monohydrate caps 250 mg, 500 mg	Biocraft
Cloxacillin sodium monohydrate syrup 125 mg/5 ml	Biocraft
Dicloxacillin sodium monohydrate caps 250 mg, 500 mg	Biocraft
Disopyramide phosphate caps 100 mg, 150 mg	Biocraft
Hydrocortisone cream 1%	Biocraft
Imipramine HCl tabs 10 mg, 25 mg, 50 mg	Biocraft
Ketoprofen caps 25 mg, 50 mg, 75 mg	Biocraft
Metaproterenol tabs 10 mg, 20 mg	Biocraft
Metaproterenol syrup 10 mg/5 ml	Biocraft
Metaclopramide tabs 10 mg	Biocraft
Metoclopramide syrup 5 mg/5 ml	Biocraft
Minocycline HCl caps 50 mg, 100 mg	Biocraft
Nystatin suspension 100,000u/ml	Biocraft
Penicillin G potassium tabs 200,000u, 400,000u	Biocraft
Penicillin VK tabs 250 mg, 500 mg	Biocraft
Penicillin VK for sol. 125 mg/5 ml, 250 mg/5 ml	Biocraft
Sulfamethoxazole/TMP suspension 200/40 mg per 5 ml	Biocraft
Sulfamethoxazole/TMP tabs 400/80 mg, 800/160 mg	Biocraft
Trimethoprim tabs 100 mg, 200 mg	Biocraft
Biopharm:	
Trimethobenzamide HCl supp 100 mg, 200 mg	Biopharm
Camall:	
Cyproheptadine HCl tabs 4 mg	Camall
Hydrocholothiazide tabs 25 mg, 50 mg	Camall
Meclizine HCl tabs 12.5 mg, 25 mg	Camall
Chase:	
Amantadine HCl caps 100 mg	Chase
Clofibrate caps 500 mg	Chase
Nifedipine caps 10 mg, 20 mg	Chase
Valproic acid caps 250 mg	Chase
Halsey:	
Ephedrine/hydroxyzine/theophylline liq 6.25/2.5/32.5 mg per 5 ml	Halsey
Guaifenesin/codeine/pseudoephedrine liq 100/10/30 mg per 5 ml	Halsey
Homatropine MBr/hydrocodone butartrate syrup 1.5/5 mg per 5 ml	Halsey
Codeine phosphate/guaifenesin liq 10/100 mg per 5 ml	Halsey
Belladonna alkaloids, phenobarbital elixir	Halsey
Cyproheptadine HCl syrup 2 mg/5 ml	Halsey
Diphenhydramine HCl elixir 12.5 mg/5 ml	Halsey
Hydrocodone bitartrate/phenylpropanolamine syrup 2.5/12.5 mg per 5 ml	Halsey
Hydrocodone bitartrate/phenylpropanolamine syrup 5/25 mg per 5 ml	Halsey
Phenylpropanolamine/phenylephrine/guaifenesin liq. 20/5/100 mg per 5 ml	Halsey
Potassium chloride liquid 10%	Halsey
Promethazine HCl syrup 6.25 mg/5 ml	Halsey
Promethazine/codeine syrup 6.25/10 mg per 5 ml	Halsey
Promethazine/phenylephrine syrup 6.25 mg/5 mg per 5 ml	Halsey
Promethazine DM syrup 6.25/15 mg per 5 ml	Halsey
Theophylline/guaifenesin liq 150/90 mg per 15 ml	Halsey
Promethazone/phenylephrine/codeine syrup 6.25/5/10 mg per 5 ml	Halsey
Theophylline elixir 80 mg/15 ml	Halsey
Oxycodone HCl, APAP caps 5/500 mg	Halsey
Oxycodone HCl, APAP tabs 5/235 mg	Halsey
Tetracycline HCl caps 500 mg	Halsey
APAP/butalbital/caffeine tabs 325/50/40 mg	Halsey
Doxycycline hyclate caps 50 mg, 100 mg	Halsey
Nutripharm:	
APAP/dichloralphenazone/isometheptene mucate caps 325/100/65 mg	Nutripharm
Sidmak:	
Albuterol sulfate tabs 2 mg, 4 mg	Sidmak
Amitriptyline tabs 10 mg, 25 mg, 50 mg, 75 mg, 100 mg, 150 mg	Sidmak
Benztropine mesylate tabs 0.5 mg, 1 mg, 2 mg	Sidmak
Bethanechol Cl tabs 5 mg, 10 mg, 25 mg, 50 mg	Sidmak
Chlorpropamide tabs 100 mg, 250 mg	Sidmak
Choline magnesium salicylate tabs 500 mg, 750 mg, 1 g	Sidmak
Cyproheptadine HCl tabs 4mg	Sidmak
Desipramine HCl tabs 25 mg, 50 mg, 75 mg	Sidmak
Dipyridamole tabs 25 mg, 50 mg, 75 mg	Sidmak
Doxycycline hyclate caps 100 mg	Sidmak
Griseofulvin ultramicrosize tabs 165 mg, 330 mg	Sidmak
Hydralazine HCl tabs 10 mg, 25 mg, 50 mg, 100 mg	Sidmak
Hydroxyzine HCl tabs 10 mg, 25 mg, 50 mg	Sidmak
Ibuprofen tabs 400 mg, 600 mg, 800 mg	Sidmak
Indomethacin caps 25 mg, 50 mg	Sidmak
Meclizine HCl tabs 12.5 mg, 25 mg	Sidmak
Methyldopa tabs 125 mg, 250 mg, 500 mg	Sidmak
Metronidazole tabs 250 mg, 500 mg	Sidmak
Nystatin vaginal tabs 100,000u	Sidmak
Oxybutynin Cl tabs 5 mg	Sidmak
Procainamide SR tabs 250 mg, 500 mg	Sidmak
Propranolol tabs 10 mg, 20 mg, 40 mg, 60 mg, 80 mg, 90 mg	Sidmak
Propranolol/hydrochlorothiazide tabs 40/25 mg, 80/25 mg	Sidmak
Salsalate tabs 500 mg, 750 mg	Sidmak
Sulfamethoxazole/TMP tabs 400/80 mg, 800/160 mg	Sidmak
Theophylline tabs 100 mg, 200 mg, 300 mg, 450 mg	Sidmak
Trazodone HCl tabs 50 mg, 100 mg, 150 mg	Sidmak
Verapamil HCl tabs 80 mg, 120 mg	Sidmak

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: March 7, 1994 at 26 N.J.R. 1190(b).

Adopted: June 14, 1994 by the Drug Utilization Review Council, Robert G. Kowalski, Chairman.

Filed: June 21, 1994 as R.1994 d.370, **with portions of the proposal not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: July 18, 1994.

Expiration Date: May 16, 1999.

Summary of Public Comments and Agency Responses:

No comments were received pertaining to the products affected by this adoption.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on March 28, 1994. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. Seven persons attended the hearing. One comment was offered, as summarized in a previous issue of the New Jersey Register (see 26N.J.R. 2025(b)). The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted** in accordance to the reformatting of 8:71 which follows a standardized format for each drug product listed:

The name of the substituted brand name drug:

The generic name of the drug product:

The strength of the drug product:

The dosage delivery system of the drug product (for example, cream, capsule, tablet):
The name of the generic drug's manufacturer:

METHOTREXATE
Methotrexate
2.5 mg
Tablet
Roxane

The following products and their manufacturers were **not adopted and are still pending**:

Albuterol sulfate syrup 2 mg/5 ml	Mova
Atenolol tabs 50 mg, 100 mg	Teva
Carbidopa/levodopa tabs 10/100, 25/100, 25/250	Geneva
Clotrimazole 1% top soln	Lemmon
Dexchlorpheneramine maleate repetabs 4 mg, 6 mg	Amide
Diflunisal tabs 250 mg, 500 mg	Purepac
Diltiazem tabs 30 mg, 60 mg	Novopharm
Diltiazem tabs 30 mg, 60 mg, 90 mg, 120 mg	Teva
Endal HC substitute	Pharm. Assoc.
Gemfibrozil tabs 600 mg	Danbury
Glipizide tabs 5 mg, 10 mg	Danbury
Glipizide tabs 5 mg, 10 mg	Mylan
Levothyroxine sodium tabs 137 mcg	Rhone Poulenc
Metoclopramide tabs 5 mg	Biocraft
Metoprolol tartrate tabs 50 mg, 100 mg	Novopharm
Metoprolol tartrate tabs 50 mg, 100 mg	Teva
Naproxen tabs 250 mg, 375 mg, 500 mg	Roxane
Naproxen susp 125 mg/5 ml	Roxane
Naproxen sodium tabs 275 mg, 550 mg	Roxane
Nortriptyline HCl caps 10 mg, 25 mg, 50 mg, 75 mg	Lemmon
Oxazepam caps 10 mg, 15 mg, 30 mg	Geneva
Phenytoin 125 mg/5 ml oral suspension	Barre-National
Pindolol tabs 5 mg, 10 mg	Lemmon
Piroxicam caps 10 mg, 20 mg	Danbury
Terfenadine tabs 60 mg	Mutual
Trazadone tablets 150 mg	Mutual
Verapamil tabs 80 mg, 120 mg	Mylan

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 26 N.J.R. 2025(b).

HUMAN SERVICES

(a)

JUVENILE MONITORING UNIT

Manual of Standards for Juvenile Detention Commitment Programs

Adopted New Rules: N.J.A.C. 10:18

Proposed: December 20, 1993 at 25 N.J.R. 5749(a).
Adopted: June 27, 1994 by William Waldman, Commissioner, Department of Human Services.
Filed: June 27, 1994 as R.1994 d.392, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 2A:4A-43(c) and Governor's Reorganization Plan No. 001-1993.
Effective Date: July 18, 1994.
Expiration Date: July 18, 1999.

Summary of Public Comments and Agency Responses:

The Department received one letter of comment from Jean Paashaus in response to the proposed Readoption with amendments. The commenter asserted that the administrative rules do not provide for the separation of juveniles on short-term (60 days maximum) judicial commitment and those youth on predispositional status.

In response, from the Department's perspective, there is no need to separate the two groups of juveniles for the following reasons:

- Youth on commitment status meet the criteria for predispositional admission. Thus, they, for the most part, have similar profiles as the youth on predispositional status.
- Generally, in counties which have used the commitment programs, only one or two youth may be on commitment status at any given time. Accordingly, it would be difficult for an administrator to justify using an entire wing for only a few youth, especially in light of the great demand for detention beds.
- While a wide range of programs are available for both groups of youth, the Department requires an augmented program for the youth on commitment status in order to satisfy the rehabilitative element of their disposition.
- The short-term commitment programs have not been available to counties for approximately ten years without the requirement to separate the two groups of youth. According to the monitoring of the programs, there have never been any identified problems associated with the mixing of the two groups of youth.

The rules proposed for readoption expired on May 2, 1994. In accordance with N.J.A.C. 1:30-4.4(f), the rules proposed for readoption are adopted herein as new rules. In addition to adopting the amendments proposed, the Department is also, upon adoption, recodifying N.J.A.C. 10A:33 as N.J.A.C. 10:18, and correcting internal cross-references accordingly.

Full text of the expired rules adopted herein as new can be found in the New Jersey Administrative Code at N.J.A.C. 10A:33, pending subject to recodification as below.

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

CHAPTER *[33]* ***18***
MANUAL OF STANDARDS FOR JUVENILE DETENTION COMMITMENT PROGRAMS

*[10A:33-1.1]*****10:18-1.1*** Purpose

In accordance with the New Jersey juvenile code (N.J.S.A. 2A:4A-20, et seq.), juveniles adjudicated delinquent may be sentenced to a term of incarceration of up to 60 consecutive days in county-operated juvenile detention facilities. Until June 30, 1993 such facilities were regulated by the New Jersey Department of Corrections pursuant to N.J.S.A. 2A:4A-37 and N.J.S.A. 2A:4A-43(c). Effective July 1, 1993 the regulatory responsibility for county-operated juvenile detention facilities was transferred to the New Jersey Department of Human Services pursuant to the Governor's Reorganization Plan (No. 001-1993). Accordingly, while the juvenile code still refers to the Department of Corrections' responsibility with regard to juvenile detention facilities, this responsibility was transferred to the Department of Human Services by way of the Reorganization Plan. Since the juvenile code specifically requires that the Department of Human Services certify all juvenile detention facilities which may be utilized for this new dispositional alternative, the Department has promulgated the minimum standards contained in this chapter which must be met by those facilities receiving adjudicated delinquents under the code. The standards in this chapter are in addition to the existing Manual of Standards for Juvenile Detention Facilities located at N.J.A.C. 10A:32.

*[10A:33-1.2]*****10:18-1.2*** Definitions

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

. . .

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

. . .

*[10A:33-2.1]*****10:18-2.1*** (No change in text.)

*[10A:33-2.2]*****10:18-2.2*** Legal authority of Department

(a) N.J.S.A. 2A:4A-43c(1) provides that if the juvenile detention facility in the county in which the juvenile has been adjudicated delinquent has a juvenile detention facility meeting the physical and program standards established pursuant to this subsection by the Department of Human Services, the court may, in addition to any

of the dispositions enumerated in this subsection, incarcerate the juvenile in a youth detention facility for a term not to exceed 60 consecutive days. The Department of Human Services shall promulgate such rules and regulations from time to time as deemed necessary to establish minimum physical facility and program standards for the use of juvenile detention facilities pursuant to this subsection.

(b) N.J.S.A. 2A:4A-43c(2) provides that no juvenile may be incarcerated in any county detention facility unless the county has entered into agreement with the Department of Human Services concerning the use of the facility for sentenced juveniles. Upon agreement with the county, the Department of Human Services shall certify detention facilities which may receive juveniles sentenced pursuant to this subsection and shall specify the capacity of the facility that may be made available to receive such juveniles; provided, however, that in no event shall the number of juveniles incarcerated pursuant to this subsection exceed 50 percent of the maximum capacity of the facility.

*[10A:33-3.1]***10:18-3.1*** (No change in text.)

*[10A:33-3.2]***10:18-3.2*** Departmental eligibility

(a) Only those counties in which the population of the approved juvenile detention facility has consistently been less than the maximum population capacity established by the Department of Human Services are eligible to participate in the Juvenile Detention Commitment Program.

1. (No change.)

(b) Only those counties which have been consistently in substantial compliance with the Manual of Standards For Juvenile Detention Facilities (N.J.A.C. 10A:32), as determined by the Department of Human Services, are eligible to participate in the Juvenile Detention Commitment Program.

*[10A:33-4.1]***10:18-4.1*** Adoption of standards

(a) All provisions of the Manual of Standards For Juvenile Detention Facilities, (N.J.A.C. 10A:32), except provisions specifically exempted in this chapter, or provisions in contradiction to the standards and regulations of the Manual of Standards For Juvenile Detention Commitment Programs, (N.J.A.C. *[10A:33]* ***10:18***) are hereby adopted by reference.

(b) All juvenile detention facilities must be in compliance with both the Manual of Standards For Juvenile Detention Facilities (N.J.A.C. 10A:32) and the Manual of Standards For Juvenile Detention Commitment Programs (N.J.A.C. *[10A:33]* ***10:18***) in order to be certified by the Department of Human Services to receive juvenile commitments.

*[10A:33-5.1]***10:18-5.1*** Juvenile detention commitment program

(a) Pursuant to N.J.S.A. 2A:4A-43c(2), the Department of Human Services shall specify the capacity of the juvenile detention facility that may be made available to receive sentenced juveniles.

1. Based upon the county's past and present juvenile detention needs, as determined by such factors as the number of admissions, length of stay, daily population count, peak population figures, etc., the Department of Human Services, in collaboration with the county, shall specify the maximum number of juvenile commitments which may be housed in the facility.

2. (No change.)

*[10A:33-5.2]***10:18-5.2*** Population statistics

Reports regarding population statistics, in such form and such frequency as shall be required by the Department of Human Services, shall be submitted to the Department of Human Services.

*[10A:33-6.1]***10:18-6.1*** Population and capacity monitoring

Based upon juvenile detention needs, as determined by population statistics reports and periodic, on-site population monitoring visits, the Department of Human Services, in collaboration with the county, may reduce or increase the number of spaces for juvenile commitments certified to be housed at the facility.

*[10A:33-6.2]***10:18-6.2*** Program inspection

(a) Based upon periodic inspection of the facility's physical plant and evaluation of the programmatic components, the Department of Human Services may modify or withdraw its certification of the facility for juvenile commitments.

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

*[10A:33-7.1]***10:18-7.1*** Program proposal submission

(a) Prior to certification of a facility to receive juvenile commitments, a program proposal shall be submitted to the Department of Human Services which shall include, but not necessarily be limited to, the following information:

1.-7. (No change.)

*[10A:33-8.1]***10:18-8.1*** (No change in text.)

*[10A:33-8.2]***10:18-8.2*** Maximum juvenile detention facility population capacity

No juvenile, on either a pre-dispositional or juvenile detention commitment status, shall be admitted to a detention facility which has reached its maximum approved capacity for the entire facility, as designated by the Department of Human Services.

*[10A:33-8.3]***10:18-8.3*** Maximum Juvenile Detention Commitment Program population capacity

No adjudicated juvenile sentenced to a juvenile detention facility shall be admitted once the facility has reached its maximum approved capacity for the juvenile detention commitment program, as designated by the Department of Human Services, in collaboration with the county.

*[10A:33-9 through 10]***10:18-9 through 10*** (No change in text.)

*[10A:33-11.1]***10:18-11.1*** (No change in text.)

*[10A:33-11.2]***10:18-11.2*** Social services

(a) (No change.)

(b) In accordance with the maximum population capacity, as designated by the Department of Human Services, for both pre-dispositional juvenile detention and the juvenile detention commitment program, there shall be at least one full-time social worker employed for every 20 juveniles of the approved population capacity.

1. (No change.)

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

(e) Social services shall be structured to assist juveniles and their parents, to provide the individualized assistance needed for successful rehabilitation, and to prepare the juvenile for return to the community. Social worker duties shall include:

1. Participating in the evaluation and classification decision for each new admission to the facility as required by N.J.A.C. *[10A:33-9]* ***10:18-9***;

2. Developing and implementing each juvenile's initial and follow-up treatment plan as required by N.J.A.C. *[10A:33-11]* ***this subchapter***;

3.-8. (No change.)

(f) (No change.)

*[10A:33-11.3 through 11.7]***10:18-11.3 through 11.7*** (No change in text.)

CORRECTIONS

(a)

THE COMMISSIONER

Search of Inmates and Facilities
Strip Searches
Adopted Amendment: N.J.A.C. 10A:3-5.7

Proposed: May 16, 1994 at 26 N.J.R. 1937(b).

Adopted: June 17, 1994 by William H. Fauver, Commissioner, Department of Corrections.

Filed: June 24, 1994 as R.1994 d.374, **without change.**

Authority: N.J.S.A. 30:1B-6, 30:1B-10 and *Roberts v. Beyer, et al.*, Dkt. No. 92-4987, U.S. District Court, District of New Jersey, November 16, 1993.

Effective Date: July 18, 1994.
Expiration Date: September 16, 1996.

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

Full text of the adoption follows:

10A:3-5.7 Strip searches
(a) (No change.)
(b) Strip searches may be conducted in the following circumstances:
1. (No change.)
2. Before an inmate enters or leaves the facility's main building, whether to go to a destination in the outside community or to a minimum security camp or farm area;
3. Prior to the departure of the inmate from any area where the inmate has had access to dangerous or valuable items;
4. Upon entering or leaving any close custody unit; or
5. During housing unit/wing searches.
(c)-(g) (No change.)

INSURANCE

(a)

INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Good Faith Marketing Report

Adopted New Rule: N.J.A.C. 11:20-9.6

Proposed: May 17, 1994 in accordance with N.J.S.A. 17B:27A-16.1 and 16.2(b), at 26 N.J.R. 2737(a), July 5, 1994.
Adopted: June 14, 1994 by the New Jersey Individual Health Coverage Program Board of Directors, Charles Wowkanech, Chair.
Filed: June 17, 1994 as R.1994 d.352, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17B:27A-2 et seq.

Effective Date: June 17, 1994.
Expiration Date: August 13, 1998.

This new rule was proposed and is being adopted pursuant to the procedures of P.L. 1993, c.164, section 7 as therein authorized. Accordingly, notice of the proposal of this new rule was published in three newspapers of general circulation in New Jersey, and simultaneously mailed to all known interested parties when submitted to the Office of Administrative Law ("OAL") for publication in the New Jersey Register.

Pursuant to section 7(d), all interested persons were provided at least 20 days comment period. As set forth in the notice of proposed new rules, the written comment period ended on June 13, 1994.

Pursuant to section 7(e), the Board may adopt these rules immediately upon the expiration of the public comment period by filing notice of the adoption with the OAL for publication in the New Jersey Register. These rules shall be effective upon the date of filing with the OAL.

Summary of Public Comments and Agency Responses:
Three comments were received from:
1. Metropolitan Life Insurance Company
2. Blue Cross and Blue Shield of New Jersey
3. HIP Rutgers Health Plan

COMMENT: The commenter suggested that the Good Faith Marketing Report should only have to be filed by carriers that failed to enroll at least 50 percent of the minimum number of non-group persons assigned to it by the Board. The commenter explained that a carrier that has enrolled at least 50 percent of the minimum number of non-group persons should be deemed to have made a "prima facie" case that it has made a good faith marketing effort.

RESPONSE: The Board agrees that a carrier that has enrolled at least 50 percent of the minimum number of non-group persons should not, on an ongoing basis, have to demonstrate that it has made a good faith marketing effort. However, the purpose of the first report required by the new rule is to gather information from all carriers offering individual health benefits plans so that the Board may determine, from an examination of the marketing methods used and expenses incurred, whether a formula can be devised to arrive at a good faith threshold expense for each carrier. Such a formula would have to be proposed and adopted as a rule and used in future years as a more concrete measure of whether adequate efforts have been made to market health benefits plans and enroll the minimum number of non-group persons. The Board has contemplated and intends to require only those carriers that have failed to enroll at least 50 percent of the minimum number of non-group persons to report in the future. At this point, the Board views the information requested of all carriers in the report required by the new rule to be essential in developing the future reporting requirement. Therefore, the Board has declined to change the proposed rule.

COMMENT: One commenter suggested that the report of marketing efforts in each of the categories required by the rule should also require that carriers include the number of contracts that resulted from the reported efforts. The commenter explained that, to the extent that the data reported might be used to develop a future good faith marketing standard, the Board should be concerned with more specific measurements of the number of contracts that resulted from each category of marketing.

RESPONSE: The Board agrees that such information would be valuable in developing a permanent standard to measure good faith marketing efforts. Therefore, the rule has been changed upon adoption to request the more specific information, if available. If a carrier has this information, it should not impose an additional burden to provide it in the report. This change is not substantive and does not require an additional opportunity for public comment.

COMMENT: One commenter recommended that the Board apply the information collected in the Good Faith Marketing Report required by the rule prospectively, not retroactively to marketing in 1993. The commenter suggested that retroactive application of a good faith marketing standard would favor carriers that chose to market their individual products separately and penalize a carrier that marketed its individual and group products together. The commenter also noted that HMOs were not permitted to sell less expensive health benefits plans because they are required by law to provide a certain level of benefits.

RESPONSE: The purpose of the Board's seeking information about carriers' marketing efforts in 1993 is twofold: first, to determine whether carriers made good faith efforts to market standard health benefits plans in 1993; and, second, to use that information to develop an objective standard for future years so that carriers and the Board will have a clear understanding of what constitutes good faith marketing. Such a future standard would be the subject of rulemaking, with an opportunity for public comment. The Board will give due consideration to the unique circumstances of a carriers' marketing standard health benefits plans in the first year of the IHC Program.

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

11:20-9.6 Good Faith Marketing Report
(a) In order for the Board to determine whether a carrier has made a good faith marketing effort as required by N.J.A.C. 11:20-9.5(f)2, members that requested exemptions from assessments for 1993 reimbursable losses shall submit to the Board a marketing report on or before July 1, 1994 containing the following information pertaining to advertising, marketing, and promotion efforts in direct support of sales of standard health benefits plans in calendar year 1993:

1. With respect to print media, the names of newspapers, magazines or other print media, including billboards, in which advertising was placed; the number of times an advertisement appeared in each; the dates those advertisements appeared; the size of the advertisements in each; copies of such advertisements; *[and]* the total cost of print media advertising; ***and the number of non-group persons enrolled as a result of such efforts, if available;***

2. With respect to broadcast media, the names of television stations, radio stations, or cable television franchises over which commercial advertising appeared; the number of times a commercial advertisement was broadcast or played, the time of day and the duration of each; audio or video tapes of such commercial advertise-

ments; *[and]* the total cost of such broadcast media advertising; ***and the number of non-group persons enrolled as a result of such efforts, if available;***

3. With respect to direct marketing by mail or telephone, the number of mailings distributed or calls placed; the approximate dates of the mailings or telephone calls; the geographic areas to which the mailings or calls were addressed; copies of the mailings or scripts of the telephone calls; *[and]* the total cost of direct marketing through mail or telephone solicitation; ***and the number of non-group persons enrolled as a result of such efforts, if available;***

4. With respect to sales through producers licensed by the State of New Jersey, details of efforts to recruit and educate producers to sell standard health benefits plans; the number of producers through whom such sales were made; *[and]* the total cost of commissions or other incentives paid to producers for sales of standard health benefits plans; ***and the number of non-group persons enrolled as a result of such efforts, if available;***

5. With respect to other forms of marketing or promotion of standard health benefits plans, describe the methods or media used; the frequency of use; *[and]* the total cost of such efforts*; **and the number of non-group persons enrolled as a result of such efforts, if available***.

(b) Carriers required to submit the marketing report described in (a) shall send it to the following address:

New Jersey Individual Health Coverage Program
20 West State Street, 10th floor
CN 325
Trenton, NJ 08625

(c) A member's failure to file the marketing report described in (a) may result in the Board's denial of a final exemption from assessment for reimbursable losses.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES
DEPARTMENT OF INSURANCE

Waiver of Executive Order No. 66(1978)
Driver Control Service
Point System and Driving During Suspension; Motor Vehicle Insurance Surcharge; Supplemental Surcharges
N.J.A.C. 13:19-10, 12 and 13

Take notice that the Driver Control Service rules, N.J.A.C. 13:19, are due to expire on August 18, 1994, pursuant to Executive Order No. 66(1978). These rules allow the DOI and the DMV to define various motor vehicle violations that are subject to sanction and to implement statutory surcharges for those violations.

The DMV originally adopted the Driver Control Service rules prior to September 1, 1969, in order to implement the enforcement of various motor vehicle violations. Specifically, subchapter 10 of the Driver Control Service rules sets the number of points to be assessed for 52 specific violations. N.J.A.C. 13:19-10. Subchapter 12 empowers the Director of the DMV to suspend the license of any person who fails to pay surcharges levied under subsection 6b of the New Jersey Automobile Insurance Reform Act of 1982, N.J.S.A. 17:29A-35b. N.J.A.C. 13:19-12. Subsection 13 assesses surcharges for certain violations, pursuant to N.J.S.A. 17:29A-35b(3). N.J.A.C. 13:19-13.

The State is preparing to issue bonds to fund a portion of the deficit of the Market Transition Facility (the "MTF bonds"). The MTF bonds will be repaid from the revenues represented by the DMV surcharges. Subchapters 10, 12, and 13 all are essential to that revenue stream.

Given the need to ensure that the MTF bond issue is successful and the concomitant need to demonstrate the security of the revenue stream for repaying those bonds, Governor Whitman has determined that the DOI and the DMV have met the spirit and intent of Executive Order No. 66(1978) by ensuring that subchapters 10, 12, and 13 of the Driver Control Services regulations remain necessary, adequate, and responsive for the purpose for which they were promulgated. Therefore, on June 29, 1994, Governor Whitman directed that the five-year sunset provision of Executive Order No. 66(1978) is waived for subchapters 10, 12, and 13 of N.J.A.C. 13:19, and the expiration date for the existing rules is extended from Augsut 18, 1994 until such time as the MTF bonds have been retired.

(b)

DIVISION OF CONSUMER AFFAIRS
BOARD OF PHARMACY

State Board of Pharmacy Rules
Readoption with Amendments: N.J.A.C. 13:39

Proposed: April 18, 1994 at 26 N.J.R. 1596(a).
Adopted: June 14, 1994 by the Board of Pharmacy, Edith Tortora Micale, President.
Filed: June 16, 1994 as R.1994 d.351, **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. 45:14-1 et seq.
Effective Date: June 16, 1994, Readoption;
July 18, 1994, Amendments.
Expiration Date: July 18, 1999.

The Board of Pharmacy afforded all interested parties an opportunity to comment on the proposed readoption of N.J.A.C. 13:39, the rules of the State Board of Pharmacy.

A notice of proposal appeared in the New Jersey Register on April 18, 1994 at 26 N.J.R. 1596(a), and copies of the published proposal were forwarded to the Star Ledger, the Trenton Times and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Pharmacy, Post Office Box 45013, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

During the official 30 day comment period which ended on May 18, 1994, the Board received written comments from the following individuals:

Melanie L. Willoughby, Executive Director, New Jersey Council of Chain Drug Stores (NJCCDS)

Henry T. Kozek, RP, CCP, CPM, Acting Assistant Director, Hospital, Ambulatory and Home Health Care Inspections, Department of Health, Health Facilities Evaluation

George Yost, R.Ph., Chairman, VHA of New Jersey Pharmacy Council (Voluntary Hospitals of America, Inc.)

Carlos Ortiz, Director of Professional & Government Relations, CVS

Dorothy D. Flemming, MSN, RN, Executive Director, New Jersey State Nurses Association

Michael Kessler, R.Ph., Central Drug Co., Inc.

SUBCHAPTER 2. APPLICANT QUALIFICATIONS AND EXAMINATION REQUIREMENTS

N.J.A.C. 13:39-2.1 Education requirements

COMMENT: Two commenters stated that, in the best interests of the consumer, the Board of Pharmacy should maintain authority to approve colleges.

RESPONSE: The Board does, in fact, maintain authority to approve colleges. The amendment to this section was merely informational in specifically identifying the American College of Pharmaceutical Education (ACPE) as the Board-recognized accrediting body for schools of pharmacy. The Board is confident that ACPE is better equipped to identify colleges of pharmacy that are in compliance with the most recent training needs for pharmacy students.

SUBCHAPTER 3. REGISTRATION OF PHARMACISTS

N.J.A.C. 13:39-3.18 Pharmacist-in-charge

COMMENT: The name of the pharmacist-in-charge should not be required on the prescription label because it may lead patients to believe that the pharmacist-in-charge filled the prescription.

RESPONSE: The name of the pharmacist-in-charge is a necessary requirement in that it provides the patient with follow-up access to the

individual who will be in the best position to respond effectively to any questions or concerns that arise in connection with the dispensed medication. The Board is not aware of any confusion surrounding use of the name of the pharmacist-in-charge on the prescription label.

SUBCHAPTER 4. PHARMACY PERMITS

N.J.A.C. 13:39-4.7(c) New pharmacies; eligibility and application

COMMENT: A corporate applicant should not be required to list on the application the names and addresses of all stockholders if the corporation is publicly held and listed on a stock exchange.

RESPONSE: This regulation clearly states that the requirement to list stockholders applies only if "the pharmacy is a non-publicly held corporation." As stated in the Summary statement of the Notice of Proposal, the Board does not require reporting changes in ownership of public companies because it recognizes that transfers of publicly held shares are made public through SEC rules. See, 26 N.J.R. 1596(a).

N.J.A.C. 13:39-4.15 Retail permit; prescription department of pharmacy department

COMMENT: The word "department" in paragraph (b)2 should be changed to "premises," consistent with the change to N.J.A.C. 13:39-3.18(e)4. The commenter believes the department needs to be secured only if the pharmacist leaves the premises and not in those instances when the pharmacist does not have full vision or may not be within the department.

RESPONSE: In amending N.J.A.C. 13:39-3.18(e)4, the Board deleted as unnecessary and perhaps misleading the phrase that described temporarily absent to include "attending to over-the-counter drugs or the pharmacist's personal needs." As originally promulgated, "personal needs" was intended to refer to use of rest room facilities and not to temporary excursions outside the pharmacy. Accordingly, the words "but within the premises" were proposed to clarify that, for security purposes, the presence of the pharmacist-in-charge is required in the drugstore at all times.

Unlike N.J.A.C. 13:39-3.18(e)4, N.J.A.C. 13:39-4.15 regulates pharmacy departments, which are located in stores with areas typically much larger than local drugstores. Use of the word "premises" here would inappropriately permit the pharmacist to leave the department unsecured when he or she is elsewhere on the larger store premises. Accordingly, no change will be made.

COMMENT: NJCCDS and CVS Pharmacy stated that they strongly support the amendment to paragraph (b)2 because it is critical that the pharmacist-in-charge be made responsible for the security of the keys. These commenters also expressed support for the amendment to paragraph (b)7 deleting the requirement that the word "department" appear in advertisements.

RESPONSE: The Board appreciates these comments in support of the cited regulations.

SUBCHAPTER 5. PRESCRIPTIONS

COMMENT: The Board should consider modifying the regulations to provide for differences in computer generated prescriptions versus those that are hand written by the prescriber. Specifically, the commenter is referring to generic substitution laws.

RESPONSE: The Board's regulations in this area are and must be based upon statutory mandate. Accordingly, the Board cannot amend the regulation absent specific statutory authority to do so.

N.J.A.C. 13:39-5.5(c)4 Copies of prescriptions; transfers

COMMENT: The Board should permit two or more pharmacies to establish a common electronic filing system to maintain required dispensing information. These pharmacies should not be required to physically transfer prescriptions between or among themselves.

RESPONSE: The Board appreciates this comment and recognizes that it would be useful to address the use of electronic filing systems. Accordingly, the Board has referred this matter to the Rules and Regulations Committee for further review.

SUBCHAPTER 6. DISPENSING AND ADVERTISING DRUGS

N.J.A.C. 13:39-6.7 Supportive personnel

COMMENT: DOH requested the Board to define explicitly the manner in which prescriptions are to be accepted by telephone. The commenter stated that this section appears to allow a pharmacist to obtain a verbal prescription from a nurse, receptionist or other employee whom the physician deems to be his or her agent, while N.J.S.A. 45:14-14 states that a prescription can be transmitted to a pharmacist only by a medical practitioner licensed to write prescriptions.

RESPONSE: The commenter's suggestion that the Board clarify this matter is well-taken. A joint meeting with the Board of Medical Examiners will be scheduled and clarifying amendments will be proposed in a future issue of the New Jersey Register.

SUBCHAPTER 7. PHARMACY FACILITY AND RECORDS

N.J.A.C. 13:39-7.7 Minimum facility and records

COMMENT: NJCCDS expressed support for the Board's approval of use of computerized versions of required reference texts.

RESPONSE: The Board agrees with this commenter that utilization of advanced technologies by the pharmacist will improve the level and quality of services.

COMMENT: The Board should delete the requirement for a suppository mold.

RESPONSE: The Board discussed this requirement at length during its review process. The Board continues to believe that the requirement remains necessary at this time but will revisit this issue, if necessary, in the future.

N.J.A.C. 13:39-7.14 Patient profile record system

COMMENT: The phrase "harmful drug interaction" should be changed to "potentially significant drug interaction," since this wording is often used to identify such a possible occurrence.

RESPONSE: The Board agrees and has amended this section accordingly.

SUBCHAPTER 9. PHARMACEUTICAL SERVICES WITHIN HEALTH CARE FACILITIES

N.J.A.C. 13:39-9.1 Definitions

COMMENT: The requirement that the supervising pharmacist be physically present in the compounding/dispensing area while supportive personnel are performing delegated duties should be deleted from the definition of "direct supervision." Allowing the pharmacist the opportunity to be involved in other tasks will benefit the patient and the health care system.

RESPONSE: Personal supervision of supportive personnel is required by statu . N.J.S.A. 45:14-6 states that apprentices or other unregistered employees "shall not be allowed to prepare, compound and dispense prescriptions, or to sell or furnish medicines, prescriptions or poisons, except in the presence of and under the personal supervision of a registered pharmacist of this state . . ."

COMMENT: What is the responsibility of the hospital clinic when medications are stored and dispensed by clinic personnel? Is it the Board's view that all clinic medications (including stock and dispensed medications) are not under the purview of the hospital pharmacist-in-charge?

RESPONSE: For the protection of the public, the pharmacist-in-charge must have all medications under his or her purview, including clinic medications supplied by the pharmacy department.

N.J.A.C. 13:39-9.3 Control of institutional pharmaceutical services

COMMENT: DOH asked whether a long-term care facility may enter into contractual agreements with pharmacies not licensed by the Board. DOH stated it supports regulations limiting suppliers to New Jersey licensed pharmacies because, under DOH rules, an out-of-State provider pharmacist has limited input to policies of the long-term care facility.

RESPONSE: A pharmacy has the right to contract with any licensed out-of-State pharmacy, and a patient in a long-term care facility may get medication from an out-of-State pharmacy. The Board believes that use of out-of-State pharmacies should continue to be permitted, and it anticipates proposing regulations in this regard in the future.

N.J.A.C. 13:39-9.5 Pharmaceuticals

COMMENT: With regard to subsection (d), DOH pointed out that facilities participating in experimental research involving residents must also be in compliance with Federal Department of Health and Human Services regulations 45 CFR Part 46, Protection of Human Subjects of Research.

RESPONSE: The Board agrees that it would be useful to include this compliance requirement and has amended this section accordingly.

COMMENT: With regard to subsection (e), VHA suggested that the Board should allow supportive personnel to inspect medication areas and

should require inspections to be done every other month, consistent with JCAHO recommendations.

RESPONSE: Medication areas fall within the regulatory guidelines pertinent to the institutional permit holder, which require immediate personal supervision.

N.J.A.C. 13:39-9.6 Drug disbursement; written orders; outpatient prescriptions

COMMENT: Another regulation allows pharmacists to make any and all notations in the patient record when needed. Accordingly, the word "clarifying" should be deleted from subsection (d) to avoid limiting entries to clarifications only.

RESPONSE: The Board appreciates this comment and will amend the regulation accordingly in order to avoid confusion.

COMMENT: DOH stated that Board of Nursing policy would prohibit a nurse from accepting a medication order that the physician had verbally transmitted to the pharmacist who then entered it in the chart. This is inconsistent with N.J.S.A. 45:14-4 which provides authority for the pharmacist to receive physicians' verbal orders. DOH believes that a pharmacist in an institutional setting should be able to receive verbal orders from a physician and that nurses should accept such orders as valid.

RESPONSE: The Board will schedule a joint meeting with the Board of Nursing for further discussion and review.

COMMENT: Pharmacists should be allowed to administer medications, perform patient assessment and case management, and prescribe and/or adjust dosages under institutional protocol. This can be viewed as extensions of many programs already in place such as pharmacokinetic dosing.

RESPONSE: This suggestion has been referred to the Board's Rules and Regulations Committee for review.

N.J.A.C. 13:39-9.7 Drug disbursement; oral orders

COMMENT: The Board should remove the emergency basis for oral orders for Schedule II medications. Schedule II medications are tightly controlled in the hospital setting and allied health professionals routinely take oral orders for changes in morphine drips.

RESPONSE: The Board agrees but points out that any substantive change in this regard would require a separate rulemaking proceeding. Therefore, the matter has been referred to the Rules and Regulations Committee for development of such a proposal.

COMMENT: DOH stated that the citation to the Federal long term care regulations appearing in subsection (c) appears to be incorrect, and that the current long term care regulations can be found under 42 CFR 483.

RESPONSE: The commenter is correct and the regulation is being amended upon adoption to provide the correct cite.

N.J.A.C. 13:39-9.11 Drug labeling

COMMENT: Subsection (a) should be recodified with the regulations pertaining to sterile admixture services.

RESPONSE: On March 21, 1994, the Board proposed new regulations relating to sterile admixture services in retail settings. The Board noted that regulations relating to services in institutional settings would be proposed in the near future but that hospital pharmacies remain subject to existing State and Federal requirements. (See 26 N.J.R. 1303(a).) Accordingly, no changes will be made at this time but the Board will recodify this section when new regulations are developed.

N.J.A.C. 13:39-9.12 Use of patient's own medication

COMMENT: Many [hospital] procedures do not call for physically handing over or transporting to the pharmacy the patient's own medications from home. Therefore, subsection (b) should be clarified by deleted the words "given to the pharmacist."

RESPONSE: The Board agrees that clarification is necessary here and has amended this section on adoption to provide that such medications "shall be identified by the pharmacist as to content and dispensing origin."

N.J.A.C. 13:39-9.16 Records and reports

COMMENT: The patient's height and weight should be routinely monitored by the pharmacist. Consistent with JCAHO requirements, paragraph (b)1 should be amended to require recording of this information in the patient record.

RESPONSE: This matter has been referred to the Board's Rules and Regulations Committee for review.

N.J.A.C. 13:39-9.17 Drug information and education

COMMENT: Paragraphs (b)2 and 3 should be amended to reflect that the formulary and the drug compendium may be available on computer.

RESPONSE: This suggestion has been referred to the Rules and Regulations Committee for further review.

N.J.A.C. 13:39-9.18 After hours access to the institutional pharmacy

COMMENT: The New Jersey State Nurses Association pointed out that this section is incorrectly worded in that it appears to exercise inappropriate oversight of Board of Nursing licensees.

RESPONSE: The commenter is correct and this section is being amended upon adoption accordingly.

COMMENT: Subsection (a) (which limits access to CDS stock to pharmacists) should be amended to recognize that many hospitals disperse some controlled substances throughout their stock, that is, C-V cough suppressants and antidiarrheals. This should be approved by each institution's pharmacy and therapeutics committee.

RESPONSE: This recommendation has been referred to the Rules and Regulations Committee for review.

COMMENT: Any medication needed and unavailable should be considered an emergency. Therefore, subsection (b) should be amended to provide that registered nurses may have access—at any time and not just in an emergency—to the hospital pharmacy's stock of drugs when drugs are not available from floor stock. The non-pharmacist should be allowed to remove doses sufficient until a pharmacist is on duty.

RESPONSE: This suggestion has been referred to the Rules and Regulations Committee for review.

COMMENT: Subsection (b) should be amended so that it does not limit professional nurse access to pharmacy stock of drugs to only one registered nurse in any given shift. Many institutions require more than one nurse, or a nurse and a security guard for security reasons.

RESPONSE: This matter has been referred to the Rules and Regulations Committee for review.

N.J.A.C. 13:39-9.19 Pharmacy and Therapeutics Committee

COMMENT: A pharmacist should be granted voting privileges on a Pharmacy and Therapeutics Committee.

RESPONSE: This matter has been referred to the Rules and Regulations Committee for review.

N.J.A.C. 13:39-9.26 Institutional decentralized pharmacies

COMMENT: The requirement for a USP DI reference text should be deleted. This text is expenses and institutions should be able to choose the text they feel most comfortable using. Additionally, the use of electronic databases should be deemed acceptable.

RESPONSE: The Board's Rules and Regulations Committee will review this matter.

SUBCHAPTER 10. STERILE ADMIXTURE SERVICES IN RETAIL AND INSTITUTIONAL PHARMACIES

COMMENT: One commenter made suggestions to amend the following provisions:

1. N.J.A.C. 13:39-10.5 Handling, packaging and delivery

Directions for use of a sterile product should not be required to appear on the permanently affixed label. Directions for use are handled via an MAR and will complicate our IV medication label.

2. N.J.A.C. 13:39-10.7 Policy and procedure manual

Paragraph 1 of subsection (a) should be removed because it seems to be covered in paragraph 13.

3. N.J.A.C. 13:39-10.11 Supplies

Disposable towels should be permitted to be used consistent with current practice.

RESPONSE: As stated above, the Board recently proposed and adopted a new subchapter 11 relating to sterile admixture services in retail settings and will soon be proposing similar regulations for institutional settings. Accordingly, these suggestions will be more appropriately considered within the context of the new regulations. To that end, they have been referred to the Board's Rules and Regulations Committee for further review.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:39.

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

SUBCHAPTER 1. GENERAL PROVISIONS

13:39-1.1 Purpose and scope

(a) (No change.)

(b) This chapter shall apply to all registered pharmacies, pharmacists, pharmacist applicants, interns, externs, supportive personnel and anyone within the jurisdiction of the Board of Pharmacy.

13:39-1.2 Definitions

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

"Authorized prescriber" means a licensed practitioner who is authorized by law to write prescriptions and/or medication orders.

...

"Compounding" means the act of preparing pharmaceutical components into medications, pursuant to an authorized prescriber's prescription or medication order, including, but not limited to prescription compounding, and intravenous admixture preparation.

"Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory, which is required under Federal or State law to be prescribed by an authorized prescriber and dispensed by a pharmacist, in the usual scope of pharmacy practice.

...

"Dispense or dispensing" means the procedure entailing the interpretation of an authorized prescriber's prescription order for a drug or device, and pursuant to that order, the proper selection, measuring, labeling, and packing in a proper container. The act of dispensing shall include all necessary consultation by the pharmacist.

"Drug or medicine" means:

1.-3. (No change.)

4. Articles intended for use as components of any article specified in 1, 2 or 3 above, but not including devices or their components, parts or accessories.

"Legend drug or device" means any drug or device that:

1. Bears the statement, "Caution: Federal law prohibits dispensing without a prescription" or words of similar import; or

2. Requires a prescription or order by an authorized prescriber.

"Licensed practitioner" means a duly licensed physician, dentist, veterinarian or other health care practitioner.

...

"Registered pharmacist" or "pharmacist" means a person whose certificate is in good standing for the current registration period.

...

SUBCHAPTER 2. APPLICANT QUALIFICATIONS AND EXAMINATIONS REQUIREMENTS

13:39-2.1 Education requirements

(a) An applicant for the written examination shall have been duly granted or have fully completed all the requirements for graduation of a minimum five-year pharmacy course leading to a degree of Bachelor of Science in pharmacy or Doctor of Pharmacy given in a school or college of pharmacy accredited by the American College of Pharmaceutical Education (ACPE).

(b) (No change.)

13:39-2.4 (Reserved)

13:39-2.7 Proof of character

(a) An applicant for the written examination shall submit, in advance, an application containing evidence of good moral character which is an on-going requirement for licensure, and evidence that he or she:

1.-7. (No change.)

SUBCHAPTER 3. REGISTRATION OF PHARMACISTS

13:39-3.4 Change of employment or address

A registered pharmacist shall notify the Board in writing of any change in his or her home address within 30 days.

13:39-3.11 Foreign graduates

(a) All pharmacist applicants with a degree from countries where the primary language is other than English, prior to being granted licensure as professional pharmacists in this State, shall submit to the Board evidence that they are certified by the Foreign Pharmacy Graduate Examination Committee (FPGEC) of the National Association of Boards of Pharmacy. In order to receive FPGEC certification, applicants must document their educational backgrounds, successfully complete the Test of English as a Foreign Language (TOEFL) Examination, the Foreign Pharmacy Graduate Equivalency Examination (FPGEE) and have attained a minimum passing score in each examination. FPGEC certification shall have been obtained within two years of application for licensure in this State.

(b) A request for waiver of the FPGEC certificate must delineate good cause for the waiver request. The Board may, after due consideration and within its own discretion, waive the TOEFL examination component of the FPGEC certification process.

13:39-3.12 Physical and mental competence of reciprocal registrants

(a) An applicant for reciprocal registration shall be physically and mentally able to perform all duties normally required of a registered pharmacist.

(b) The Board, at its discretion, may require proof of the applicant's physical and mental competence to practice pharmacy in this State.

13:39-3.15 Biennial registration renewal

(a) (No change.)

(b) The renewal application shall list the name, home address, original certificate of registration number, places and hours of employment, continuing education credits, and other information as requested by the Board.

(c) (No change.)

13:39-3.18 Pharmacist-in-charge

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

(e) A registered pharmacist-in-charge shall be physically present in the pharmacy or pharmacy department for that amount of time necessary to ensure the fulfilling of the following responsibilities:

1.-3. (No change.)

4. Maintaining the security of the prescription area and its contents, which includes the restriction of persons unauthorized by the pharmacist on duty from being present in the prescription area while the pharmacist is temporarily absent but within the premises;

5. Ensuring that only pharmacists and interns or externs under direct supervision provide professional consultation with patients and physicians;

6.-11. (No change.)

12. Ensuring the dispensing of all medication generally prescribed to patients in the trading area of the licensed premises or as required by the speciality for which the pharmacy holds a permit;

13.-14. (No change).

SUBCHAPTER 4. PHARMACY PERMITS

13:39-4.4 Change of ownership

Whenever there is any change in ownership of the business entity holding a permit to operate a pharmacy, the new ownership of such entity shall apply for a new permit not less than 30 days in advance of the change of ownership on a form prescribed and furnished by the Board and pay a fee pursuant to N.J.A.C. 13:39-1.3.

13:39-4.7 New pharmacies; eligibility and application

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

(c) The permit application shall bear the exact trade name, if any; the corporate names, if any; the name and addresses of the owners and operators, if a sole proprietorship or partnership; the names and addresses of all officers and stockholders and the names and addresses of all principles duly licensed to write prescriptions if the pharmacy is a non-publicly held corporation; and the names and addresses of the officers, if a publicly held corporation.

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

13:39-4.9 Business hours

(a) All pharmacies shall be kept open for the transaction of business at least 40 hours per week and at least five days per week.

(b) If any changes are made in the opening or closing hours of a pharmacy or other Board-licensed establishment, the Board office shall be notified in writing of these changes within 30 days.

13:39-4.14 Contract pharmaceutical services

An institutional permit is required for any area within an institution where drugs are stored, manufactured or compounded and which is serviced by an outside vendor that performs pharmaceutical services as defined in N.J.A.C. 13:39-1.2.

13:39-4.15 Retail permit; prescription department of pharmacy department

(a) (No change.)

(b) The holder of a permit to operate a prescription or pharmacy department and the registered pharmacist-in-charge of the department shall be subject to the following additional requirements:

1. (No change.)

2. The registered pharmacist on duty shall be responsible for keeping the prescription department secure and locked and the alarm system turned on at all times when he or she does not have full vision or control of the department or when he or she is not present within the department. Only the pharmacist-in-charge of the licensed premises shall be responsible for the security of the keys to the department.

3.-6. (No change.)

Recodify existing 8.-11. as 7.-10. (No change in text.)

SUBCHAPTER 5. PRESCRIPTIONS

13:39-5.3 Authorization for renewal of prescriptions

(a) (No change.)

(b) When the renewals listed on the original prescription have been depleted, no additional renewals may be added to the original prescription. For additional dispensing, a new prescription must be authorized by the prescriber as provided in N.J.S.A. 45:14-14, which must be reduced to writing by the pharmacist and entered into either a manual or into the electronic data processing system as a new prescription. A new prescription shall be generated and the original prescription shall remain in the prescription file in chronological order.

13:39-5.6 Record of pharmacist filling prescription

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

(d) Prescriptions for all controlled substances listed in schedule II shall be maintained in a separate prescription file.

(e) (No change.)

(f) Prescriptions for all controlled substances listed in schedules III, IV and V shall be maintained in a single file separate from all other prescriptions, unless an electronic data processing system is utilized which meets the requirements of (i) below. If such an electronic data processing system is utilized, prescriptions for all substances listed in schedules III, IV and V shall be filed either in the prescription file for controlled substances listed in schedule[s I and] II or in the usual consecutively numbered prescription file for noncontrolled substances.

(g)-(h) (No change.)

(i) In using an electronic data processing system, the system shall have the capability of producing sight-readable documents of all original and refilled prescription data, and, in addition, the number of refills authorized by the prescriber for a period of not less than five years. Five years of record information shall be maintained in such a manner so as to be sight-readable within two weeks. The most recent one year of record information shall be immediately reviewable on-line and available in printed form within three business days. The term "sight-readable", as it appears in all rules of the Board, shall mean that the Board or Attorney General shall be able to examine and read the record of information. During the course of an on-site inspection, the record may be read from a cathode ray tube (CRT), microfiche, microfilm, hard copy printout or other Board acceptable method. For the purpose of administrative proceedings before the Board, records shall be provided in a paper printout form.

(j) (No change.)

SUBCHAPTER 6. DISPENSING AND ADVERTISING DRUGS

13:39-6.3 (Reserved)

13:39-6.6 Foreign prescriptions

Only those prescriptions written or signed by an authorized prescriber licensed to write prescriptions in the United States, District of Columbia, or any territory of the United States shall be considered valid prescription orders.

13:39-6.7 Supportive personnel

(a) (No change.)

(b) Supportive personnel shall not interpret a prescription order or consult with a patient or prescriber or the agent of the prescriber. Supportive personnel may, however, count, weigh, measure, or pour prescription medication under the direct supervision of the registered pharmacist as long as the contents and finished-product are verified by a registered pharmacist.

(c) (No change.)

SUBCHAPTER 7. PHARMACY FACILITY AND RECORDS

13:39-7.7 Minimum equipment and facilities

(a) The following minimum amount of equipment and facilities shall be required to be in every prescription area, and this equipment shall be stored so as to be readily accessible and shall be kept in a clean condition:

1. The current USP DI and supplements and suitable current reference texts encompassing the general practice of pharmacy, drug interactions and drug product composition. Unabridged computerized versions of these reference texts shall be acceptable;

Recodify existing 3.-8. as 2.-7. (No change in text.)

8. A glass mortar and pestle

9. Glass funnels;

10. (No change.)

11. A steel spatula and a spatula of rubber or composition;

Recodify existing 13.-14. as 12.-13. (No change in text.)

Recodify existing 16.-17. as 14.-15. (No change in text.)

16. Auxilliary labels, including poison labels;

Recodify existing 19.-20. as 17.-18. (No change in text.)

13:39-7.11 Prescription balances, scales, weights and automatic counting devices

All pharmacies shall prove to the satisfaction of the Board that all balances, scales, weights and automatic counting devices have been annually inspected by the Department of Weights and Measures of the municipality or county in which such pharmacy, drugstore, or other Board-licensed establishment is located, and that such balances, scales, weights and automatic counting devices have been properly sealed by the applicable authority.

13:39-7.14 Patient profile record system

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

(e) Upon receipt of a new or refill prescription, a pharmacist shall examine the patient's profile record either in a manual or electronic data processing system before dispensing the medication, to determine the possibility of a *[harmful]* ***potentially significant*** drug interaction, reaction or misutilization of the prescription. Upon determining a *[harmful]* ***potentially significant*** drug interaction, reaction or misutilization, the pharmacist shall take the appropriate action to avoid or minimize the problem, which shall, if necessary, include consultation with the patient and/or the prescriber.

SUBCHAPTER 8. INTERNSHIPS; EXTERNSHIPS; APPROVED TRAINING SITES

13:39-8.1 Definitions

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

"Approved training site" means a site approved by the Board to provide accredited practical experience to pharmacy interns or externs.

...

"Pharmacy extern" means any person who is in the fifth or sixth college year (or third or fourth professional year) at an accredited school or college of pharmacy approved by the Board who is assigned to an approved training site for the purpose of acquiring accredited practical experience under the supervision of the school or college at which he or she is enrolled.

...

13:39-8.2 Preceptor certification application; procedures; responsibilities

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

(e) The certified preceptor is charged with the responsibility for the following:

1.-2. (No change.)

3. Providing the pharmacy intern or extern with instruction and guidance in:

i.-vii. (No change.)

viii. Telephone procedure with prescribers and patients;

ix. Consulting with prescribers and patients; and

x. (No change.)

4. Arranging an interview with a physician or other authorized prescriber for the intern or extern; and

5. (No change.)

13:39-8.3 Training pharmacy approval

(a) To be approved as a training pharmacy for interns and externs, a pharmacy shall meet the following requirements:

1. (No change.)

2. Have a total number of prescriptions or medication orders filled annually, including renewals, of at least 20,000, with no more than one pharmacy intern or extern in training for each 20,000 prescriptions filled in the pharmacy.

3.-4. (No change.)

13:39-8.4 Internship and externship practical experience

(a) The minimum accredited internship and externship practical experience requirement shall be the equivalent of 1,000 hours as follows:

1. One thousand hours for completion of a structured internship conducted after graduation from an accredited college of pharmacy and consisting of no less than 24 weeks supervised by a certified preceptor. Each week of practical experience shall consist of no less than 20 hours and no more than 45 hours of actual service per week. If the intern is a foreign pharmacy graduate, he or she must have met all of the requirements of the National Association of Board of Pharmacy Foreign Pharmacy Graduate Examination Commission.

2. The preceptor and the pharmacy intern shall keep accurate records of the time spent by the pharmacy intern for credit toward the requirements of (a)1 above. The Board shall provide appropriate forms to be submitted to the Board for approval of postgraduate practical experience.

3. No credit shall be given for hours served as an intern prior to the Board's receipt of the written application.

Recodify existing 2. and 3. as (b) and (c) (No change in text.)

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

(f) The pharmacy college shall certify that the requirements of (b) above have been met. The Board shall provide appropriate forms for such certification.

13:39-8.5 Change in intern status

A pharmacy intern applying for registration as a pharmacist in the State of New Jersey shall notify the Board within 10 days of any change in:

1. Beginning of a term of internship;
2. Termination of an internship;
3. Number of hours of employment;
4. Scheduled hours of employment;
5. Preceptor; and/or
6. Employing pharmacy.

13:39-8.7 Pharmacist intern log

(a) Pharmacist interns shall maintain a log for the internship period which meets the following requirements:

1. (No change.)

2. Entries shall be made in the log weekly and shall contain:

i. (No change.)

ii. A brief summary of all new prescription drug products (new generic entities only) dispensed, such as physical-chemical characteristics, dosage, forms, and usage;

iii. One example of each of the following professional responsibilities:

(1) The use of the patient profile record requiring contact with patient, prescriber or hospital to resolve potential problems;

(2) Consultation with the patient or prescriber concerning special instructions regarding the use of medications;

(3) In a retail setting, consultation with the patient concerning over the counter medication; and

iv. The preceptor's report.

SUBCHAPTER 9. PHARMACEUTICAL SERVICES WITHIN HEALTH CARE FACILITIES

13:39-9.1 Definitions

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

"Authorized prescriber" means a licensed practitioner who is authorized by law to write prescriptions and/or medication orders.

...

"Health care facility" means:

A place where the sick and injured are cared for under a common roof such as hospitals; long term care facilities; and establishments similar to those delineated in N.J.S.A. 45:14-32.

...

"Medication order" means a written request for medication originated by an authorized prescriber and intended for patient use in the health care facility, and not for use of the institution's employees or their dependents or outpatients of the facility's clinics. A valid medication order contains the date ordered, the patient's name and location within the facility, the name, dose, route, and frequency of administration of the medication, and any additional instructions. Computer-generated medication orders within an institutional setting, utilizing the prescriber's electronic signature or password will meet legal requirements for a prescriber's original handwritten signature on medication orders. Computerized signatures or passwords will be accepted provided that the facility has adequate safeguards which assure the confidentiality of each electronic signature or password and which prohibit their improper or unauthorized use.

13:39-9.3 Control of institutional pharmaceutical services

(a) (No change.)

(b) If a health care facility does not have an institutional pharmacy on its premises or chooses to utilize the services of a pharmacy outside the institution, it may enter into an agreement with a pharmacy licensed by the Board. The pharmacist-in-charge of that pharmacy and the designated pharmacist of the institution, if appropriate, shall direct, control, supervise and be responsible for the pharmaceutical services provided to the facility.

(c) The pharmacist-in-charge, with the cooperation of the Pharmacy and Therapeutics Committee, shall develop written policies and procedures as needed to provide pharmaceutical services to the facility. The written policies and procedures shall be available to the Board.

13:39-9.4 Pharmaceutical services

The pharmaceutical services shall be provided in accordance with accepted professional principles and standards and appropriate Federal, State and local laws. These services shall be responsive to the medication needs of the patient.

13:39-9.5 Pharmaceuticals

(a) The pharmacist-in-charge shall be responsible for determining the specifications for drugs and pharmaceutical preparations used in the treatment of patients of the facility as to quality, quantity and source of supply. An authorized purchasing agent and/or materials manager and/or pharmacy buyer of the facility may perform the actual procurement. In such a case, the purchase shall be approved by the pharmacist-in-charge or his or her designee, who shall be a pharmacist.

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

(d) The storage and dispensing of all Investigational New Drugs shall be a pharmaceutical service provided in cooperation with, and in support of the principal investigator. Under these parameters the dispensing of these drugs shall not be construed to be a violation of N.J.A.C. 13:39-5.4. ***A facility participating in experimental research involving residents must be in compliance with Federal Department of Health and Human Services regulations, 45 C.F.R. Part 46, Protection of Human Subjects of Research.***

(e) The pharmacist-in-charge shall establish a system of control for all drugs dispensed for use in the drug therapy of patients of the facility. Inspections shall be conducted by a pharmacist of all medication areas located in the facility or any other service of the facility. These inspections shall be fully documented. Written inspection reports shall be prepared and signed by the inspecting pharmacist. Procedures for the review of these reports shall be developed and instituted by the pharmacist-in-charge and can be incorporated into the overall quality assurance program of the hospital.

13:39-9.6 Drug disbursement; written orders; outpatient prescriptions

(a) The pharmacist shall review the prescriber's original order, a direct copy thereof, or an electro-mechanical facsimile before any initial dose of medication is dispensed, except as provided for in N.J.A.C. 13:39-9.9.

(b) Drugs not specifically limited as to time or number of doses when ordered shall be controlled by the automatic stop order procedure or other methods in accordance with written policies of the facility.

(c) Orders involving abbreviations and chemical symbols shall be carried out only if the abbreviations and symbols are included on a standard list that has been approved by the medical staff.

(d) When appropriate, the pharmacist shall make necessary *[clarifying]* entries into the patient medical record relative to drug use after consultation with the prescriber.

(e) Prescriptions written for employees of the institution or their dependents, or for outpatients of the facility's clinic, shall conform to the prescription requirements of N.J.S.A. 45:14-14.

13:39-9.7 Drug disbursement; oral orders

(a) A pharmacist shall receive oral orders only from an authorized prescriber. Such orders shall be immediately recorded and signed by the person receiving the order on the prescriber's order sheet or into the electronic data processing system.

(b) Oral orders for Schedule II controlled substances shall be permitted only in the case of a bona fide emergency situation.

(c) Oral orders shall be countersigned by the prescriber as required by *[20 CFR Part 3 §§405.1024(g)(6) and 405.1123(h)]* ***42 CFR 463***.

13:39-9.8 Compounding

(a) Compounding of individual medication orders or prescriptions, the formulation of special drug needs and all bulk compounding (sterile or non-sterile) shall be done by or under the direct supervision of a pharmacist.

(b) Asceptic control procedures shall be maintained for the preparation of intravenous admixtures, the reconstitution of other sterile parenteral preparations, and the compounding and sterilization of other pharmaceutical products as needed.

(c) All prepackaging and labeling of drugs shall be done by or under the direct supervision of a pharmacist. Procedures shall be established for maintaining the integrity and manufacturer's control identity of prepackaged material. The prepackaging records shall be initialed by the supervising pharmacist.

13:39-9.9 Monitoring of patient drug therapy

(a) The pharmacist shall be responsible for monitoring drug therapy of patients in the facility. This shall include, but is not limited to, maintaining and reviewing the patient medication profile prior to the dispensing of medications.

(b) In instances involving the issuance and administration of STAT orders (orders requiring immediate attention) these drugs shall be documented on the patient's medication profile immediately after dispensing.

(c) When the pharmacy is closed, these drugs shall be documented on the patient's medication profile immediately after the pharmacy is reopened.

13:39-9.10 Medication not dispensed in finished form

The pharmacist shall be responsible for providing medication in a form that requires little or no further alterations, preparation, reconstitution, dilution or labeling by other licensed personnel. The pharmacist shall provide adequate instructions for those products that are not dispensed in finished form.

13:39-9.11 Drug labeling

(a) Whenever drugs are added to intravenous solutions, supplementary labeling shall be affixed to the container indicating the names and amounts of all ingredients, the name and location of the patient, the date and time of expiration and the initials of the supervising or dispensing pharmacist.

(b) Labeling of medications, other than intravenous solutions, shall be in conformance with written policies and procedures controlling the drug distribution system in use within the facility and in accord with current acceptable standards of pharmaceutical practice. Dispensing and labeling of outpatient prescriptions shall conform to N.J.S.A. 45:14-14.

13:39-9.12 Use of patient's own medication

(a) No drugs shall be administered to a patient except those provided through the pharmacy. Any exception to this rule must be governed by written policies and procedures developed by the pharmacist-in-charge and approved by the Pharmacy and Therapeutics Committee.

(b) Although the use of patient's own medications may be warranted in certain situations, it should be discouraged as a general or routine practice. If a patient's previously acquired medication is to be used, a written order to this effect shall be signed and dated by the patient's physician. Such medications shall be *[given to the pharmacist for identification of]* ***identified by the pharmacist as to*** contents and dispensing origin. Also, these medications shall be documented as part of the pharmacy's patient profile record system.

13:39-9.13 Investigational drugs; removal of outdated and recalled drugs; emergency drug supply; controlled dangerous substances

(a) Investigational drugs shall be properly labeled and stored in the pharmacy until dispensed. Essential information on the investigational drug shall be maintained in the pharmacy. The investigational drug may be administered only after basic chemical, pharmaceutical and pharmacological information has been made available to all concerned and all the requirements of the Food and Drug Administration and the facility are satisified.

(b) There shall be procedures established to assure the immediate and efficient removal of all outdated and recalled drugs from patient care areas and from the active stock of the pharmacy. The pharmacist-in-charge shall develop written policies and procedures governing the removal from the facility of outdated or recalled drugs.

(c) Limited quantities of emergency drugs shall be placed under controlled conditions in locations within the facility to assure im-

mediate access by authorized licensed health care personnel for use in an emergency situation. Written policies and procedures for the maintenance, content, control and accountability of emergency drugs supplied and located throughout the facility shall be developed by the pharmacist-in-charge and approved by the Pharmacy and Therapeutics Committee.

(d) Controlled dangerous substances shall be purchased, received, stored, dispensed, administered, recorded and controlled in accordance with State and Federal laws and regulations. Written policies and procedures concerning control, use and accountability of controlled drugs shall be developed by the pharmacist-in-charge.

13:39-9.14 Drug-dispensing devices

(a) Where the use of a drug-dispensing device is approved as an integral part of the drug distribution system by the facility, the pharmacist-in-charge and the Pharmacy and Therapeutics Committee, the device may be used when the pharmacist is not on duty (absent during either the day or night), provided that any absence of the pharmacist does not exceed 24 hours, or when the pharmacist is on duty, provided that proper review of the use of the drug-dispensing device can be ascertained. The drug-dispensing device shall be checked for accuracy and cleanliness every 24 hours by a pharmacist when on duty and so documented.

Recodify existing i.-iii. as 1.-3. (No change in text.)

4. A pharmacist shall check the record of all medications withdrawn from the drug-dispensing device against the order as written by the authorized prescriber. This check shall be performed and documented within 24 hours from the time of the original order and so noted on the pharmacy's patient medication profile.

Recodify existing v.-vi. as 5. and 6. (No change in text.)

13:39-9.15 Disposal of unused medications

(a) (No change in text.)

13:39-9.16 Records and reports

(a) (No change.)

(b) The institutional pharmacy shall maintain a patient profile record for each patient receiving drug therapy in accordance with N.J.A.C. 13:39-7.14 and as follows:

1. The profile records for inpatients shall contain: the date of each entry; the name; sex; age or birthdate; location of the patient; the drug name, dose, route of administration and quantity dispensed; the initials of the pharmacist performing the dispensing or supervising; the reported diagnosis allergies and chronic condition(s) of the patient.

2.-3. (No change.)

(c) (No change.)

(d) Records for receipt, use and final disposition of controlled dangerous substances shall be maintained by the institutional pharmacy in compliance with the requirements of Federal and State controlled dangerous substances laws and regulations. Nursing administration and audit records for controlled dangerous substances shall be available for review by the pharmacy.

(e) (No change.)

(f) The pharmacist-in-charge shall be responsible for maintaining a system by which all reported adverse drug reactions are recorded and reviewed by the Pharmacy and Therapeutics Committee. This information shall be made available to the Food and Drug Administration or other appropriate agencies upon request.

13:39-9.17 (No change in text.)

13:39-9.18 After hours access to the institutional pharmacy

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

(c) *[A registered nurse may]* ***The pharmacist-in-charge may designate a registered nurse to*** remove the following from the pharmacy stock of drugs:

1.-2. (No change.)

(d) *[A nurse shall leave in the pharmacy]* ***The pharmacist in charge shall obtain from the registered nurse*** on a suitable form a record of any drugs removed showing the following:

1.-4. (No change.)

5. The patient's name and location; and

6. (No change.)

(e) The *[nurse shall leave]* ***pharmacist in charge shall obtain*** with the record in (d) above the container from which the single dose was taken for drug administration purposes in order that it may be properly checked by a pharmacist.

(f) (No change.)

Recodify existing 13:39-9.10 through 9.18 as 9.18 through 9.26 (No change in text.)

SUBCHAPTER 11. NUCLEAR PHARMACIES

13:39-11.1 Definitions

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

...

"Radiopharmaceutical" means any substance defined as a drug in Section 201(g)(1) of the Federal Food, Drug and Cosmetic Act or in the FDA's Nuclear Pharmacy Guidelines and which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any such drug which is intended to be made radioactive. This definition includes nuclide generators which are intended to be used in the preparation of any such substance but does not include drugs such as carbon-containing compounds or potassium-containing compounds or potassium-containing salts which contain trace quantities of naturally occurring radionuclides.

...

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route 34

Township of Aberdeen and Borough of Matawan, Monmouth County

Adopted Amendment: N.J.A.C. 16:28-1.18

Proposed: May 2, 1994 at 26 N.J.R. 1765(a).

Adopted: June 13, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: June 17, 1994 as R.1994 d.353, **without change.**

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

Effective Date: July 18, 1994.

Expiration Date: May 7, 1998.

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

Full text of the adoption follows:

16:28-1.18 Route 34

(a) The rate of speed designated for the certain parts of State highway Route 34 described below shall be the maximum legal rate of speed:

1. For both directions of traffic in Monmouth County:

i.-v. (No change.)

vi. Aberdeen Township:

(1) 50 mph between the Marlboro Township-Aberdeen Township corporate line and a point 500 feet south of Randell Way (approximate milepost 20.44 to 20.47); thence

(2) Zone 3: 45 mph between a point 500 feet south of Randell Way and Van Brackle Road (approximate milepost 20.47 to 21.20); thence

vii. Aberdeen Township and Matawan Borough:

(1) 40 mph between Van Brackle Road and the most northerly Aberdeen Township-Matawan Borough corporate line (approximate milepost 21.20 to 22.25); thence
viii. (No change.)
2. (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Route U.S. 9
Lower Township, Cape May County
Adopted Amendment: N.J.A.C. 16:28-1.41

Proposed: May 2, 1994 at 26 N.J.R. 1765(b).
Adopted: June 13, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: June 17, 1994 as R.1994 d.354, **without change.**

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

Effective Date: July 18, 1994.
Expiration Date: May 7, 1998.

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

Full text of the adoption follows:

16:28-1.41 Route U.S. 9
(a) The rate of speed designated for the certain parts of State highway Route U.S. 9 described in this subsection shall be established and adopted as the maximum legal rate of speed:
1. For both directions of traffic in Cape May County:
i. Lower Township:
(1) Zone 1: 50 miles per hour between Route 109 and Cresse Lane except for 35 miles per hour when passing through the Lower Cape May Regional High School—Teitelman School (Bennetts Crossing) zone (mileposts 4.18 to 4.47), while 35 miles per hour "When Flashing" signs are operating during recess or while children are going to or leaving school during opening or closing hours (approximate mileposts 3.00 to 5.81); thence
(2) (No change.)
ii.-iv. (No change.)
2. (No change.)
(b) (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Route U.S. 130 including parts of Route I-295, Route U.S. 30 and Route U.S. 206
Carneys Point Township and Borough of Penns Grove, Salem County
Adopted Amendment: N.J.A.C. 16:28-1.69

Proposed: May 2, 1994 at 26 N.J.R. 1766(a).
Adopted: June 13, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: June 17, 1994 as R.1994 d.362, **without change.**

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

Effective Date: July 18, 1994.
Expiration Date: May 7, 1998.

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

Full text of the adoption follows:

16:28-1.69 Route U.S. 130 including parts of the Route I-295, Route U.S. 30 and Route U.S. 206
(a) The rate of speed designated for State highway Route U.S. 130, including parts of Route I-295, Route U.S. 30 and Route U.S. 206 described in this subsection are established and adopted as the maximum legal rate of speed for both directions of traffic:
1. Salem County:
i. (No change.)
ii. Carneys Point Township, Borough of Penns Grove:
(1) (No change.)
(2) Zone 2: 50 mph between Route N.J. 140 (Plant Street) and a point 960 feet south of Hollywood Avenue (approximate milepost 0.56 to 2.20);
(3) Zone 3: 35 mph between a point 960 feet south of Hollywood Avenue to Maple Avenue, except 25 mph when passing through the John J. Pershing and the Lafayette Public School zones 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 milepost 2.20 to 3.03);
(4)-(5) (No change.)
iii. (No change.)
2.-6. (No change.)
(b) (No change.)

(c)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Route N.J. 47
Middle Township, Cape May County
Adopted Amendment: N.J.A.C. 16:28-1.132

Proposed: May 2, 1994 at 26 N.J.R. 1767(a).
Adopted: June 13, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: June 17, 1994 as R.1994 d.361, **without change.**

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

Effective Date: July 18, 1994.
Expiration Date: May 7, 1998.

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

Full text of the adoption follows:

16:28-1.132 Route 47
(a) The rate of speed designated for the certain part of State highway Route 47 described in this subsection shall be established and adopted as the maximum legal rate of speed for both directions of traffic:
1. In Cape May County:
i.-ii. (No change.)
iii. Middle Township:
(1) (No change.)
(2) Zone 2: 40 mph between 700 feet south of the center of the northbound roadway of the Garden State Parkway overpass and Fifth Street (approximate mileposts 2.96 to 3.36); thence
(3) Zone 3: 35 mph between Fifth Street and County Road 626 (Railroad Avenue) (approximate mileposts 3.36 to 4.07); thence
(4)-(9) (No change.)
iv. (No change.)
2.-4. (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Wyckoff Mills Road (Under State Jurisdiction)
Howell Township, Monmouth County
Adopted New Rule: N.J.A.C. 16:28-1.182

Proposed: May 2, 1994 at 26 N.J.R. 1767(b).
Adopted: June 13, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: June 17, 1994 as R.1994 d.358, **without change.**

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

Effective Date: July 18, 1994.
Expiration Date: May 7, 1998.

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

Full text of the adoption follows:

16:28-1.182 Wyckoff Mills Road (under State jurisdiction Route U.S. 9 Ramp)

(a) The rate of speed designated for Wyckoff Mills Road (under State jurisdiction) described in this subsection shall be established and adopted as the maximum legal rate of speed thereat for both directions of traffic:

1. In Monmouth County:

i. Howell Township:

(1) Zone 1: 40 mph between Route U.S. 9 and Strickland Road (approximately 1,500 feet).

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Frontage Road (Under State Jurisdiction)
Union Township, Hunterdon County
Adopted New Rule: N.J.A.C. 16:28-1.183

Proposed: May 2, 1994 at 26 N.J.R. 1768(a).
Adopted: June 13, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: June 17, 1994 as R.1994 d.359, **without change.**

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

Effective Date: July 18, 1994.
Expiration Date: May 7, 1998.

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

Full text of the adoption follows:

16:28-1.183 Frontage Road (under State jurisdiction Route I-78 Connector)

(a) The rate of speed designated for Frontage Road (under State jurisdiction) described in this subsection is established and adopted as the maximum legal rate of speed for both directions of traffic:

1. Hunterdon County:

i. Union Township:

(1) Zone 1: 25 mph between Pattenburg Road and a point 725 feet east of Pattenburg Road.

(2) Zone 2: 35 mph between a point 500 feet west of Perryville Road and a point 750 feet east of Perryville Road.

(c)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Restricted Parking and Stopping
Route N.J. 31
East Amwell Township, Hunterdon County
Adopted Amendment: N.J.A.C. 16:28A-1.22

Proposed: May 2, 1994 at 26 N.J.R. 1768(b).
Adopted: June 13, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: June 17, 1994 as R.1994 d.363, **without change.**

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

Effective Date: July 18, 1994.
Expiration Date: May 7, 1998.

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

Full text of the adoption follows:

16:28A-1.22 Route 31

(a) The certain parts of State highway Route 31 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-7. (No change.)

8. No stopping or standing in East Amwell Township, Hunterdon County:

i. Along both sides:

(1) Beginning at the northerly curb line of Lambertville-Hopewell Road (C.R. 518) and a point 1,200 feet northerly therefrom.

(b) (No change.)

(d)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Restricted Parking and Stopping
Route U.S. 40
Hamilton Township, Atlantic County
Adopted Amendment: N.J.A.C. 16:28A-1.28

Proposed: May 2, 1994 at 26 N.J.R. 1769(a).
Adopted: June 13, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: June 17, 1994 as R.1994 d.360, **without change.**

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

Effective Date: July 18, 1994.
Expiration Date: May 7, 1998.

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

Full text of the adoption follows:

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

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

1.-4. (No change.)

5. No stopping or standing in Hamilton Township, Atlantic County:

i. (No change.)
ii. Along the northerly (westbound) side:
(1) (No change.)
(2) Beginning at the easterly curb line of Route N.J. 50 to a point 250 feet easterly therefrom.
6. Time limit parking in Hamilton Township, Atlantic County:
i. Along the northerly side:
(1) From the westerly curb line of Farragut Avenue to a point 250 feet east of the easterly curb line of Route N.J. 50.
Recodify existing 6.-8. as 7.-9. (No change in text.)
(b) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Limited Access Prohibition
Route N.J. 55 Freeway
Maurice River Township, Millville City and Vineland City in Cumberland County; Pittsgrove Township in Salem County; and Franklin Township, Clayton Borough, Elk Township, Glassboro Borough, Harrison Township, Mantua Township, Pitman Borough and Deptford Township in Gloucester County
Adopted New Rule: N.J.A.C. 16:30-7.3

Proposed: May 2, 1994 at 26 N.J.R. 1769(b).
Adopted: June 13, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: June 17, 1994 as R.1994 d.355, **without change.**

Authority: N.J.S.A. 27:1A-1, 27:1A-5, 27:1A-44, 39:4-197(b), 39:4-81 and 39:4-199.1

Effective Date: July 18, 1994.
Expiration Date: May 7, 1998.

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

Full text of the adoption follows:

16:30-7.3 Route N.J. 55 Freeway
(a) The use of the completed parts of Route N.J. 55 Freeway in both directions shall be limited to certain classes of traffic, beginning at milepost 20.00 in Maurice River Township to include the corporate limits of Millville City and Vineland City in Cumberland County, Pittsgrove Township in Salem County, Franklin Township, Clayton Borough, Elk Township, Glassboro Borough, Harrison Township, Mantua Township, Pitman Borough and Deptford Township in Gloucester County, ending at milepost 60.85. The use of the aforesaid sections of the Route N.J. 55 Freeway by the following classes of traffic is prohibited:
1. Pedestrians, except park areas, rest areas, walks and crossings specifically designated by the Commissioner for that purpose;
2. Animals, led, ridden or driven, except on leash where pedestrians are permitted; and
3. Non-motorized vehicles.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Turn Prohibitions
Route U.S. 46
Mount Olive Township, Morris County
Adopted Amendment: N.J.A.C. 16:31-1.3

Proposed: May 2, 1994 at 26 N.J.R. 1771(a).
Adopted: June 13, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: June 17, 1994 as R.1994 d.356, **without change.**

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

Effective Date: July 18, 1994.
Expiration Date: May 7, 1998.

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

Full text of the adoption follows:

16:31-1.3 Route 46
(a) Turning movements of traffic on the certain parts of State highway Route U.S. 46 described in this subsection are regulated as follows:
1. No left turns in Mount Olive Township, Morris County:
i.-iii. (No change.)
iv. West on Route U.S. 46 to south on Gold Mine Road.
2. (No change.)

(c)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Turn Prohibitions
Route N.J. 47
City of Vineland, Cumberland County
Adopted Amendment: N.J.A.C. 16:31-1.8

Proposed: May 2, 1994 at 26 N.J.R. 1770(a).
Adopted: June 13, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: June 17, 1994 as R.1994 d.357, **without change.**

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

Effective Date: July 18, 1994.
Expiration Date: May 7, 1998.

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

Full text of the adoption follows:

16:31-1.8 Route 47
(a) Turning movements of traffic on certain parts of State highway Route 47 described in this subsection are regulated as follows:
1. No left turn:
i. In Deptford Township, Gloucester County:
(A) From north on Route 47 to west on Bankbridge Road.
2. No "U" turn:
i. In the City of Vineland, Cumberland County:
(A) From 925 feet south of College Drive to a point 1,065 feet south of College Drive.

(a)

DIVISION OF AERONAUTICS

Airport Safety Improvement Aid

Readoption with Amendments: N.J.A.C. 16:56

Proposed: April 18, 1994 at 26 N.J.R. 1607(a).
Adopted: May 24, 1994 by W. Dennis Keck, Acting Assistant Commissioner for Policy and Planning, Department of Transportation.
Filed: June 22, 1994 as R.1994 d.372, **with technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29, 6:1-44 and the "Airport Safety Act of 1983," P.L. 1983, c.264, effective July 11, 1983 (N.J.S.A. 6:1-89 et seq.).
Effective Date: June 22, 1994, Readoption;
July 18, 1994, Amendments.
Expiration Date: June 22, 1999.

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

Summary of Agency-Initiated Changes:
At the time of proposal, the Department had anticipated changing the Division's name from the Division of Aeronautics to the Office of Aviation. However, since the publishing of the proposed readoption with amendments, reorganization of the reporting arrangements within the chain of command in the Department has necessitated the continuation of the designation of the Division of Aeronautics. In addition, this reorganization of the reporting arrangements has also necessitated changing the Director to Executive Director.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:56.

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

16:56-1.1 Definitions

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

"Airport Safety Fund" means the special fund established by the "Airport Safety Act of 1983" to help finance improvements to air safety and travel.

"Applicant" means any person seeking funds from the Airport Safety Fund.

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

"Department" means the Department of Transportation.

"Director" means the Director of the Office of Aviation.

"Division" means the Division of Aeronautics.

"***Executive*** Director" means the ***Executive*** Director of the *[Office]* ***Division*** of *[Aviation]* ***Aeronautics***.

["Office" means the Office of Aviation.]

"Person" means any corporation, company, association, society, firm, partnership, or joint stock company, as well as any individual, the State, and all political subdivisions of the State or any agencies or instrumentalities thereof.

"Sponsor" means any person in receipt of funds from the Airport Safety Fund.

"State Aid" means funds dispersed from the Airport Safety Fund for the purposes of this chapter.

"Unrestricted public use airport" means any area of land, water, or both, either publicly or privately owned, which is licensed for the landing or takeoff of aircraft and open to the public for aeronautical operations that does not have restrictive covenant on operational use by the general public for reasons other than safety.

"Waiver" means relief from application requirements of this rule or temporary relief from other provisions of this rule for a specified time period.

16:56-3.1 Eligible facilities

(a) Airports eligible for aid under this chapter are unrestricted public use airports which are not international airports by classification or service characteristics.

(b) Projects eligible for consideration for funding under the provisions of this chapter include, but are not limited to, the following:

1.-17. (No change.)

(c) (No change.)

16:56-5.1 Application for receipt of State grants for matching Federal funds

(a) Persons seeking State grants for matching funds may request application and agreement forms by writing to the following address:

[Office of Aviation] ***Division of Aeronautics***
N.J. Department of Transportation
1035 Parkway Avenue
CN 610
Trenton, New Jersey 08625-0610

(b) (No change.)

(c) For construction or installation projects, the applicant shall further provide:

1. An "Application for New Aeronautical Facility License or Alteration," as required under N.J.A.C. 16:54.

2.-6. (No change.)

(d) (No change.)

(e) The Commissioner may waive the requirement to submit specific maps, reports, or plans normally required for an aid application. The waivers may be granted only after a written request to the ***Executive*** Director and formal written response to the applicant by the ***Executive*** Director prior to submission of the completed application to the *[Office]* ***Division***.

16:56-6.1 Application for receipt of State Airport Safety Improvement Loans

(a) Persons seeking State Airport Safety Improvement loans may request application and agreement forms by writing to the following address:

[Office of Aviation] ***Division of Aeronautics***
N.J. Department of Transportation
1035 Parkway Avenue
CN 610
Trenton, New Jersey 08625-0610

(b) (No change.)

(c) For construction or installation project(s), the applicant shall further provide:

1. An "Application for New Aeronautical Facility License or Alteration, as required under N.J.A.C. 16:54.

Recodify existing 3.-9. as 2.-8. (No change in text.)

(d) (No change.)

(e) The Commissioner may waive the requirement to submit specific maps, reports, or plans normally required for an aid application. The waivers may be granted only after a written request to the ***Executive*** Director and formal written response to the applicant by the ***Executive*** Director prior to submission of the completed application to the *[Office]* ***Division***.

16:56-7.1 Application for receipt of State Airport Safety Improvement Grants

(a) Persons seeking State Airport Safety Improvement Grants may request application and agreement forms by writing to the following address:

[Office of Aviation] ***Division of Aeronautics***
N.J. Department of Transportation
1035 Parkway Avenue
CN 610
Trenton, New Jersey 08625-0610

(b) (No change.)

(c) For construction or installation projects, the applicant shall further provide:

1. An "Application for New Aeronautical Facility License or Alteration," as required under N.J.A.C. 16:54.

Recodify existing 3.-9. as 2.-8. (No change in text.)

(d) (No change.)

(e) The Commissioner may waive the requirement to submit specific maps, reports, or plans normally required for an aid application. The waivers may be granted only after a written request to the ***Executive*** Director and formal written response to the applicant by the ***Executive*** Director prior to submission of the completed application to the *[Office]* ***Division***.

16:56-8.1 Application for emergency or special State airport safety aid

(a) In the event that an applicant is unable to meet the deadlines of N.J.A.C. 16:56-9.1 and/or the process of N.J.A.C. 16:56-13.1, or requests alternate consideration of an application, an applicant may petition the Commissioner for emergency aid under the provisions of this Chapter. An application filed for emergency aid may be processed in an expedited manner, but within the normal application procedures to the greatest degree possible.

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

Recodify existing (e)-(f) as (c)-(d) (No change in text.)

16:56-9.1 Deadlines for applications for State aid

(a) Applications for State aid are considered on an annual basis, based on information received under the Five-Year Capital Improvement Program (CIP). From the completed CIP's on file for any given year, projects will be selected for State Aid participation.

(b) The deadline for submission of projects under the Five-Year Capital Improvement Program is the close of business on the 1st Monday of February.

Recodify existing (e) as (c) (No change in text.)

16:56-10.1 Airport aid project selection process and criteria considered

(a) Following the closing date for the receipt of Capital Improvement Program (CIP) information, all proposed projects will be reviewed by the Department to determine their eligibility for funding. Proposed projects found to be eligible may be considered for funding. If, following the initial determination of eligibility, it is found that additional information is necessary, the applicant shall provide that additional information so as to allow further consideration of the project.

(b) The ***Executive*** Director shall review all Capital Improvement Program projects to be considered for funding and evaluate those proposed projects in respect to applicable criteria for project funding, available State resources, current priorities for development of the air transport infrastructure, and significant environmental or economic factors.

(c) Within 60 days of the closing date for Capital Improvement Program projects, the ***Executive*** Director shall forward to the Commissioner the list of projects considered for funding that year, and the list of those projects recommended by the ***Executive*** Director to be funded from all projects considered. The recommendations of the ***Executive*** Director are to be provided exclusively to the Commissioner for review. The ***Executive*** Director may not otherwise release recommendations as they do not constitute a public commitment for Department action.

Recodify existing (e)-(f) as (d)-(e).

(f) An applicant who receives an offer for State aid has 14 days to respond to indicate acceptance of the offer for State Aid. Acceptance of an offer for State Aid is nonbinding on an applicant until a grant agreement has been signed and accepted by the State and the sponsor. Failure to respond will be considered as rejection of the State Aid offer.

(g) The applicant shall have 60 days after accepting an offer for State Aid to submit a completed application. Applicants may request an extension of this deadline from the ***Executive*** Director. Extensions may be granted if the applicant demonstrates that additional time is required to prepare and submit a complete application based on project complexity or pending administrative approvals. The *[Office]* ***Division*** will review the application for completeness. Grant agreements will be prepared by the *[Office]* ***Division*** for complete applications received for approved projects.

(h) In considering Capital Improvement Program projects or any application for aid, the ***Executive*** Director and Commissioner shall give weight and consideration to the following criteria:

1.-9. (No change.)

(i) In consideration of the various criteria applicable to the review of a Capital Improvement Program projects or application, the Commissioner reserves the right to evaluate the matrix of criteria in a manner which may take into account unique or special factors at any airport. Factors making an airport unique from any others may include the character of the market it serves, the type and use of based aircraft, the current or future role of the airport, nearby facilities offering similar services, or any other significant elements contributing to the character or utilization of the facility. To take into consideration special or unique factors, the Commissioner may evaluate criteria for individual applications giving differing weights to applicable criteria on a case-by-case basis.

(j) In evaluating Capital Improvement Program projects or applications for State Aid, the Commissioner may establish Department internal review procedures, review committees, or any other administrative mechanisms sufficient to handle in an expeditious manner the responsibilities of the Department in these programs. The Commissioner is required, however, to maintain an ongoing record of the specific review mechanisms used for the consideration of airport aid applications and to make available to applicants an outline of the current applicable internal review procedures.

16:56-14.1 Audit and recordkeeping requirements for State funded projects

(a) Provisions for audit of grants to sponsors are as follows:

1. The sponsor shall comply with the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management and Budget and the Single Audit Act of 1984 (Federal OMB Circular A-128).

2. A Single Audit of the sponsor shall be performed annually by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards in conformity with State audit policy.

3. Department agreements governed by this chapter shall be subjected to audit compliance tests in accordance with requirements delineated in the Department of Treasury, OMB publication entitled "New Jersey Grants Management Information System Manual".

4. Audit costs incurred by sponsors to comply with this subchapter are not reimbursable.

(b) General provisions for audit and recordkeeping requirements are as follows;

1. Each sponsor shall keep records as the Commissioner may prescribe, including records which fully disclose the amount and the disposition of the proceeds of the aid, the total cost of the plan or program in connection with which the grant is given or used, and the amount and nature of that portion of the cost of the plan or program supplied by other sources, and records as will facilitate effective audit.

2. The Commissioner or any duly authorized representatives, shall have access to any books, documents, papers, and records that are pertinent to aid received under this chapter, for the purpose of audit and examination. This includes progress audits at any time during the project.

3. To fulfill statutory and regulatory requirements each sponsor shall establish and maintain an adequate accounting record for each individual project, which will allow the State to determine the allowability of costs incurred for the project.

4.-6. (No change.)

(c) (No change.)

16:56-15.1 Inspection of State funded projects

(a) The Commissioner, ***Executive*** Director, or any other person designated or authorized by the Commissioner has the absolute right

to inspect, without notice, the sites, proposed sites, records, construction or materials related to an airport aid project.

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

16:56-16.1 Performance requirements for persons receiving State airport safety improvement aid

(a) All persons receiving aid under the provisions of this chapter are bound to comply with all criteria, provisions, and terms of contract and/or agreement under the granting of that aid. Modification to the terms of any contract and/or agreement can be made only after the sponsor, or their legally designated representative or successor, and the Department agree to the modification in writing.

(b) The Department may allow, by formal contract of reassignment, the transfer of the rights and obligations assumed by one person under an aid grant or loan to another person. An example is when an airport is sold and continues to operate as an airport under a new owner. The Department may agree by contract to reassign the aid agreement to the new owner. The Department is not, however, obliged in any way to seek reassignment of any agreement or obligation.

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

16:56-17.1 Payment procedures

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

(c) Sponsors having received State Aid shall disburse those monies and make payments to outside vendors or services and materials properly invoiced under the applicable project within 10 calendar days.

(d) Sponsors receiving State Aid for matching Federal funds shall forward to the Department, on the forms provided by the Department, requests for matching funds along with signed completed copies of Federal forms requesting reimbursement for airport aid projects as forwarded to the Federal Aviation Administration. When the Federal Aviation Administration releases payments to the sponsor, the State may thereafter forward to the sponsor its share of project participation as provided for in its contractual assurances with the sponsor.

(e) Sponsors receiving State Aid shall forward to the Department, on the forms provided by the Department, the request for disbursement of State Aid. The sponsor shall attach valid copies of applicable vendor invoices for payment under the project in the manner prescribed by the Department. In the case of construction or installation projects at an airport, these invoices shall be certified by the project's engineer as accurate and properly invoicing the "as built" resources used in the project. In nonconstruction or installation projects, the sponsor shall attach valid copies of applicable vendor invoices for payments under a project. These invoices shall be certified by the sponsor as accurate and properly invoicing the resources used in the project. Upon receipt of all local certifications under a project, the State may thereafter forward payments for its share of a project to the sponsor as provided for in its contractual assurances with the sponsor.

(f) Sponsors receiving State Airport Safety Improvement Loans (disbursement) shall forward to the Department, on the forms provided by the Department, the request for disbursement of State Aid Loan monies. This request shall include valid copies of applicable vendor invoices for payment under the project in the manner prescribed by the Department. In the case of construction or installation projects at an airport, these invoices shall be certified by the project's engineer as accurate and properly invoicing the "as built" resources used in the project. Requests forwarded to the Department for monies shall be in increments of not less than 25 percent of the authorized State loan participation in the project. Upon receipt of all local certifications under a project, the State may thereafter forward payments for its share of a project to the sponsor as provided for in its contractual assurances.

(g) Sponsors who have received State Airport Safety Improvement Loans shall repay that loan to the State in the manner provided for in its contractual agreements. Unless otherwise provided for in the, contract Airport Aid Loan repayments to the State shall be due on a quarterly basis on the First day of the months of March, June, September and December.

16:56-18.1 Liability and penalties

(a) Any failure by a sponsor to meet the conditions or performance criteria under an airport aid project may result in the withdrawal of State Aid, disqualification from current or future aid consideration, or the declaration that a sponsor is in default of the terms of an airport aid contract(s).

(b) If a sponsor fails to continue to comply with its contractual assurances before the end of the predetermined life of the financially assisted improvements, as the life is determined by the Commissioner, the State shall be immediately reimbursed for the unused portion of the predetermined life and, if not fully reimbursed, the claim shall be a first lien on the airport property to the extent of the unpaid balance.

(c) (No change.)

OTHER AGENCIES

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Hazardous Discharge Site Remediation Fund

Adopted Amendments: N.J.A.C. 19:31-8.2 and 8.3

Proposed: April 18, 1994 at 26 N.J.R. 1612(b).

Adopted: June 7, 1994 by New Jersey Economic Development Authority, Richard L. Timmons, Assistant Deputy Director.

Filed: June 24, 1994 as R.1994 d.375, **without change.**

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

Effective Date: July 18, 1994.

Expiration Date: August 20, 1995.

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

Full text of the adoption follows:

19:31-8.2 Definitions

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

"Innocent party" means a person who:

1. Acquired the property prior to December 31, 1983;

2. Who can demonstrate that the hazardous substance or hazardous waste that was discharged at the property was not used by that person, or by any person that had permission to use the site from the person applying for an innocent party grant; and

3. Who can certify that he or any person that had permission to use the site from the person applying for the innocent party grant did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered.

. . .

19:31-8.3 Eligibility

(a) (No change.)

(b) No person, other than a municipal governmental entity shall be eligible for Financial Assistance from the Fund to the extent that person is capable of establishing a remediation funding source.

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

(f) An applicant for financial assistance or a grant shall certify to the Department and to the Authority that they cannot establish a remediation funding source for all or part of the remediation costs. This requirement does not apply to grants to innocent parties or to financial assistance or grants to municipal governmental entities.

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

New Jersey Boat Industry Loan Guarantee Fund

Adopted New Rules: N.J.A.C. 19:31-9

Proposed: April 18, 1994 at 26 N.J.R. 1613(a).
Adopted: June 7, 1994 by New Jersey Economic Development Authority, Richard L. Timmons, Assistant Deputy Director.
Filed: June 24, 1994 as R.1994 d.376, **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. 34:1B-1 et seq., specifically N.J.S.A. 34:1B-5(l).

Effective Date: July 18, 1994.
Expiration Date: August 20, 1995.

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

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

SUBCHAPTER 9. NEW JERSEY BOAT INDUSTRY LOAN GUARANTEE FUND

19:31-9.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1993, c.358. This Act established the New Jersey Boat Industry Loan Guarantee Fund, a special, revolving fund for the purpose of providing loan guarantees to manufacturers, assemblers and distributors of luxury boats in New Jersey.

19:31-9.2 Definitions

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

"Act" means P.L. 1993, c.358.

"Authority" means the New Jersey Economic Development Authority.

"Boat" means a vessel or watercraft, other than a personal watercraft or sea plane on the water, used or capable of being used as a means of transportation on water, which may be temporarily or permanently equipped with machinery for propulsion.

"Boat manufacturer or distributor" means an independently owned and operated business which:

1. Manufactures, assembles or distributes boats in the State, the retail value of which is at least $100,000 each, or manufactures or provides marine products in the State for such boats; and

2. Prior to January 1, 1991, manufactured, assembled or distributed boats in the State the retail value of which was at least $100,000 each, or manufactured or provided marine products in the State for such boats.

"Cost" means the expenses incurred in connection with the operation of a boat manufacturer or distributor, which can be reasonably expected to be recovered through the financing of the operation, and which shall include, but not be limited to, the costs of planning, fixed assets, materials, working capital, floor plan funding and any other costs determined by the Authority to be necessary to carry out the purposes of the Act.

"Fixed assets" means any real property, interests in real property, plant, equipment, and other assets commonly accepted as fixed assets.

"Marine products" means those parts and materials utilized in the design, construction and maintenance of boats, which shall include, but not be limited to, parts and materials used in boat engines, generators, transmissions, exhaust systems and electrical, plumbing, heating and cooling systems, except that marine products shall not include any oil or oil-based products or materials.

"Members" means the members of the Authority.

"Participating bank" or "bank" means a State- or Federally-chartered bank, savings bank or savings and loan association or a bank organized under the laws of a foreign government, deemed eligible by the Authority for participation in the program.

"Program" means the New Jersey Boat Industry Loan Guarantee Program established by the Authority purusant to the Act.

"Working capital" means those liquid capital assets other than fixed assets.

"State" means the State of New Jersey.

19:31-9.3 Eligibility

(a) Boat manufacturers and distributors are eligible for guarantees of loans and lines of credit made by participating banks to pay for eligible costs provided that:

1. The Authority, after consultation with the Office of Labor Statistics in the Division of Planning and Research of the Department of Labor, shall determine that the loan for which a guarantee is requested, is expected to result in a net increase in the number of jobs for residents of the State subsequent to August 10, 1993; and

2. The Authority is satisfied that the boat manufacturer or distributor has the ability, reputation and credit-worthiness necessary to reach a market and generate sales.

(b) To be eligible for the program, applications must be received *[within one year of the effective date of these rules]* ***by July 18, 1995***.

19:31-9.4 Terms of guarantees

(a) Guarantees by the Fund shall be for a term of not more than five years.

(b) Borrowings against lines of credit which are guaranteed by the Fund must be evidenced by purchase orders and the line of credit must be paid down upon receipt of payment by the borrower of the invoices represented by the applicable purchase orders.

19:31-9.5 Amount of guarantees

(a) Guarantees by the Fund may be, generally, for the lesser of $1.5 million or 90 percent of the principal amount of the loan or line of credit.

(b) In no event will the fund provide guarantees in an amount in excess of $35,000 per new or maintained job which can reasonably result from the loan or line of credit financing which the Fund will guarantee.

19:31-9.6 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance ("Application") concerning the project must be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;

2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;

3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;

4. Annual financial statements for the three years ending immediately prior to January 1, 1991, including the balance sheets, operating statements and reconciliation of source and application of funds;

5. A current interim statement, if the most recent annual financial statement is more than six months old;

6. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

7. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;

8. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person;

9. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and

10. A formal commitment letter from the participating bank providing the loan, including all terms, conditions, collateral, and a statement of the requirement for the Authority guarantee.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts receivable;

3. Aging of accounts payable; and/or

4. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official actions of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-9.7 Evaluation process

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;

2. An analysis of historic and projected financial statements and a comparison to industry peers (primary emphasis will be placed on the record of profitability and financial stability prior to January 1, 1991 and projections of recovered profitability and financial stability over the term of the guarantee);

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment, the adequacy of the collateral available to secure the requested financing and the number of jobs to be created.

(c) If a positive determination is made, the requested financing is presented to the Members for approval.

19:31-9.8 Approval process

(a) Only the Members can approve a loan guarantee.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant and the bank which will be providing the loan.

1. The commitment letter incorporates the bank's commitment, and contains all terms, conditions and collateral required by the Authority.

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as beneficiary and collateral assignee.

3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant and the bank, and returned to the Authority, a list of closing instructions is mailed to the attorneys for the applicant and bank.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

19:31-9.9 Attorney General review

All financing documents, including the application, are subject to review by the Attorney General.

19:31-9.10 Fees

Fees for loan guarantees will be charged in accordance with the Authority's fee rules (see N.J.A.C. 19:30-6).

ENVIRONMENTAL PROTECTION

(a)

ENVIRONMENTAL REGULATION

Land Use Regulation Program
Ninety-day Construction Permits
Fees

Adopted Amendments: N.J.A.C. 7:1C-1.3 and 1.5

Proposed: February 22, 1994 at 26 N.J.R. 913(a); see also 26 N.J.R. 1561(a).

Adopted: June 24, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Filed: June 24, 1994 as R.1994 d.379, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-9, 13:1D-29 et seq., specifically 13:1D-33.

DEPE Docket Number: 10-94-01/296.

Effective Date: July 18, 1994.

Expiration Date: June 15, 1995.

Summary of Hearing Officers' Recommendations and Agency Response:

On February 22, 1994, the Department of Environmental Protection and Energy ("Department") proposed amendments to the rules at N.J.A.C. 7:1C-1.5 governing fees for the filing and review of applications for construction permits pursuant to the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq. and the Waterfront Development Act, N.J.S.A. 12:5-1 et seq. In addition, the Department proposed amendments at N.J.A.C. 7:1C-1.3 concerning pre-application reviews.

The Department held public hearings on the proposed rule amendments on March 11, 1994 in Trenton; March 14, 1994 in Toms River; and March 16, 1994 in Ocean City, New Jersey. In response to requests from Legislators and the public, the Department extended the closing date for public comment from March 24, 1994 to April 25, 1994. At the public hearings and during the public comment period, the Department also obtained public input on two related proposals (DEPE Docket numbers 11-94-01/291 and 08-94-01/105) to amend the rules on Coastal Zone Management at N.J.A.C. 7:7E and the Coastal Permit Program Rules at N.J.A.C. 7:7. The proposed amendments to N.J.A.C. 7:7 (constituting the Department's procedural rules for coastal development) and to N.J.A.C. 7:7E (constituting the Department's substantive rules for coastal development) were largely necessitated by the adoption of P.L. 1993, c.190. This law amended CAFRA and will become effective July 19, 1994. Generally speaking, P.L. 1993, c.190 expands the types of

development required to undergo Department review particularly if development is located within 150 feet of the mean high water line or within 150 feet of the landward limit of a beach or dune.

John R. Weingart, Assistant Commissioner of Environmental Regulation in the Department, served as hearing officer at the March 14, 1994, public hearing and Ernest Hahn, Administrator of the Land Use Regulation Program, served as hearing officer at the March 11 and March 16, 1994 public hearings.

As a result of the public hearings, Assistant Commissioner Weingart and Administrator Hahn recommended that the Department adopt the proposed amendments with the changes discussed below in the Summary of Public Comments and Agency Responses. The Department agrees with the recommendations. All comments received during the public comment period and during the three public hearings were reviewed and are addressed in the respective adoption notices for the three regulatory proposals as applicable. Commissioner Robert C. Shinn, Jr. has considered all comments made at the hearings and these amendments, as adopted, reflect that consideration. The adoption notices for the two other CAFRA-related proposals appear elsewhere in this issue of the New Jersey Register.

Interested persons may inspect the public hearing record, or obtain a copy upon payment of the Department's normal copying charges, by contacting:

Janis E. Hoagland, Esq.
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, NJ 08625

Summary of Public Comments and Agency Responses:

The Department received a number of comments indicating that the proposed fees were excessive and unjustified, did not adequately address the economic impacts, and were inadequately capped. Several commenters also objected to the Department's proposed deletion of the fee rebate provisions.

At N.J.A.C. 7:1C-1.3, Pre-application procedure and requirements, the Department has clarified the rules on adoption to specify the circumstances under which a written jurisdictional determination will be issued.

The Department has modified the rules establishing Waterfront Development and CAFRA fees (N.J.A.C. 7:1C-1.5(a)1ii(1) and N.J.A.C. 7:1C-1.5(a)3i(1), respectively) to clarify that the permit fees for residential development consisting of a single duplex will be $500.00.

N.J.A.C. 7:1C-1.5(d) has been amended on adoption to include examples of activities which may constitute "a significant change" for the purposes of determining whether or not a modification to an issued permit will be processed. This clarification was made in response to comments.

At N.J.A.C. 7:1C-1.5(a)3v, the Department has decided to lower the fee for a letter of interpretation from $250.00 to $125.00 for this optional service. This change was made in response to comments.

The following persons submitted written or oral comments on the February 22, 1994 proposal to amend N.J.A.C. 7:1C.

1. Anonymous
2. Avery,Alan, Jr.—Ocean County Planning Board
3. Bennett, D.W.—American Littoral Society
4. Block, Carl, Mayor of Stafford Township
5. Booth, Marilyn—Atlantic Electric
6. Burkett, Christopher
7. Casaccio, Paul
8. Chomsky, Martin—Monmouth County Water Resources Association
9. Clayton, Ralph
10. Connors, Christopher, New Jersey Assembly, 9th District
11. Connors, Leonard, Jr., New Jersey Senate, 9th District
12. DeLozier, Gregory—N.J. Association of Realtors
13. DeMunz, Carl—N.J. Association of Realtors
14. DiBeradine, Philip—Officer, Commerce Bank
15. Dillingham, Tim—Sierra Club, New Jersey Chapter
16. Farragher, Clare—New Jersey Assembly, 12th District
17. Feairheller, John—Walker, Previti, Holmes and Associates
18. Fink, Michael—New Jersey Builders Association
19. Foelsch, William—N.J. Recreation and Parks Association
20. Gurtcheff, David and Sharon
21. Heller, John, P.E.
22. Helwig, Carl—Pureland Association
23. Hirsch, Guliet—Heritage Minerals, Inc.
24. Hulmes, Leita—Monmouth County Water Resources Association
25. Iasillo, Barbara, Township of Dover
26. Loud, Edward—Board of Recreation Commission, Monmouth County
27. Madden, Barbara
28. Marinakis, George—Cape May County Municipal Utilities Authority
29. Marinelli, Beverly and Harold
30. McKeon, David, Ocean County Planning Department
31. McGuiness, Michael—New Jersey Builders Association
32. Moran, Jeffrey—New Jersey Assembly, 9th District
33. Munoz, Theresa—Lynch, Giuliano, and Associates, P.A.
34. Pagliughi, Martin—Mayor, Borough of Avalon; Secretary, Cape May County Park Commission
35. Patterson, Robert—Cape May County Chamber of Commerce
36. Penta, Rosemary
37. Peraria, Scott
38. Renkin, Thomas—N.J. State League of Municipalities
39. Sauer, Burt
40. Schiavo, Rita
41. Schoemer, Kathleen
42. Serkies, John—Department of Commerce and Economic Development, Office of Business Advocacy
43. Shissias, James—Public Service Electric and Gas
44. Simpson, Arthur and Kathleen Lavecchia—Borough of Lavallette
45. Smith, Ken, President, Coastal Advocate, Inc.
46. Tombs, Bradley—Normandeau Associates
47. Truncer, James—Board of Recreation Commissioners
48. A petition signed by 63 individuals (several whose names were illegible) was submitted as a comment.

In addition to the comments summarized below, the Department received 54 letters submitted after the close of the comment period. Since these letters were submitted after the close of the comment period, the Department has not summarized them below, or listed the names of the senders above. The Department did review the comments, however. Four of the letters were identical and were directed to Commissioner Robert C. Shinn, Jr. to express opposition to the proposed amendments. The letters stated that the original intent of CAFRA was good, but that the pending changes were not. Forty-one of the comments were submitted as a form letter to Governor Whitman requesting that the Legislature reconsider CAFRA II because it is entirely too restrictive and will drastically affect real estate values, and because the State needs the shore area for rateables and tourism.

The timely submitted comments and the Department's responses are summarized below. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

General

(1) COMMENT: In general, we support the proposed fee structure. We believe the fee structure generally reflects the comparative costs of administering the permit program. (3)

RESPONSE: The Department acknowledges this comment in support of the proposal.

(2) COMMENT: We encourage the Department to take further steps to reduce the regulatory burden on small projects, single family dwellings, and municipal and county projects. We also encourage the Department to find ways to reduce the fee burden on these same categories of projects by increasing fees on larger private projects if necessary. (15)

RESPONSE: The Department is considering a number of such steps and may propose them in a future regulatory proposal.

(3) COMMENT: Three commenters expressed concern over their ability to renovate, rebuild, maintain, expand, or make improvements to their existing single family homes without going through CAFRA regulation and paying exorbitant fees. (30, 37, 39)

RESPONSE: The 1993 legislative amendments to CAFRA and the Department's regulations do not require a person to obtain a CAFRA permit to conduct repairs at his or her existing house. This means that a person can paint a house, change shutters, replace roofs, windows and siding without obtaining a CAFRA permit or paying a fee. The 1993 legislative amendments to CAFRA also exempt the construction of a patio, deck or similar structure at a residential development.

The Department has amended and clarified the rules at N.J.A.C. 7:7-2.1(c)5 upon adoption (published elsewhere in this issue of the New Jersey Register) to specifically provide, in accordance with the legislative intent of the 1993 amendments to CAFRA, that the construction of a

patio, deck or similar structure at a residential development is exempt. For the purpose of this exemption, "similar structures" are porches, balconies and verandas. The Department's adopted rules further provide that the following structures and activities will also be exempt at a residential development, provided that they do not include the placement of pilings or placement of a structure on a beach or dune: open fences, open carports, flower boxes, gardens, gazebos, satellite dishes and antennas, sheds, wooden boardwalks and gravel or brick/paver block walkways, showers/spa/hot tubs which do not discharge to surface waters or wetlands. The construction of timber dune walkover structures constructed in accordance with Department specifications found in N.J.A.C. 7:7E, Rules on Coastal Zone Management, will also be allowed at a residential development.

In addition, the Department has adopted (see adoption of N.J.A.C. 7:7 elsewhere in this issue of the New Jersey Register) a Permit-By-Rule that will allow the expansion of a legally constructed, habitable single family or duplex dwelling on a bulkheaded lagoon lot, provided that the expansion does not exceed a cumulative surface area of 400 square feet, the expansion is not proposed on a wetland, and the expansion is set back a minimum of 15 feet from the waterway face of the bulkhead. A Permit-By-Rule requires the submission of a letter to the Department, and no fee payment. The Department has also adopted in the rules at N.J.A.C. 7:7 appearing elsewhere in this issue of the New Jersey Register, a General Permit for the voluntary reconstruction of a single family home that has not been damaged by storm or other act of God. A General Permit involves a simpler application process, fewer requirements, and a smaller fee ($250.00; see N.J.A.C. 7:1C-1.5(a)3iv) than an individual permit.

(4) COMMENT: How are we going to treat the couple who retires into a summer home and decides expand their home? Where can the addition go? What are the impacts? What is the reasonableness of the fee, and our enforcement responsibilities? (4)

RESPONSE: As mentioned in the response to Comment (3) above, the Department has elsewhere adopted a Permit-By-Rule (see adoption of N.J.A.C. 7:7 elsewhere in this issue of the New Jersey Register) that will allow the expansion of a legally constructed, habitable single family or duplex dwelling on a bulkheaded lagoon lot, provided that the expansion does not exceed a cumulative surface area of 400 square feet, the expansion is not proposed on a wetland, and the expansion is set back a minimum of 15 feet from the waterway face of the bulkhead. A Permit-by-Rule does not require a fee or an application, just the submission of a letter. The Department has also adopted (see adoption of N.J.A.C. 7:7 elsewhere in this issue of the New Jersey Register) a General Permit for the voluntary reconstruction of a single family home that has not been damaged by storm or other act of God. A General Permit involves a simpler application process, fewer requirements, and a smaller fee ($250.00) than an individual permit.

(5) COMMENT: The proposal states that applications have to include a check or money order. Municipalities are required by the Department of Community Affairs to use a voucher system, as they cannot use a check or money order. (21)

RESPONSE: The Department already accepts payment by voucher for public entities. This practice has not been proposed for change and will continue under the amended rules. In addition, N.J.A.C. 7:7-4.2(a)2 has been revised on adoption (elsewhere in this issue of the New Jersey Register) to specify that government vouchers can be submitted as payment for fees in lieu of a check or money order.

(6) COMMENT: In your whole report of 350 plus pages there is a very, very small portion dedicated to the economic impact. (13)

(7) COMMENT: Has anyone looked at the economic impact of condemning the Jersey shore? (27)

(8) COMMENT: The proposed rules will adversely affect the economic recovery of the coast by intimidating legitimate investors in coastal development/redevelopment and will create economic hardship through burdensome fees and cumbersome bureaucratic processes. (35)

(9) COMMENT: We believe that these new rules, as written, will destroy property values, increase unemployment, increase taxes and permit fees and have an unnecessary adverse impact on the single family homeowner. (48)

(10) COMMENT: The conclusions in the Social, Economic, and Environmental Impact sections do not appear to be fully supported. How can the State conclude that "the current and proposed fees reflect more closely the actual cost of application review" when in the previous paragraph it states that "the Department does not yet know how many applications it will receive under the legislative amendments to CAFRA?" (1, 46)

(11) COMMENT: The proposed changes to N.J.A.C. 7:1C-1.5 appear arbitrary, result in unquantified economic impacts, and do not consider alternatives to reduce costs. (1, 46)

(12) COMMENT: Utilities, industries and commercial developers must pass on these costs to consumers which make affected business less competitive. (1)

(13) COMMENT: If consumers knew of the permit fee costs, whether it be on the local, county, or State level we would have a lot more people here screaming. They do not realize that the developer pays for the permit fees and all the required engineering that's done, and passes it on to the consumer. CAFRA II is not making it affordable for the consumer. (7)

(14) COMMENT: It may be reasonable to evaluate the number of applications by public, quasi-public and private components (on a financial basis) and assess the actual direct and secondary economic impacts to the various applicants and regional economy. (1)

(15) COMMENT: Revenues generated by application fees will have a significant impact on the public. Application fees will rival the design fees which will undoubtedly increase upon rule adoption. Fee increases for public developments will result in these costs being passed to the taxpayer. (6)

(16) COMMENT: One of the major concerns is the effect of these proposals on public projects and, specifically, county public projects. The costs of delay in implementing some of these projects and any fees are ultimately borne by the taxpayers of the county and of the affected areas. (30)

RESPONSE TO COMMENTS (6) THROUGH (16) ABOVE: The economic impact of the adopted rules generally reflects the economic impact of the CAFRA amendments enacted by the Legislature in 1993. The Legislature determined that there was a need for increased protection of natural resources in New Jersey's coastal areas, particularly within 150 feet of the mean high water line or of a beach or dune. The result of this legislation is that more people and properties will be subject to regulation by the Department. In developing the amendments adopted here and elsewhere in the New Jersey Register, the Department considered the concerns of those who will be regulated for the first time under CAFRA and tried to structure the amendments to provide a concise and specific regulatory framework designed to facilitate the preparation, submission and review of permit applications.

The Department has also made an effort to reduce the economic burden of its regulations on single family/duplex developments through means such as general permits, permits-by-rule in the Coastal Permit Program rules (N.J.A.C. 7:7) and revisions to the Rules on Coastal Zone Management, specifically N.J.A.C. 7:7E-3.28 (Wetland Buffers); 7:7E-7.2 (Housing Use); and 7:7E-8.11 (Public Access to the Waterfront). The fee for the construction of a single family home qualifying for a general permit is $250.00, the fee for a single family home requiring an individual permit is $500.00, and no fee is associated with a Permit-by-Rule. See N.J.A.C. 7:1C-1.5 as adopted herein.

The coastal permit procedures in N.J.A.C. 7:7 provide an orderly and efficient method for preparing, reviewing, issuing and enforcing coastal permit applications and coastal permit decisions. Because the 1993 legislative amendments to CAFRA require the Department to review smaller developments, more property owners in the coastal area will be subject to regulation and/or promotion of certain types of land use, which may continue to adversely affect the development value of their property. For those developments requiring approval from the Department, applicants may incur engineering, consulting and legal fees in addition to the application fees outlined above. These application preparation fees will vary widely depending on the complexity of the development. In addition, construction costs on certain developments may increase as a result of modifying structures or whole developments to comply with the re-adopted coastal permit program rules and policies.

The Department expects that the General Permits and Permits-by-Rule will have a positive social impact since applicants with eligible developments will not be required to submit a complete individual CAFRA permit application and will be able to follow an expedited application process.

To date, the effect of CAFRA decisions under these rules has been to minimize the adverse economic impacts of poorly planned development upon waterfront commerce, tourism, recreation, public access to the coast, the coastal ecosystem, and the fishing and shellfishing in-

dustries. Losses in specific property value and the compliance costs associated with the coastal permit program rules have been offset by the economic loss avoided as a result of comprehensively regulating uses of the coastal area. The Department expects these effects to continue after the statutory and regulatory changes to CAFRA become effective.

(17) COMMENT: These regulations create a cash cow in the form of a fee driven bureaucracy. The outrageous fees contained within these regulations clearly violate the State mandate/State pay principle. (10, 11, and 32)

(18) COMMENT: The taxpayers and citizens of municipalities and counties should not be forced to carry a new fiscal burden which violates the spirit and intent of State mandate/State pay. (20, 44)

RESPONSE TO COMMENTS (17) AND (18) ABOVE: When it enacted the amendments to CAFRA in 1993, the Legislature decided that the existing laws were, in certain respects, inadequate to protect coastal areas and that further State regulation was necessary, particularly within 150 feet of the mean high water line or a beach or dune. The fees are necessary to effectuate this newly required State review. At this point, those reviews are conducted by the Land Use Regulation Program within the Department, which is totally fee funded and receives no appropriation from general revenues. The fees are assessed if a property owner voluntarily decides to develop his or her land, not because the owner must develop the land in order to meet State requirements. The fees, therefore, do not violate the principle of State mandate/State pay.

(19) COMMENT: Can the Department use local agencies in implementing and enforcing regulations? Services are duplicated by local municipalities. Can the Department justify added fees and economic impacts based on this? (27)

RESPONSE: The CAFRA amendments adopted by the Legislature revised the Department's jurisdiction in the CAFRA zone and set new thresholds for State review in an effort to promote comprehensive review of coastal development at the State level. The legislative amendments do not provide the Department with the authority to delegate regulatory responsibilities to local agencies. The Department's rules reflect and are consistent with the legislation.

(20) COMMENT: The definition of "construction" is inconsistent. There are two areas in the regulations where the term "construction" is used, one as it applies to how fees are calculated and the other with respect to how the grandfather exemption is applied. When fees are calculated, everything is considered, including grading, clearing, and anything else that could be construed as construction. However, with the grandfather provision, only when the advanced stages of construction are reached is the grandfather provision applicable. There should be some consistency. (31)

RESPONSE: Construction, for the purposes of determining fees, is based on all construction activities because of the impact of all construction on environmental resources. However, for the purpose of conferring an exemption, construction should be considered as the actual work effort and expenditures on a development. When it amended CAFRA in 1993, the Legislature sought to exempt those projects which were far along in the review process and actively being pursued. The exemption provisions of the 1993 CAFRA amendments (CAFRA II) do not apply to those larger projects which previously required a CAFRA permit. Thus, since the exemptions only apply to the class of smaller-scale projects now subject to review under the 1993 CAFRA amendments, the Department believes that three years should be a sufficient amount of time for a project to reach an advanced stage of construction.

N.J.A.C. 7:1C-1.3

(21) COMMENT: The continued use of pre-application reviews is strongly supported. These preliminary reviews allow potential applicants to gain insight from the Department regarding any areas of particular concern or interest that the Department believes should be addressed/emphasized in the application for a proposed development, as well as the procedures and policies that would apply to the particular development. (28)

(22) COMMENT: The Department's extension of its formal timeframe from receipt of the written request for completion of such preliminary reviews from 20 days to 30 days is acceptable. This timeframe will still assure potential applicants that the use of the pre-application review process will not unduly delay their proposed developments. (28)

RESPONSE TO COMMENTS (21) AND (22) ABOVE: The Department acknowledges these comments in support of its proposal.

(23) COMMENT: Pre-application conferences should be taken seriously and not be discouraged. The Department appears to be proposing changes to the pre-application procedures and requirements (for example, requiring applicant to submit a conceptual proposal at the time a request for a pre-application meeting is made) so as to discourage the applicant from requesting these conferences. We believe that in many instances, these conferences afford the applicant the opportunity to ask pertinent questions and to receive vital information. We are also concerned that by conducting pre-application conferences over the telephone, the Department may not view them as seriously. (18)

(24) COMMENT: Pre-application conferences should be encouraged as opposed to being discouraged. The Department should make itself more accessible, not less. (22)

(25) COMMENT: It should be made clear that the applicant has the right to request a pre-application conference if he/she desires. (5)

RESPONSE TO COMMENTS (23) THROUGH (25) ABOVE: The Department does not intend to discourage applicants from requesting either pre-application "conferences" or "reviews." The amendment will simply allow the Department to discuss a proposed development with an applicant by telephone rather than at a meeting (see adoption of N.J.A.C. 7:7 elsewhere in this issue of the New Jersey Register). Such telephone discussions can be used for smaller developments or if only a small number of relatively straightforward issues need discussion. This should save both the Department and applicants time. The amendment is aimed mainly at the smaller-scale developments that are now subject to review by virtue of the amendments to CAFRA adopted in 1993. This change is also intended to allow the Department to continue to provide this service free of charge at a time when permit workload is increasing and review staff is not. Pre-application "conferences" will still be available for more complex developments or for anyone who prefers an in person "conference" to a telephone "review."

(26) COMMENT: This proposal should be revised to eliminate the requirements for a conceptual proposal. (18)

RESPONSE: The requirement for a conceptual proposal is intended to allow for a more thorough review on the part of the Department so that more specific guidance can be provided to prospective permit applicants. The conceptual proposal does not have to include detailed design and engineering, and therefore, the Department does not feel this is a burdensome requirement. The conceptual proposal also will enable the Department to provide greater assistance to permit applicants in the preparation of an Environmental Impact Statement or Compliance Statement.

N.J.A.C. 7:1C-1.5(a)

(27) COMMENT: Government entities should be exempt from fees or from CAFRA regulation altogether. (44)

RESPONSE: The CAFRA amendments adopted by the Legislature in 1993 provide no exemptions from fees or regulation based on an applicant's status as either a public or private entity. The Department's rules reflect and are consistent with the legislative amendments.

(28) COMMENT: CAFRA permit application fees for private individuals and businesses should be greatly reduced. (20, 25, 44)

(29) COMMENT: The Department should waive permit fees for owner occupied units. While not specifically required under the legislation, the commenter believes this follows the wishes of the Legislature, in that, throughout the process a theme of environmental protection was associated with making the process as easy as possible for homeowners and coastal residents. (12)

(30) COMMENT: The regulations as stated now affect every single family homeowner within 150 feet of the water. This means that every single homeowner within that area needs to come before the Department with a permit to be approved, which will require not only an application fee, but extensive engineering costs and expenses. (14)

RESPONSE TO COMMENTS (28) THROUGH (30) ABOVE: The CAFRA amendments adopted by the Legislature in 1993 provide no exemptions from fees or regulation for any public or private entity, including single family homeowners. The Department's rules reflect and are consistent with the legislative amendments. The Department has, however, made a number of attempts to limit the impact of the CAFRA regulations on private individuals. The Department has adopted elsewhere in this issue of the New Jersey Register a Permit-By-Rule that will allow the expansion of a legally constructed, habitable single family or duplex dwelling on a bulkheaded lagoon lot, provided that the expansion does not exceed a cumulative surface area of 400 square feet, the expansion is not proposed on a wetland, and the expansion is set back a minimum of 15 feet from the waterway face of the bulkhead. The Department has also adopted elsewhere in this issue of the New

Jersey Register a General Permit for the voluntary reconstruction of a single family home that has not been damaged by storm or other act of God. A General Permit involves a simpler application process, fewer requirements, and a smaller fee ($250.00) than an individual permit. A Permit-By-Rule requires a letter, not an application, and no permit fee. In addition, the Department will propose in the near future a General Permit to allow construction or expansion of a single family home or duplex on a non-bulkheaded lagoon lot by General Permit. That proposal may also contain a Permit-by-Rule for the construction or expansion by more than 400 square feet, a single family home or duplex on a bulkheaded lagoon lot.

(31) COMMENT: Caps should be placed on all permit application fees. As currently structured, a cap of $30,000 would only apply to non-residential waterfront development permits and non-residential CAFRA permits within 150 feet of the mean high water line. All permit application fees should be capped regardless of the location of the proposed activity. (18, 22)

RESPONSE: The Department has not placed the cap on permit fees for applications based on the location of the proposed development, but rather based on whether the fee is calculated based on construction costs. The cap is only being proposed for waterfront development application fees and non-residential CAFRA developments located between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high waterline and any tidal waters or the landward limit of a beach or dune, whichever is most landward because only these application fees are calculated as a percentage of construction costs. While construction costs are generally an excellent way to predict the complexity of a project and associated time required to complete the review of the application, this method is not accurate in every case. Sometimes construction costs are more reflective of the types of materials and design chosen rather than of the magnitude of the environmental issues that the Department needs to address in its review of the permit application and in determining compliance with permit conditions. In these instances, a cap on the total fee is appropriate. Other application fees are based on the actual size and use of the development and not on construction costs.

(32) COMMENT: In instances where the Department deems it necessary to exceed the cap, permit applicants should have the right to review the Department's figures to see how these costs are calculated. (18)

RESPONSE: The Department agrees. For this reason, the proposed and adopted rule states that if the fee would have exceeded $30,000 using the formula, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. The rule further states "the Department shall provide the applicant with documentation of such costs when a supplemental fee is charged." This documentation will show how the costs were calculated.

(33) COMMENT: Many projects, particularly utility line projects or bridge projects, have high construction costs, yet are relatively straightforward and uncomplicated to review. Actual review costs for these types of projects will usually not equal the application fees. Will the Department track costs for projects which would not have exceeded this cap using the proposed schedule? (23)

(34) COMMENT: The Department should be required to submit a detailed accounting of its costs associated with a project to each applicant. (18, 22)

(35) COMMENT: The permit fees should accurately reflect the time expended by the Department in the processing and reviewing permit application and assessing compliance with administrative and performance conditions on approved projects. The proposed amendments do not provide an accurate means of determining whether the assessed fee was fair and this will contribute to the existing mistrust of the Department. (5)

RESPONSE TO COMMENTS (33) THROUGH (35) ABOVE: The Department will provide an accounting of costs for those fees which exceed the $30,000 cap, as stated in the adopted rules. However, in all other cases, the fee will be established solely on the basis of the fee formula set by regulation and not on a case-by-case basis which reflects the actual costs associated with processing any one specific permit application. This is because the Program's costs include the performance of many tasks not associated with the review of any specific permit application but of assistance to all applicants and permittees. Since fees are not based solely on the specific costs to process and monitor compliance with any specific permit, a cost accounting method cannot be used as a basis to appeal fees. However, the Department will, as it has done in the past, provide an applicant with all data used to calculate a fee. This will enable an applicant to confirm that his or her fee has been accurately computed, and, if the fee has been inaccurately computed, to obtain a recalculation.

(36) COMMENT: The proposed regulations require the payment of potentially exorbitant and prohibitive fees for most permits for construction, irrespective of the size or impact of the construction. (8, 24)

(37) COMMENT: Based upon consulting with professionals in the field, that the proposed fees to be charged by NJDEPE are excessive. The rationale for such a fee structure should be provided for public scrutiny. (35)

(38) COMMENT: The commenters expressed strong displeasure with the amount of the fees proposed by the Department. (7, 9, 29, 40)

(39) COMMENT: The increased fees will cause economic hardship on for many applicants and will also substantially escalate the cost of those small-scale construction projects which were not previously regulated by CAFRA as well as the expenses for larger-scale developments. We do not support the State's continuing policy of establishing fees to cover the actual cost associated with the Department's application review process. The proposed fees seem to be unjustifiable when viewed on a direct cost basis. If the Department intends to adopt the review fees as proposed, it should provide an opportunity for review and comment regarding the Department's cost substantiation for the calculation of the proposed permit fees. (28)

RESPONSE TO COMMENTS (36) THROUGH (39) ABOVE: The Land Use Regulation Program performs many functions that cannot be associated with any specific permit application but are of benefit to all permittees and applicants. For example, Program staff handle an estimated 150,000 telephone calls a year, hold pre-application meetings either in the office or in the field, respond to constituent letters, answer public inquiries, and conduct and attend formal and informal public information and education sessions such as courses held at Rutgers University. The Department's fee must cover these functions as well as the specific costs of processing permit applications and determining compliance with permit conditions, because the Program is, at this point, totally fee-funded. The Department is seeking legislative appropriations to help reduce its reliance on permit fees and to support the provision of public information and assistance which generally benefit all applicants and permittees. Until such an appropriation is provided, the costs associated with providing this service will be paid from the fees generated for permit review. The fee formulas are intended to allocate Program costs equitably among permittees by assessing higher fees for larger or more complex projects and projects which will have the greatest environmental impact.

(40) COMMENT: The commenter expressed dissatisfaction with the assessment of a $500.00 fee for homeowners to perform minor improvements to their homes. (12)

RESPONSE: No permit or fee is required for an existing single family home to be maintained and repaired. In addition, as stated in response to Comment 3 above, an applicant qualifying for a general permit to voluntarily reconstruct a single family home that has not been damaged by storm or other act of God will pay a fee of $250.00, while those qualifying for a Permit-By-Rule to expand their homes will pay no fee. As stated in response to Comment 30 above, the Department will propose in the near future a General Permit to allow construction or expansion of a single family home or duplex on a non-bulkheaded lagoon lot by General Permit. That proposal may also contain a Permit-by-Rule for the construction or expansion by more than 400 square feet, a single family home or duplex on a bulkheaded lagoon lot.

(41) COMMENT: The protection of the State's coast and water bodies is essential; however, we are concerned that the permit fees are doubling and tripling across the board (for example, the $10,000 cap on Waterfront Development Permits is proposed to increase to $30,000) without any evidence that the fees are reflective of the Department's costs in processing applications. The Department should not arbitrarily increase fees. (43)

(42) COMMENT: The commenter is concerned about the State having now bumped up the maximum cap of the permit review fee of CAFRA and waterfront development up to $30,000. (41)

(43) COMMENT: The proposed amendments to repeal the provisions for a fee rebate and institute a fee cap of $30,000 will have a significant impact on customers. (5, 43)

(44) COMMENT: The proposed fees and fee increases for applications for waterfront development permits landward of the mean high water line (northern waterfront and Delaware River areas) are 225 percent higher than the current fees which are 233 percent higher than the fees that were in effect in February of 1993 (based on a five unit project). What is the Department's rationale for such a rapid increase in application fees in such a short time—two years? (18)

(45) COMMENT: Why is the Department raising the cap on certain non-residential waterfront development permits from $4,000 to $30,000 which represents an increase of 650 percent? (18, 22)

(46) COMMENT: The new and increased fees are inequitable and unjustified in some cases. For example, the Department only last year adopted huge increases in the permit application fees, and some of these fees are going up again by hundreds of percent. (31)

RESPONSE TO COMMENTS (41) THROUGH (46) ABOVE: At N.J.A.C. 7:1C-1.5(a)1, the Department is adopting revised permit fees for waterfront development taking place landward of the mean high waterline. The prior fees were based on whether developments qualified as CAFRA facilities, based on size and use. However, under the 1993 legislative amendments to CAFRA, the requirement for a CAFRA permit will vary depending on the development's proposed location. Therefore, the Department has deleted the reference to facilities and established new fees based on the size of the proposed development. The adopted amendments to the Waterfront Development fees make them consistent with those charged for CAFRA permit applications. Both Waterfront Development applications and CAFRA applications require the same amount of Department staff time and resources for administrative review and initial technical review.

Substantive technical review varies with the complexity of the proposed development, but the initial reviews are comparable. In addition, the Department's adopted changes to the fees associated with Waterfront Development applications will help to cover more of the Program's costs.

(47) COMMENT: The commenter is very concerned with the proposed fees for newly regulated small residential developments of six or less units. For both waterfront development residential permits landward of the mean high water line and CAFRA residential developments, the Department is proposing that developments of three to six units pay a much higher fee per unit than the smaller sized (one or two unit) or larger size (greater than six units) developments. A more equitable fee schedule would assess a fee of $500.00 per unit for developments consisting of one to six units. As currently structured, a three unit development would have an application fee of $1,050.00 per unit as compared to $500.00 per unit for one or two unit developments and $550.00 or less per unit for developments of six or more units. (18)

(48) COMMENT: There seems to be an inequitable section there in the way that the fees will be determined for small CAFRA residential developments. The fee per unit for three to five units or three to six units is closer to a thousand dollars per unit as opposed to smaller one or two unit development or the larger developments where the fee is closer to $500.00 per unit. The three or five unit developments will incur twice the fee. (31)

(49) COMMENT: As proposed, the fee for a residential development consisting of one or two dwelling units will be $500.00 per unit. This means that a two-unit development will be required to pay a fee of $1,000. Under this proposal, the fee for all other residential developments will be $3,000 plus $50.00 per dwelling unit for the first 300 units. This means that a three-unit development will be required to pay a fee of $3,150, which represents an additional $2,150 for one additional unit. A fee differential of such magnitude will have a significant negative impact upon small developments. The fee schedule should be modified so that the $500.00 per unit fee would apply to projects of up to five units, and thus reduce the impact that the proposed fee schedule would have on very small developments. (42)

RESPONSE TO COMMENTS (47) THROUGH (49) ABOVE: The Department used the regulatory thresholds established in the 1993 legislative amendments to CAFRA as the basis for the fee structure. Under those amendments, the Department regulates the first use and intervening development, and three or more units within 150 feet of the mean high water line or a beach or dune. The Department believes it is appropriate to base its fee formula on the regulatory thresholds set by the Legislature.

(50) COMMENT: The rule should be clarified to state whether linear developments would be subject to CAFRA permit fees for the entire project in instances where the project straddles regulatory zones. (17)

RESPONSE: Fees for linear development are established at N.J.A.C. 7:1C-1.5(a)3ii(2)(A). A proposed linear development is regulated regardless of the discussion of straddling regulatory zones. The fee for a proposed linear development will be $3,500 plus $500.00 per acre to be disturbed.

(51) COMMENT: Fees for projects which straddle regulatory zones should be prorated based upon the amount of development proposed for each zone. (28, 35)

RESPONSE: The Department does not believe that fees for projects that straddle regulatory zones should be prorated. It would be extremely difficult for the applicant and the Department to prorate fees for developments when the fees are based on construction costs.

(52) COMMENT: The public deserves to know if and how much of their property is impacted by the proposed rules. A regulatory program that requires a potential applicant to contact the regulatory agency for a fee to determine if an application is required is administratively flawed. (2)

(53) COMMENT: CAFRA jurisdictional determinations were consistently issued in the past by the Bureau of Coastal and Land Use Enforcement through a formal correspondence letter. This request never required a fee. However, it is apparent that a fee of $250.00 is required in order to obtain an exemption letter pursuant to CAFRA jurisdiction. The fee should be waived if jurisdiction is not applicable under CAFRA and, in addition, if a site is under CAFRA jurisdiction, the fee should be applied to the overall permit fee. (33)

RESPONSE: The Department does not require a potential applicant to pay a fee to find out if an application is required. The Department will continue to provide jurisdictional determinations free of charge. Jurisdictional questions are ones which ask, for example, whether specific property is located within the 150 foot zone, how to tell where the dune ends, or if a permit is needed to build 4 houses, etc. The Department will also issue written statements providing answers to jurisdictional questions during the course of a pre-application review based solely on the conceptual plan for the proposed development and its location (see N.J.A.C. 7:1C-1.3(a)1). However, this written statement will not constitute an exemption letter certifying that a development is exempt from the requirements of CAFRA. The Department is amending the rule at N.J.A.C. 7:1C-1.3(a) on adoption to clarify this issue.

The Department will be charging a fee (see N.J.A.C. 7:1C-1.5(a)3v) if an applicant wishes to receive a letter certifying that their development is exempt for the regulatory provisions of the CAFRA law based on the receipt of prior municipal approvals. No person is required to receive a letter of exemption prior to construction, but the research necessary for the Department to prepare one can be extensive. The Department will therefore charge a fee to cover part of its cost for those people requesting such a letter. In response to public comments, the fee has been reduced on adoption from the $250.00 that was proposed to $125.00.

(54) COMMENT: The Department should issue letters of exemption and not assess a fee for this service. (2, 28, 38)

(55) COMMENT: The proposed $250.00 fee to obtain a letter of exemption is excessive, out of line with other Department programs assessing fees for letters of exemptions, and not reflective of the costs to the Department to issue said letters. The $250.00 fee should be reduced to $100.00 to be consistent with other programs. (18, 22, 28)

RESPONSE TO COMMENTS (54) AND (55) ABOVE: In response to comments, the Department has decided to lower the fee for this optional service to $125.00. The Department is seeking legislative appropriations to help lessen its reliance on permit fees and to support the provision of public information and assistance such as this which generally benefit all applicants and permittees. Until such an appropriation is provided, the costs associated with providing this service will be paid from the fees generated for permit review.

(56) COMMENT: The commenter's CAFRA permit was over $75,000 because of the engineer's fees, the impact studies (archaeological, environmental) and all the other impact studies as well as legal fees. Discussion of application fees should be more specific because there are a lot of other fees that are attached there too. (13)

(57) COMMENT: In addition to permit fees, in many areas, there are, of course, engineering fees and ongoing attorney fees. (45)

RESPONSE TO COMMENTS (56) AND (57) ABOVE: When it enacted the amendments to the CAFRA law in 1993, the Legislature decided that existing laws were, in certain respects, inadequate to protect coastal resources. The CAFRA amendments adopted by the Legislature revised the Department's jurisdiction in the CAFRA zone and set new thresholds for State review. For those developments requiring approval

from the Department, applicants may incur engineering, consulting and legal fees in addition to the application fees outlined in this adoption. These application preparation fees will vary widely depending on the complexity of the development. In addition, construction costs on certain developments may increase as a result of modifying structures or whole developments to comply with the readopted coastal permit program rules and policies.

(58) COMMENT: How is the Department going to issue the additional number of CAFRA permits that will be submitted as a result of the new regulations without adding staff? (7)

RESPONSE: At this time, the Department does not anticipate hiring any new employees to implement the adopted regulations and anticipates conducting permit review activities using existing staff, although the Department does plan to retain all current staff and to fill some current vacant positions as funding permits. If the new CAFRA amendments had not been enacted, the Department would likely have reduced the staff size or maintained it at its current level. The Department has also taken a number of steps in the proposed and adopted rules to provide for a more efficient permit review process.

In developing the amendments to the CAFRA regulations adopted here and elsewhere in this issue of the New Jersey Register, the Department considered the concerns of those who will be regulated for the first time under CAFRA and tried to structure the rule amendments to provide a concise and specific regulatory framework designed to facilitate the preparation, submission and review of permit applications. This regulatory framework includes general permits and permits-by-rule (see adoption of N.J.A.C. 7:7 elsewhere in this issue of the New Jersey Register). A General Permit requires the submittal of a $250 review fee and submission of an application form, site photos and other related information, such as a site plan, building permit or project description. A permit by rule requires only the submission of a letter to the Department. See N.J.A.C. 7:7-7.1 through 7.4.

In addition, the 1993 Legislative amendments to CAFRA provide that the Department must approve, approve with conditions or deny a permit application within 90 days of the application being deemed complete. Should the Department not take action on a permit within that timeframe, the permit application would automatically be approved.

(59) COMMENT: One commenter indicated that he interpreted the regulations to state that the fee for a CAFRA permit for a single family home is going to top $3,000. (9)

RESPONSE: The commenter has apparently misunderstood the rule. The fee for the construction of a single family home qualifying for a general permit is $250.00, while the fee for a single family home requiring an individual permit is $500.00. See N.J.A.C. 7:1C-1.5 as adopted herein.

(60) COMMENT: Employees of the Department should be required to account for their time just as the employees of any business operating in the State. (5)

(61) COMMENT: Prior to changing fee schedules and program policies an accountability system must be established recording individual staff time and expenses related to each project. (35)

(62) COMMENT: Does the State implement routine auditing procedures to identify control weakness, rule redundancy, inefficiencies, complaints, standards unsupported by sound science, etc? The absence of any internal or independent audits indicates weakness that merit consideration of alternatives to correct deficiencies in lieu of increased fees (1, 46)

(63) COMMENT: NJ DEP must be accountable for all fees collected and expended in the application review process. Audit and challenge of expenditures by an application must be possible to ensure agency accountability and to return all unused fees. (35)

RESPONSE TO COMMENTS (60) THROUGH (63) ABOVE: Department employees are required to account for their time. Land Use Regulation Program staff sign in and out each day, and must complete biweekly timesheets indicating the activities which occupied each day. For example, employees must indicate the number of hours spent on various permit reviews such as CAFRA, stream encroachment, waterfront development, and freshwater wetlands. In addition, these categories are further divided into the specific type of activity conducted such as appeals, enforcement actions, general permit reviews, wetlands type A reviews, reviews of residential waterfront development applications, reviews of a major/minor stream encroachment application, etc. There are 34 different categories of activities to which time is attributed on employee time sheets. Employees also provide a weekly schedule to their supervisor indicating which days they will be in the office, or out of the office on field visits, for meetings, etc. Before going in the field, employees must provide a list of sites which they intend to visit, in the order in which they will be visited. The Department is a public agency and differs in certain ways from a private business. Many of the responsibilities of employees in the Land Use Regulation Program are not associated with any specific permit application. These responsibilities include answering general phone inquiries, holding pre-application meetings either in the office or in the field, responding to general inquiries and constituent letters, attending interagency meetings, formulating and amending rules and regulations, and formal and informal public information and education efforts regarding the various permitting programs administered by the Program. The Department believes that these responsibilities are a vital part of its public function, that the responsibilities provide a needed service to all applicants and permittees, and that its project reviewers should concentrate on these areas as well as on substantive permit review rather than on tracking the costs associated with each individual permit application.

N.J.A.C. 7:1C-1.5(d)

(64) COMMENT: The Department should retain the distinction between major and minor permit modifications unless the Department can clarify those criteria by which it will determine whether a significant change will occur (for example, percent increase in impervious surface, percent increase in number of units, or some other adverse impact on the resource). (18)

(65) COMMENT: The Department should retain the distinction between major and minor permit modifications. It is both unfair and unreasonable for the review of a project to be subjective. With no set of guidelines, approvals will be at the whim of the reviewing personnel. Should the philosophy and/or agenda of the original reviewer and modified project reviewer differ, the applicant could suffer greatly in terms of time and cost. If anything is to change, the distinction should be further broken down. (22)

(66) COMMENT: The rule language gives discretion to the Department, provides no predictable standard, and increases the Department staff's workload to review numerous requests regarding incidental matters. Department staff continuously comment on the backlog of work they can't complete because of these types of issues. The rules should allow minor changes conditioned upon submission of revised plans and correspondence detailing the changes. (46)

RESPONSE TO COMMENTS (64) THROUGH (66) ABOVE: The Department has provided additional clarification in the rule at N.J.A.C. 7:1C-1.5(d) upon adoption as suggested by the commenters. Significant changes generally include, but are not limited to, increased clearing, grading, filling or impervious coverage, reduction in buffers, and change in footprint location.

(67) COMMENT: Fees for modifying approved projects should be assessed based upon the significance of the change and the actual cost incurred by the Department. It is unjustifiable for the Department to charge, for example, one quarter of a $30,000 original fee ($7,500) for a relatively minor change to a proposed larger-scale development. (28)

RESPONSE: Fees for modified projects are based on whether or not the Department deems the proposed modification to be a "significant change." As mentioned in the response to Comments (64) through (66) above, the Department has provided additional clarification to the rule at N.J.A.C. 7:1C-1.5(d) upon adoption by providing examples of activities which generally constitute significant changes. Should a proposed modification to an approved permit be deemed a "significant change" by the Department, a new permit application and associated fees would be required.

In the case of a request for a modification to an approved permit that is not deemed a significant change by the Department, a fee equal to one quarter the original permit fee must be submitted. The Department believes that the assessment of a fee equal to one quarter the original permit fee is justified. While the expense to the Department in reviewing a modified application is not as great as the expense of reviewing a new application, Department believes that linking the fee for modified projects to one quarter the original permit application fee does allocate program costs equitably among permittees.

(68) COMMENT: Fees for development close to the water are lower than fees for similar projects farther inland. This confusion or misunderstanding should be clarified and a clear rationale be provided. (3)

RESPONSE: The Department believes the commenter is expressing confusion regarding the fee consequences associated with minor activities undertaken at existing park facilities (see response to Comments (69) through (71) below). The Department has clarified the rules at N.J.A.C. 7:7-2.1(b)5v (appearing elsewhere in this issue of the New Jersey Reg-

ister), on adoption, to specify that minor activities undertaken at an existing park facility are not regulated and will not require an application or a fee unless the parking space/area threshold is to be exceeded by the addition of new parking. The Department will only regulate development when the proposed construction contains additional parking spaces which will cause the modified development to meet or exceed the regulatory threshold.

(69) COMMENT: Fees are unreasonable. If Parks System wanted to construct 100 feet of fencing at Huber Wood Park it would cost a little over $100.00 for the materials and installation, plus $4,000 for a DEP permit, plus engineering fees for the "development" plans, plus a hearing, plus a 30 day comment period, and finally a decision by the DEP could be expected within 60 days. This is bureaucracy gone mad. (26).

(70) COMMENT: The installation of a child's swing set, is defined by the rules as a development or structure requiring full permit review. This would require an application fee of about $4,000 if it was more than 150 feet landward of a high water line or dune. The DEP is well aware that the public dollars for the Cape May County Park Commission are limited and by indirectly discouraging recreational improvements the DEP is in direct conflict with its goal of insuring additional and adequate recreational opportunities. (34)

(71) COMMENT: The proposed minimum fee for a CAFRA permit for a non-residential development more than 150 feet inland ($3,500 plus $500.00 per acre) is more than the proposed minimum fee on a beach or dune or within 150 feet landward ($1,450 plus ½ percent of construction costs). This appears to be illogical; the fee structure should be reexamined. (16, 19, 47)

RESPONSE TO COMMENTS (69) THROUGH (71) ABOVE: The Department has clarified the rules at N.J.A.C. 7:7-2.1(b)5v upon adoption published elsewhere in this issue of the New Jersey Register to specify that minor activities undertaken at an existing park facility are not regulated and will not require an application or a fee unless the parking space/area threshold is to be exceeded by the addition of new parking. The Department will only regulate development when the proposed construction contains additional parking spaces which will cause the modified development to meet or exceed the regulatory threshold. Therefore, construction of a fence or a child's swing set within a park will not require a CAFRA permit unless that construction is accompanied by the addition of parking spaces and the total number of resulting spaces meets or exceeds the regulatory threshold.

(71) COMMENT: It's a terrible state of affairs when the coastal municipalities will have to march to Trenton with their hat in their hand with a $250.00 check to get a CAFRA permit to clean our beaches from storm debris and build up our dunes with sand. (11)

RESPONSE: The commenter is correct that the fee for a general permit for beach maintenance will be $250.00. However, a municipality that receives this general permit will be permitted to conduct routine beach and dune maintenance, emergency beach restoration after a storm, dune creation and enhancement, and minor improvements such as beach access/dune walkover construction and dune fencing under the general permit for a five year period before having to reapply. General permits for beach maintenance involve a simpler application process and fewer requirements, and they will be customized to the needs of each municipality requiring the permit.

(72) COMMENT: Within 150 feet of the mean high water line or dune, these rules will cost local taxpayers untold thousands of dollars for professional fees and application costs for CAFRA permits for the construction, maintenance, repair, or replacement of public infrastructure. (11)

RESPONSE: The Department's amendments to N.J.A.C. 7:7 adopted elsewhere in this issue of the New Jersey Register exclude the routine maintenance, repair and replacement of public infrastructure beyond 150 feet from the mean high water line from the definition of "public development" and thus allow those activities to occur without a CAFRA permit. However, as proposed, those amendments inadvertently failed to exclude those activities from the definition if they occurred within 150 feet from the mean highwater line or the landward limit of a beach or dune. In response to comments the Department has clarified the rules at N.J.A.C. 7:7-2.1(b)2 upon adoption to specify that those maintenance, repair and replacement activities within this area are also not considered "public development" subject to regulation under CAFRA. This clarifying amendment further specifies that maintenance, repair, replacement or connection of telecommunication lines and cable television lines likewise do not constitute "public development" and thus are also not regulated under CAFRA.

N.J.A.C. 7:1C-1.5(e)

(73) COMMENT: The rules should be modified to require the Department to consult with the applicant before engaging additional expertise. The rules allow the Department to charge additional fees for large scale or complex projects which may require the engagement of essential expertise. (18, 22)

(74) COMMENT: The applicant should be able to help shop for and choose the consultant that the Department engages when additional expertise is necessary to review an application. (22)

RESPONSE TO COMMENTS (73) AND (74) ABOVE: The Department agrees and acknowledges these comments. However, the Department did not propose any amendments to the relevant section of the rule with this proposal. The current rule states "The applicant will be consulted before imposition of such fees."

(75) COMMENT: The Department should be required to disclose all information dispensed by the hired consultant. (22)

RESPONSE: The Department agrees with this comment. It is currently the Department's practice to incorporate all information into the application file. This practice will continue.

N.J.A.C. 7:1C-1.5(k)

(76) COMMENT: A cap on permit application fees is acceptable; however, the rebate option should be retained. (23)

(77) COMMENT: After completion of the project, any fee above the cost actually incurred by the Department should be refunded to the applicant. To continue to keep fee payments for work that in effect "was never done" is totally unjustified and unreasonable. (5)

(78) COMMENT: Taking the rebate section out of the regulations is keeping monies from the people that could be spent it elsewhere in the economy and probably for future projects. That section of the regulations should be kept because DEP, like all other sections of government, is going to have to be fiscally responsible, and they should be accountable for what they are doing. (41)

(79) COMMENT: Will the Department refund money should the review not require the full escrowed amount? (22)

(80) COMMENT: The Department should allow for rebates of any amount regardless of whether or not certain conditions are met (for example, dollar amounts and percent thresholds). (18)

(81) COMMENT: We object to the termination of the partial rebate program. The Department, in the New Jersey Register, Monday, February 7, 1994, proposes to eliminate the program because it is "costly and burdensome," requires a special accounting system and doesn't include costs of compliance. Last year a permit fee of $34,000 for a Stream Encroachment project at one of our facilities resulted in a $30,000 rebate. The actual cost of the Department's review was only $4,000. (43)

(82) COMMENT: It is common practice to keep track of expenditures and manage money in accordance with a budget. Under the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), municipalities must track the costs of the professional services and must account to the applicant as to the purposes for which any escrow account payments were spent. We do not believe it is unreasonable for the Department to institute similar procedures. We request that the partial rebate program be preserved as assurance that the Department is cognizant of the economic ramifications of this fee program. (43)

(83) COMMENT: The proposed elimination of the rebate provision included in N.J.A.C. 7:1C-1.5(k) is objectionable because it raises questions regarding the Department's ability to be accountable to permit applicants. (5, 18)

(84) COMMENT: Unless the Department dramatically reduces the currently proposed CAFRA fee structure, it is unfair to eliminate the only existing provision which allows applicants some financial relief for excessive fees or overcharges assessed by the Department. (28)

(85) COMMENT: The commenter objects to the deletion of the rebate provision and the substitution of the $30,000 cap based on a specific application experience with the Department under the pre-existing rule. Under the pre-existing rule, the commenter submitted an application and based upon the construction cost of the project, $7,000,000 was required to submit a fee of $72,200. The commenter subsequently requested a rebate pursuant to N.J.A.C. 7:1C-1.5(k), and received a rebate of $65,200. Therefore, the review cost the commenter $7,000. Under the proposed amendments, the commenter would have been assessed a fee of $30,000, and would therefore have paid an additional $22,800. Since the refund was based on the Department's

actual costs incurred in processing and reviewing the application and in addressing any appeal of the permit decision, the Department will be charging an additional $22,800 which is unjustified. (5)

(86) COMMENT: The rebate program may be costly and perceived ineffective in terms of accounting. (41)

RESPONSE TO COMMENTS (76) THROUGH (86) ABOVE: In the July 5, 1994, New Jersey Register, the Department adopted the deletion of the fee rebate provisions. See 26 N.J.R. 2789(a).

The Land Use Regulation Program's fees are intended to equitably allocate the Program's costs among all permittees and are not generally based on the specific costs associated with each application. At this time, the Land Use Regulation Program is completely fee supported. Thus, the Program must collect enough money for staff, equipment, overhead costs, public education efforts, program analysis and development, and application reviews through fees. Until such time as the Program receives a State appropriation, the Program must balance its permit fees with its operating costs. The adopted fee formula will enable the Department to adequately review specific permit applications as well as to perform tasks which are not generally associated with any specific permit application but which are intended to assist all permittees and applicants. These tasks include answering general phone inquiries, holding pre-application meetings either in the office or in the field, responding to general inquiries and constituent letters, attending inter-agency meetings, formulating and amending rules and regulations, and continuous formal and informal public information and education efforts.

The following comments are beyond the scope of this rule proposal:

(87) COMMENT: The requirement, at N.J.A.C. 7:1C-1.3, to notify certain local agencies of the applicant's intent to file a permit is unnecessary and excessive. Although this section is not being formally proposed for modification, we request the Department to delete this requirement since local agencies and interested parties already have the option of being noticed on the Department's actions on construction permits by reviewing the DEP Bulletin. This additional notice requirement is unnecessary and costly. (18)

(88) COMMENT: Under the proposed amendments, individuals will need CAFRA approval if they do not build within a three year period. Why should they have to work under these time constraints when their original purchases were pre-CAFRA? (36)

(89) COMMENT: Let this document serve as not only an expression of objection, but also as formal legal demand for full compensation, costs, fees, and punitive damages as this legislation has already begun to impact unfavorably upon my property values. (40)

Summary of Agency-Initiated Changes:

Changes have been made on adoption to correct or clarify the amendments as follows:

At N.J.A.C. 7:1C-1.5(a)1ii(1), the Department has amended the rule on adoption to provide that the Waterfront Development Fee for a residential development consisting of a single duplex shall be $500.00. This amendment on adoption takes into account that the Department's costs in reviewing an application for a single family home would be the same as the costs associated with reviewing an application for a single duplex.

At N.J.A.C. 7:1C-1.5(a)3i(1), the Department has amended the rule on adoption to provide that the CAFRA permit fee for a residential development consisting of a single duplex shall be $500.00. This amendment takes into account that the Department's costs in reviewing an application for a single family home would be the same as the costs associated with reviewing an application for a single duplex.

At N.J.A.C. 7:1C-1.5(d), the Department has clarified the rule on adoption to provide examples of activities which may constitute a "significant change." This clarification was made in response to comments.

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

7:1C-1.1 Purpose

This chapter implements P.L. 1975, Chapter 232 (N.J.S.A. 13:1D-29 et seq.), to secure timely decisions by the Department of Environmental Protection *[and Energy]* of construction permit applications as defined therein, to assure adequate public notice of procedures thereunder, and to continue effective administration of the substantive provisions of other laws.

7:1C-1.3 Pre-application procedure and requirements

(a) A pre-application review is an optional service especially recommended for major development. During this review the Department will discuss the apparent strengths and weaknesses of the proposed development, as well as the procedures and policies that would apply to the particular development. The conference is intended to provide guidance and does not constitute a commitment of approval or denial of a permit for the proposed development. However, if the appropriate agency determines that the proposed project is exempt from the permit requirement, the agency shall issue a written statement of such finding which shall bind the agency. ***The written statement issued as a result of a pre-application review shall be based solely on the information submitted by the applicant pursuant to (a)1 below. Therefore, this written statement will not constitute an exemption letter, issued pursuant to N.J.A.C. 7:7-2.1(e), certifying that a development is exempt from the requirements of CAFRA.***

1. A request for a pre-application review shall be made in writing and shall include a conceptual proposal of the proposed development, including a written description of the site and the proposed development including the dimensions, number, and uses of proposed structures, as well as a tax lot and block designation of the site.

(b) (No change.)

7:1C-1.5 Fees

(a) Fees shall be charged for the review of any application for a construction permit in accordance with the following schedule:

1. Waterfront development permits:

i. (No change.)

ii. The permit fee for any waterfront development taking place landward of the mean high water line shall be calculated as follows:

(1) The fee for a residential development consisting of one or two dwelling units, as defined at N.J.A.C. 7:7-1.3, shall be $500.00 per unit. ***The fee for a residential development consisting of a single duplex shall be $500.00.***

(2) The fee for all other residential developments shall be $3,000 plus:

(i) $50.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for the first 300 units;

(ii) $40.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for units 301 to 600; and

(iii) $30.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for all units in excess of 600.

(3) The fee for non-residential developments shall be calculated based on the following schedule:

Construction Cost	Fees
$0 to $50,000	$1,450 + ½ of one percent of construction costs
$50,001 to $100,000	$1,700 + one percent of construction costs above $50,000
$100,001 to $200,000	$2,200 + 1¼ percent of construction costs above $100,000
$200,001 to $350,000	$3,450 + 1½ percent of construction costs above $200,000
greater than $350,000	$5,700 + one percent of construction costs above $350,000

The fee payable at the time of application shall not exceed $30,000. If the fee calculated under this formula would have exceeded $30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed $30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

(4) The fee for mixed Residential and Non-Residential Facilities shall be the sum of the Residential and Non-Residential Facilities fee as calculated under (a)1ii(1) or (2) and (3) above.

iii. The permit fee for all other waterfront developments taking place waterward of the mean high water line shall be as follows:

(1) The permit fee for residential site improvements for a single private residential unit or duplex, including without limitation: shore structures (bulkheads, riprap) piers and docks, walkways and activities associated with a single private residential unit or duplex, shall be $250.00 plus one half of one percent of the construction cost above $10,000.

(2) The permit fee for all other activities requiring a waterfront development permit shall be based on the following schedule:

Construction Cost	Fees
$0 to $50,000	$1,450 + ½ of one percent of construction costs
$50,001 to $100,000	$1,700 + one percent of construction costs above $50,000
$100,001 to $200,000	$2,200 + 1¼ percent of construction costs above $100,000
$200,001 to $350,000	$3,450 + 1½ percent of construction costs above $200,000
greater than $350,000	$5,700 + one percent of construction costs above $350,000

The fee payable at the time of application shall not exceed $30,000. If the fee calculated under this formula would have exceeded $30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed $30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

2. Wetland permits: The fee for a Wetlands Act of 1970 permit (N.J.A.C. 7:7-2.2) shall be one percent of the construction costs, or a minimum of $250.00 for residential dock construction associated with a single family or duplex dwelling unit, and $500.00 for all other regulated activities.

3. CAFRA permits:

i. The fee for residential developments shall be calculated as follows:

(1) The fee for a residential development consisting of one or two dwelling units, as defined at N.J.A.C. 7:7-1.3, shall be $500.00 per unit. ***The fee for a residential development consisting of a single duplex shall be $500.00.***

(2) The fee for all other residential developments shall be $3,000 plus:

(i) $50.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for the first 300 units;

(ii) $40.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for units 301 to 600; and

(iii) $30.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for all units in excess of 600.

ii. The fee for non-residential developments shall be calculated as follows:

(1) The fee for Commercial, Public or Industrial Development located on a beach or dune or located between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, shall be calculated based on the following schedule:

Construction Cost	**Fees**
$0 to $50,000	**$1,450 + ½ of one percent of construction costs**
$50,001 to $100,000	**$1,700 + one percent of construction costs above $50,000**
$100,001 to $200,000	**$2,200 + 1¼ percent of construction costs above $100,000**
$200,001 to $350,000	**$3,450 + 1½ percent of construction costs above $200,000**
greater than $350,000	**$5,700 + one percent of construction costs above $350,000**

The fee payable at the time of application shall not exceed $30,000. If the fee calculated under this formula would have exceeded $30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed $30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

(2) The fee for commercial, public or industrial developments located beyond 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, shall be $3,500 plus $500.00 per acre included in the site plan.

(A) For a proposed linear development, the fee shall be $3,500 plus $500.00 per acre to be disturbed. For the purposes of this section, "linear development" means land uses such as roads, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission lines and the rights-of-way therefor, which have the basic function of connecting two points. Linear development shall not mean residential, commercial, office or industrial buildings, improvements within a development such as utility lines or pipes, or internal circulation roads.

(3) For a non-residential commercial development that straddles the regulatory zone between the first 150 feet review zone and the remainder of the CAFRA area and does not trigger the higher regulatory threshold set forth at N.J.A.C. 7:7-2.1(a)5, the fee shall be calculated considering the entire development using the formula found at (a)3ii(1) above.

(4) For a non-residential commercial development that straddles the regulatory zone between the first 150 feet review zone and the remainder of the CAFRA area and does trigger the higher regulatory threshold set forth at N.J.A.C. 7:7-2.1(a)5, the fee shall be calculated considering the entire development using the formula found at (a)3ii(2) above.

(5) For a public or industrial development that straddles the regulatory zone between the first 150 feet review zone and the remainder of the CAFRA area, the fee shall be calculated considering the entire development using the formula found at (a)3ii(2) above.

iii. The fee for mixed residential and non-residential facilities shall be the sum of the residential and non-residential facilities fee as calculated under (a)3i and (a)3ii above.

iv. The fee for the review of a General Permit authorization application pursuant to N.J.A.C. 7:7-7.2 shall be $250.00.

v. The fee for the review and processing of a request for an exemption letter certifying that a development is exempt from the requirements of CAFRA shall be *[$250.00]* ***$125.00***.

4.-5. (No change.)

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

(d) For the purposes of this section, a modification to an issued permit will be processed for modified projects which will not result in a significant change in the scale, use, or impact of the project as approved. The determination as to what constitutes a significant change is within the sole discretion of the Department and will be based on a review of the original application file and the new information submitted by the applicant. A change that will cause less environmental impact than the original project will not constitute a "significant change". ***Significant changes generally include, but are not limited to, increased clearing, grading, filling or impervious coverage, reduction in buffers, and change in footprint location.***

1. The fee for a request for an approval of a modification of the approved project shall be one-quarter of the total original permit fee or a minimum of $100.00.

(e) The Department may also charge additional fees to engage such essential expertise as may be necessary for the processing and review of large scale and complex projects. The applicant will be consulted before imposition of such fees.

(f)-(j) (No change.)

(a)

ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS

Worker and Community Right to Know Regulations Readoption with Amendments: N.J.A.C. 7:1G

Proposed: January 3, 1994 at 26 N.J.R. 123(a).
Adopted: June 10, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.
Filed: June 16, 1994 as R.1994 d.349, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with portions not adopted, including N.J.A.C. 7:1G Appendix 1.**
Authority: N.J.S.A. 34:5A-1 et seq., 13:1D et seq. and 52:27D-223.
DEPE Docket Number: 65-93-12/286.
Effective Date: June 16, 1994, Readoption; July 18, 1994, Amendments.
Expiration Date: June 16, 1999.

On January 3, 1994 the Department of Environmental Protection and Energy (Department) proposed to readopt, with amendments, N.J.A.C. 7:1G, the Worker and Community Right to Know Regulations. The amendments proposed establishing a 100 pound threshold for Community Right to Know (CRTK) reporting and revising the Environmental Hazardous Substance (EHS) list of substances subject to CRTK reporting. The Department is readopting N.J.A.C. 7:1G, which was due to sunset on September 29, 1994 with some portions of the amendments proposed. This adoption will codify the EHS list, establish a threshold for reporting, and continue the regulations in effect after September 29, 1994.

In order to give the public an opportunity to comment on the proposal, a 30 day comment period was provided for submission of written comments. The Department heard oral testimony at a public hearing held on February 1, 1994. In response to the comments received, which are discussed below, the Department is readopting subchapters 1 through 7 as proposed with amendments on January 3, 1994 and is adopting portions of the proposed EHS list at N.J.A.C. 7:1G-2.1. Elsewhere in this issue of the New Jersey Register, the Department is proposing further revision to the EHS list. The Department is herein adopting the 100 pound reporting threshold at N.J.A.C. 7:1G-3.1, and is proposing to increase this threshold in the companion proposal. The Department is making the separate proposal because the changes are too substantial to be made herein upon adoption of the January 1994 proposal.

Summary of Public Comments and Agency Responses:

A public hearing was held on February 1, 1994, at the Department's hearing room at 401 East State Street in Trenton, New Jersey, to provide an opportunity for interested persons to comment on the proposed readoption, with amendments, of N.J.A.C. 7:1G. The comment period closed on February 2, 1994. Ten persons presented oral testimony at the hearing; four of these persons also submitted written comments. An additional 51 persons submitted written comments. The commenters were as follows:

1. Richard Arnold, Allied Signal, Inc.
2. John P. Sandstedt, Sybron Chemicals, Inc.
3. Judith J. Glazier, Golder Associates, Inc.
4. Glenn Roberts, Flavor and Extract Manufacturers Assoc./ Fragrance Materials Association of the United States
5. Garth Walters, and Robin M. Izzo, Princeton University Occupational Health and Safety
6. Kenneth J. Farrell, Sandoz Pharmaceuticals Corporation
7. Gary Garetano, Hudson Regional Health Commission
8. James A. Shissias, Public Service Electric and Gas Company
9. Barry R. Weissman, Ausimont USA, Inc.
10. Vincent F. Bennett, Schering-Plough Corporation
11. Alan N. Bogard, Exxon Chemical Company
12. Ronald L. Spraetz, National Starch and Chemical Company
13. Eugene J. DeStefano, Killiam Associates
14. Joseph F. Rohr, Camdett Corporation
15. Donald L. Hoven, Hackensack Water Company
16. David L. Carroll, Bush Boake Allen, Inc.
17. C. Stypulkowski, National Starch and Chemical Company
18. Lawrence C. Pentz, Johnson Matthey
19. Leon Bonan, Ackros Chemicals America
20. Gerald W. Treece, Monsanto Chemical Company
21. Joseph A. Higgins, Jr., Borough of Woodcliff Lake
22. Kelly Shea, Mansfield Township Ambulance Corps.
23. Jerry Chanon, Homestead at Mansfield Civic Assoc., Inc.
24. Jim Sinclair, New Jersey Business and Industry Assoc.
25. Mark Lewis, Hoffman-La Roche, Inc.
26. Sharon M. Gray, Atlantic Electric
27. Henry W. Gventer, Hoechst Celanese Corporation
28. Thomas A. Bates, Huntsman Polypropylene Corporation
29. Frank Mara, Fragrance Resources, Inc.
30. Gary A. Page, American Cyanamid Company
31. Thomas J. Detweiler, Chemical Industry Council of New Jersey
32. Hieng D. Neumann, Rohm and Haas Company
33. Gene L. Hortz
34. Tina O'Such, Children's Health Initiatives
35. V.G. Morando, Jr., Engelhard Corporation
36. Mark Donatiello, W.R. Grace & Company
37. Janice Tirpack, BASF Corporation
38. Alfred H. Pagano, E.I. DuPont, Inc.
39. Richard E. Naipawer, Givaudan-Roure Corporation
40. D.J. Campbell, Mobil Oil Corporation
41. R.J. Marshall, and J.A. Hergert, ICI Fluoropolymers
42. Ted Valerio, National Starch and Chemical Company
43. Ron Burstein, National Starch and Chemical Company
44. James F. Wadon, FMC Corporation
45. Gail M. Driscoll, Merck & Company, Inc.
46. T.S. Nasife, Occidental Chemical Corporation
47. Richard Fackler, Occidental Chemical Corporation
48. David Li, Cardolite Corporation
49. Rodger Nogaki, Creative Risk Services, Inc.
50. Wynne Falkowski, Coalition Against Toxics
51. Jane Nogaki, New Jersey Right to Know and Act Coalition
52. Rick Engler, New Jerey Industrial Union Council AFL-CIO
53. Peter Smith, Fire Fighters Association of New Jersey
54. Drew Kodjak, New Jersey Public Interest Research Group
55. Peter Carbone, Camden Fire Department
56. Dolores Phillips, New Jersey Environmental Federation
57. Rosemary Smith
58. Russell Smith
59. L.J. O'Leary
60. Lynn D. Johnson
61. Susan F. Sproul

1. COMMENT: Several differing opinions were expressed concerning the proposed threshold at N.J.A.C. 7:1G-3.1(b). Several commenters suggested that the Department adopt the Federal threshold of 10,000 pounds for inventory reporting. (1-3, 6, 9-13, 17-20, 24-25, 27-33, 35-48, 57-61) Some commenters supported the 500 pound threshold the Department proposed on April 19, 1993. (4, 16, 26, 28) Others supported the 100 pound threshold as proposed. (8, 15, 34, 49-56) Two commenters offered support for a 10,000 pound or no less than a 500 pound threshold. (27, 28) One commenter proposed a one pound threshold for explosives, radioactives, acutely poisonous materials, United States Department of Transportation (USDOT) poisons A and B, and chemicals with a National Fire Protection Association (NFPA) Health rating of 4, or keeping the zero threshold. (7) Two commenters supported the proposed 100 pound threshold in lieu of the 500 pound threshold proposed earlier, but said they prefer a zero threshold. (22, 23)

RESPONSE: The Department has reviewed the comments and is adopting the 100 pound threshold for inventory reporting, but proposing elsewhere in this New Jersey Register to increase the threshold to 500 pounds. After consideration of all comments received on this issue, the Department believes that a 500 pound threshold will reduce the reporting burden on industry, more closely align the State and Federal Right to Know programs, and provide meaningful data to the public and emergency responders for planning for and responding to emergency situations.

2. COMMENT: One commenter felt that the threshold determination should be calculated by container type rather than the aggregate quantity of a chemical present at a facility. The commenter felt the threshold should be figured on a per package basis. (27) Another commenter recommended an alternative threshold calculation by changing the

language at N.J.A.C. 7:1G-3.1(b) to read "thresholds present in aggregate at any location of a facility at any one time" and to define location as "a building, structure or related equipment." (5)

RESPONSE: One of the Department's objectives is to conform the State Community Right to Know program to the Federal program under the Emergency Planning and Community Right to Know Act (EPCRA) to the maximum extent practicable. Thus, the language used for threshold determination in the proposal mirrors the Federal language at 40 CFR 370 where threshold determination is calculated by "facility."

The establishment of a 100 pound reporting threshold will eliminate the need to report small quantities of hazardous substances. A 500 pound threshold, as the Department is proposing elsewhere in this New Jersey Register, will further reduce the burden on industry. The Department believes that basing threshold determination on location or container type may encourage employers to store small quantities in various types of containers or in many places to avoid reporting. Thus, the substances could escape reporting although actually present at the facility in significant quantities. For these reasons, the Department cannot support a container-based or location-based threshold for reporting.

3. COMMENT: Several commenters suggested retaining the Enviromental Hazardous Substances (EHS) as adopted January 3, 1994, rather than the list as proposed for readoption on that date. (1-3, 6, 9-10, 13, 18-20, 25, 28-29, 31-33, 35-48) Some commenters also recommended that the Department's EHS list should be comprised of the SARA Section 302 list and the OSHA "list." (1, 3, 6, 9, 11, 13-14, 18-20, 24-25, 28, 30-33, 35-48) One commenter suggested that the EHS list consist of the SARA 302 list, the EHS list adopted on January 3, 1994, and any substance exceeding a quantity of 10,000 pounds that requires a Materials Safety Data Sheet (MSDS). This commenter stated that the addition of the SARA Section 313 chemicals is redundant and contrary to Federal requirements and would only add another burden to the regulated community, since information on these chemicals is already reported on the Federal Form R and the New Jersey Release and Pollution Prevention Report. (10) A commenter opined that the Department does not fully understand the real purpose of the U.S. Department of Transportation (USDOT) regulations and has simply grasped at another list of substances for inclusion in a reporting requirement. (2) One commenter stated that the EHS list was established for release reporting not emergency response and the USDOT list should not be added to the EHS list. (25) Several commenters suggested that the Department only add chemicals to the list based on scientific evidence in accordance with State rulemaking procedures. (8, 12, 16-17, 25)

RESPONSE: After consideration of the comments received regarding the EHS list, the Department has determined that the USDOT list does not need to be included in the EHS list to ensure that meaningful information will be provided to the public and to emergency responders. The Department is adopting an EHS list comprised of the chemical lists as originally proposed in April 1993, with the exception of the Unusually Hazardous Substance List, which the Department is modifying with this adoption. Also, the Department is proposing, elsewhere in this issue of the Register, to add to the EHS list the regulated substances on the Section 112(r) list promulgated by the U.S. Environmental Protection Agency (USEPA) on January 31, 1994 pursuant to the 1990 Clean Air Amendments (CAAA). This list contains 55 flammable gases and flammable liquids and five toxic substances not already listed as EHSs and the USDOT Class 1, Division 1.1 explosives. Since the Section 112(r) list focuses on chemicals that pose a significant risk to the community if an accidental release should occur, the Department believes that the inclusion of these substances as EHSs is appropriate to provide citizens and emergency responders with information about hazardous substances in their communities.

Upon passage of the State Pollution Prevention Act of 1991, the definition of Environmental Hazardous Substance in the Worker and Community Right to Know Act was amended to include all substances regulated under Section 313 of SARA and the Industrial Survey List (N.J.A.C. 7:1F, Appendix A). Therefore, the inclusion of these two lists in the EHS list has already been effected by statute and is being codified with this adoption. It should be noted that the environmental release, throughput, waste transfer, and pollution prevention information collected on the Release and Pollution Prevention Report and the Federal Form R is different from the chemical inventory information collected on the Community Right to Know Survey.

The OSHA "list" referred to by some commenters is actually those substances regulated under the Hazard Communication Standard of the Federal Occupational Safety and Health Act (OSHA). Any substance which requires a Material Safety Data Sheet (MSDS) is covered under the Hazard Communication Standard at 29 CFR 1910.1200. This includes thousands of hazardous chemicals. These chemicals are federally reportable under Section 312 of EPCRA when the 10,000 pound threshold is reached. The Department believes it would not be practical or beneficial to require the reporting of the thousands of additional chemicals regulated under OSHA at the New Jersey reporting threshold.

4. COMMENT: Several commenters supported the Department's proposed inclusion of the USDOT hazardous materials as EHSs. (23, 34, 49-56)

RESPONSE: The Department appreciates the support of these commenters. However, after consideration of the comments received and further review, the Department has determined that the USDOT hazardous materials should not be listed as EHSs. Rather, the CAAA Section 112(r) list of regulated substances, promulgated by USEPA after the Department's January 3, 1994 proposal, is more closely aligned with the community safety aspects of the program and defines, more accurately, those substances that pose a threat to the community. Therefore, the Department is not adopting the USDOT hazardous materials (Appendix 1) proposed at N.J.A.C. 7:1G-2.1(a)6 and is proposing the addition of the Section 112(r) regulated substances to the EHS list elsewhere in this issue of the New Jersey Register.

5. COMMENT: Several commenters said the New Jersey Right to Know regulations should be consistent with the Federal regulations (1-3, 6, 9-14, 17, 19, 20, 24-25, 28, 30-33, 35-48, 57-61), and the New Jersey Pollution Prevention requirements. (1, 3, 6, 9-11, 13, 19, 20, 25, 28, 30-33, 35-48, 57-61) Some commenters felt the amendments should be consistent with the Shinn-Doria bill to amend the Worker and Community Right to Know Act. (1, 3, 6, 13, 19-20, 25, 28, 31-33, 35-48, 57-61) Other commenters noted Governor Whitman's goal of a less burdensome regulatory bureaucracy. (1, 3-4, 9-11, 13, 19-20, 24-25, 28, 30-33, 35-44, 46-48, 57-61)

RESPONSE: The Department agrees that the State Right to Know program should be more consistent with the Federal program, and that reporting requirements of little value should be eliminated. In establishing an EHS list that reflects the potential hazards of releases to emergency responders and the community, the Department is attempting to balance the need for information against the costs to industry of reporting within the framework of the Worker and Community Right to Know Act. This adoption, which codifies a new EHS list and a 100 pound reporting threshold, coupled with the Department's proposal to further revise the list and increase the threshold, represent positive steps toward making the program less burdensome and more meaningful.

The Worker and Community Right to Know Act and the Pollution Prevention Act are linked to each other through amendments made to the Worker and Community Right to Know Act in 1991 when the Pollution Prevention Act was passed. The amendments to the Right to Know rules adopted on January 3, 1994, ensure consistency in the reporting requirements under both Acts. The Release and Pollution Prevention Report (N.J.A.C. 7:1G-4.1) will be used to fulfill the annual reporting requirements for both programs.

6. COMMENT: The Department has gone from making proposals founded on law and based on a thorough technical analysis in favor of a popularity contest; foregoing consideration of need, practicality, cost effectiveness, extent of chemical use or differences in Federal and state regulations. (11, 24, 31)

RESPONSE: The Department disagrees. The Department proposed to streamline reporting requirements through the use of a reporting threshold. In developing this readoption proposal, the Department carefully considered the high degree of chemical usage in the State in light of the resources which are required to collect chemical inventory information at a zero threshold. In consideration of these and other factors discussed in these responses to comments, the Department proposed on January 3, 1994, a 100 pound reporting threshold, and elsewhere in this Register, is proposing a 500 pound threshold.

7. COMMENT: One commenter recommended modifying the EHS acronym since it would be confused with the USEPA EHS (Extremely Hazardous Substance) designation. It was recommended that the Department modify the acronym to "NJ-EHS," "NJEHS," or "EHSNJ" to differentiate between a New Jersey Environmental Hazardous Substance and a Federal Extremely Hazardous Substance. (10)

RESPONSE: The Department recognizes this concern. However, the term "Environmental Hazardous Substances" was established in the Worker and Community Right to Know Act of 1983, prior to the enactment of Title III of the Federal Superfund Amendments and

Reauthorization Act (SARA) of 1986. The Department cannot by regulation modify the term "Environmental Hazardous Substance" which has been established by statute. The EHS acronym for Environmental Hazardous Substance has been widely used since the inception of the State's Right to Know program to describe the substances subject to reporting. Changing an established acronym would be burdensome for the regulated community and the Department. The Department will attempt to use the EHS acronym only when its meaning has been made clear.

8. COMMENT: One commenter suggested that separate reporting of substances having different mixture ranges or found in different container types be eliminated from Community Right to Know reporting. (25)

RESPONSE: In its January 3, 1994, adoption of amendments to these rules, the Department aimed at reducing the number of times a substance must be reported by eliminating the use of mixture ranges on the Community Right to Know Survey at N.J.A.C. 7:1G-3.1(c)4. The information is collected by container type to allow emergency responders to better plan their response strategies.

9. COMMENT: The Community Right to Know survey contains irrelevant information (codes for container types, inventory ranges, alphabetical listing) in a format which is not useful for emergency responders. (2, 4, 9-11, 21, 24, 27, 29)

RESPONSE: The Department agrees with the commenters that the coded information may not provide emergency responders with easily understandable information quickly enough to be useful in an emergency situation. The Department will be developing a new survey form that will eliminate the use of numerical codes to the greatest extent possible. It should be noted however, that use of codes for reporting is consistent with the Federal Tier II report developed pursuant to Section 312 of EPCRA and that the data are being provided to emergency responders to assist in the planning for emergencies.

10. COMMENT: A commenter stated that emergency responders are not helped by receiving information about oil and gas at gasoline stations or chemicals at factories that may be toxic if ingested. (21)

RESPONSE: Gasoline stations are among those business activities clearly covered under the Worker and Community Right to Know Act. Also, they are covered under Section 312 of SARA when they exceed the 10,000 pound Federal threshold for reporting. In establishing the threshold for reporting under the State program, the Department was intending to eliminate the reporting of minimal quantities of hazardous substances and thereby reduce the volume of information sent to emergency responders.

11. COMMENT: The proposed regulations will only increase the cost of doing business in New Jersey with zero benefit. (3, 11, 19, 24, 46)

RESPONSE: The Department disagrees with this comment. The amendments do not impose any new reporting, recordkeeping or other compliance requirements on businesses. On the contrary, the amendments incorporate a reporting threshold which effectively reduces the number of chemicals subject to reporting and will eliminate the need for many small businesses to report. Moreover, the Department is proposing to increase the threshold to 500 pounds for most substances, which will further decrease the reporting burden on the regulated community.

12. COMMENT: One commenter felt that the Right to Know regulations should be handled by one Department and set of regulations, not two. (9)

RESPONSE: By statute, the implementation of the Act is primarily divided between this Department and the Department of Health. Therefore, the Department cannot by regulation merge the two programs into one. The Department recognizes that coordination between the two Departments is necessary to properly implement the provisions of the Act.

13. COMMENT: One commenter wanted changes to the labeling regulations. (9)

RESPONSE: Labeling under the Worker and Community Right to Know Act is implemented by the New Jersey Department of Health in accordance with the rules at N.J.A.C. 8:59. Thus, the Department is not able to respond to these comments.

14. COMMENT: One commenter suggested making the Department's computerized lists available to the Federal, State and local agencies to reduce the paperwork burden. (14)

RESPONSE: The Department has made the chemical inventory data available through the New Jersey Right to Know Public Access System (RTKPAS). The RTKPAS is a menu driven database containing chemical inventory information submitted by both private sector employers and public sector employers. RTKPAS is jointly funded by this Department and the Department of Health and is available 24 hours a day to emergency responders, government agencies and the public by personal computer and modem.

15. COMMENT: A commenter stated that the intent of the Right to Know regulations was not to use the information gathered on the reporting forms for the training of employees or emergency responders or for informing the public of hazardous chemicals that may be at a facility. (8)

RESPONSE: The New Jersey Worker and Community Right to Know Act was the outgrowth of the public's concern over the amount of hazardous chemicals in the State and the belief that local health, fire, police, safety and other government officials require detailed information about the identity, characteristics, and quantities of hazardous substances present in their communities in order to adequately plan for and respond to emergencies. The legislative intent of the Act was to establish a comprehensive program for the collection and distribution of meaningful information about hazardous substances, and to provide a procedure whereby residents may gain access to the information.

16. COMMENT: Several persons stated that the Community Right to Know data are not collected for the purposes of pollution prevention. (1, 3, 6, 9-11, 13, 18-20, 24-25, 28, 30-33, 35-38, 57-61)

RESPONSE: Notwithstanding that pollution prevention is not a stated objective of the Worker and Community Right to Know Act, the Right to Know data may be used as an indicator of pollution prevention trends. The State and Federal Right to Know data collected indicate reductions in the quantity of releases of hazardous substances to the environment. Based on reported data, the Department believes that public disclosure of hazardous substances information has motivated industry to expedite pollution prevention efforts.

Summary of Agency-Initiated Changes:

The Department is adopting only three of the 13 chemicals proposed on the Unusually Hazardous Substances list at N.J.A.C. 7:1G-2.1(a)4. The Department, in consultation with the Department of Community Affairs' Division of Fire Safety, will further develop this list and propose any necessary additions in a future rulemaking. The Department is taking this action in order to reevaluate the Unusually Hazardous Substances list in light of the fact that the Department is not adopting the previously reportable USDOT hazardous materials proposed at N.J.A.C. 7:1G-2.1(a)6 (Appendix 1), and is proposing to add, in the proposal published elsewhere in this issue of the Register, the Clean Air Act Amendments (CAAA) Section 112(r) list of regulated substances for accidental release prevention.

Because the U.S. Department of Transportation (USDOT) hazardous materials proposed in Appendix 1 are not being incorporated into the EHS list at N.J.A.C. 7:1G-2.1(a)6, the Department is not adopting the proposed additions of paint, antifreeze and heating oil to the list of substances that may be reported as generic mixtures at N.J.A.C. 7:1G-3.1(c)4ii since these three substances are found only on the USDOT list.

As part of the readoption of the chapter, the Department is making several minor changes to the sections to which amendments were adopted on January 3, 1994. The defintion of "employer" at N.J.A.C. 7:1G-1.2 is being amended to conform the definition to that in the statute. This change clarifies that public employers, or employers in non-profit, non-public schools, colleges or universities, are not subject to the Right to Know fee. Since these employers are not currently being assessed this fee, this change will not impact New Jersey employers. Several format and grammatical changes are being made to the definition of "employer" to assure consistency with the classification system used throughout the definition. Thus, Industry Numbers 4512 and 4513 are replaced by Group Number 451 which includes only those two Industry Numbers. These changes will not impact the regulated community since they do not change coverage under the Act.

N.J.A.C. 7:1G-5.1(a) and (b) are being amended to clarify the CRTK survey distribution protocol for any employer that is subject to the Worker and Community Right to Know Act, regardless of whether the employer is also subject to the reporting requirements of the Federal Superfund Amendments and Reauthorization Act (SARA), also known as the Emergency Planning and Community Right to Know Act (EPCRA). This will not affect regulated businesses since the survey distribution is mandated by the Acts and has been in effect in New Jersey.

N.J.A.C. 7:1G-7.7(c) is being amended to specify the penalty if an employer fails to report 10 substances on the Community Right to Know

Survey or the Release and Pollution Prevention Report. The penalty schedule adopted on January 3, 1994 is ambiguous in that the penalty for omitting 1 to 10 substances is $500.00 while the penalty for omitting 10 or more substances is $1000.00. The revised language clarifies that the $1000.00 penalty applies to omissions of more than 10 substances.

Summary of Hearing Officer Recommendation and Agency Response:

Gerald P. Nicholls, Director of the Division of Environmental Safety, Health and Analytical Programs, served as the hearing officer at the February 1, 1994 public hearing. After reviewing the testimony given at the public hearing, Director Nicholls recommended that the proposed rules be adopted with the changes addressing the concerns raised by the public as described in the Summary of Public Comments and Agency Responses.

A copy of the record of the public hearing is available upon payment of the Department's normal changes for copying. Persons requesting copies should contact:

Janis E. Hoagland
Office of Legal Affairs
Department of Environmental Protection and Energy
401 East State Street
CN 402
Trenton, New Jersey 08625

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:1G.

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

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.

...

"Employer" means any person or corporation, regardless of whether he pays employees, in the State, engaged in business operations having a Standard Industrial Classification, as designated in the Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget, within Major Group Number 07 (Agricultural Services), only Industry Number 0782—Lawn and Garden Services; Major Group Numbers 20-39 inclusive (Manufacturing Industries); Major Group Number 45 (Transportation by Air), only *[Industry Numbers 4512—Scheduled Air Transport, 4513—Air Courier Services]* ***Group Number 451—Air Transportation, Scheduled and Air Courier Services***, and Group Number 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 473—Arrangement of Transportation of Freight and Cargo, 474—Rental of Railroad Cars, and 478—Miscellaneous Services Incidental to Transportation), Major Group Number 48 (Communications), 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, Non-durable 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 Non-durable Goods; 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 Parking), 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*[s]* 806—Hospitals; Major Group Number 82 (Educational Services) only Group Numbers 821—Elementary and Secondary schools, 822—Colleges, Universities, *[and]* 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. *[Employer also means State and Local Governments, or any agency, authority, department, bureau or instrumentality thereof.]* ***Except for the purposes of N.J.S.A. 34:5A-26, "employer" also means the State and local governments, or any agency, authority, department, bureau, or instrumentality thereof, or any non-profit, non-public school, college or university.***

...

7:1G-2.1 Designation of environmental hazardous substances (EHSs)

(a) The list of EHSs shall be comprised of the substances listed below:

1. Toxic Chemicals on the list at 40 CFR 372.65 established by the United States Environmental Protection Agency for reporting pursuant to SARA Title III section 313, incorporated herein by reference, as from time to time supplemented or amended;

2. Extremely Hazardous Substances on the list at 40 CFR 355 Appendix A designated under SARA Title III section 302, established by the United States Environmental Protection Agency for reporting, incorporated herein by reference, as from time to time supplemented or amended;

3. Chemicals designated as selected substances at N.J.A.C. 7:1F Appendix A for reporting on the Industrial Survey as from time to time supplemented or amended;

4. Unusually Hazardous Substances defined at N.J.A.C. 7:1G-1.2 and listed below by the Department pursuant to N.J.S.A. 52:27D-223:

Chemical	CAS Number
*[Diethyl Carbamyl Chloride	88-10-8
Diisobutyl Aluminum Hydride	1191-15-7
Triethylborane	97-94-9
Chlorosulfuric Acid	7790-94-5
Lithium Tetrahydroaluminate	16853-85-3
Tert-Butyl Perbenzbate	614-45-9
Cobaltous Nitrate	10141-05-6
Cupric Nitrate	3251-23-8
Dibenzoyl Peroxide	94-36-0
Potassium Chromate	7789-00-6]*
Saran	8013-77-2
PVC (Chloroethylene, polymer)	9002-86-2
Lopac	9003-54-7

5. Any hazardous substance added to the list of chemicals subject to pollution prevention planning pursuant to N.J.A.C. 7:1K-3.5; and

6. *[Hazardous materials in Appendix 1 of this chapter.]* ***(Reserved)***

(b) Chemical inventory reporting on the Community Right to Know Survey shall include all EHSs listed at (a)1 through 6 above.

(c) Environmental release, throughput, and waste transfer reporting on the Release and Pollution Prevention Report shall be limited to the list of substances described at (a)1 and 5 above.

7:1G-3.1 Completion of Community Right to Know Survey Portion of the Environmental Survey

(a) An employer shall complete and submit to the Department a Community Right to Know Survey for each facility covered by the rules indicating if EHSs were present during the reporting period and whether the EHSs met or exceeded the threshold quantities for reporting listed in (b) below.

(b) A threshold of 100 pounds or the Federal SARA 302 threshold, whichever is lower, shall apply to all EHSs present in aggregate at the facility at any one time. These thresholds for reporting do not apply to container labeling pursuant to N.J.A.C. 8:59-1 et seq.

(c) For each EHS that met or exceeded the thresholds listed in (b) above, an employer shall provide all information on a Community Right to Know Survey form approved by the Department, which shall include, but is not limited to, the following:

1. The chemical name Chemical Abstracts Service registry number, if available, and the EHS number and USDOT number, if available, of each EHS which is present at the facility in a pure state or mixture;

2.-3. (No change.)

4. EHSs in mixtures shall be reported as follows:

i. (No change.)

ii. EHSs in mixtures in the following generic categories may be reported using the generic name and the quantity of the entire mixture: gasoline, new and used petroleum oil, *[paint, antifreeze, heating oil,]* and hazardous waste;

5.-6. (No change.)

(d) (No change.)

7:1G-3.2 Reporting exemptions

(a) EHSs meeting any of the following criteria are exempt from chemical inventory reporting on the Community Right to Know Survey:

1. EHSs present at a facility in quantities that do not meet or exceed the thresholds for reporting found at N.J.A.C. 7:1G-3.1(b);

2.-5. (No change.)

(b)-(f) (No change.)

7:1G-4.1 Completion of Release and Pollution Prevention Report

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

(e) Environmental release, throughput, and waste transfer reporting on the Release and Pollution Prevention Report shall be limited to the list of substances described at N.J.A.C. 7:1G-2.1(a)1 and 5.

7:1G-5.1 Survey submittal

(a) An employer subject to reporting under the Worker and Community Right to Know Act *[who does not meet]* ***, regardless of whether the employer also meets*** the Federal requirements for reporting ***under Section 312 of SARA,*** shall transmit a Community Right to Know Survey for each covered facility to the Department by March 1 of the year following the reporting year. A copy shall also be transmitted to the local fire and police departments, local emergency planning committee, and the Right to Know County Lead Agency of the county in which the facility is located.

(b) An employer subject ***only*** to the reporting requirements of Section 312 of SARA shall transmit an original Community Right to Know Survey for each covered facility to the Department by March 1 of the year following the reporting year. A copy shall also be transmitted to the local fire department and local emergency planning committee.

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

7:1G-7.7 Penalties

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

(c) Failure of an employer to report all EHSs pursuant to these regulations on the Community Right to Know Survey or Release and Pollution Prevention Report shall result in the assessment of a civil administrative penalty based on the number of substances omitted as follows: one to 10 substances, $500.00; *[10 or]* more ***than 10*** substances, $1,000.

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

OFFICE OF ADMINISTRATIVE LAW NOTE: As explained in the notice above, DEPE is **not adopting** the proposed Appendix 1 to N.J.A.C. 7:1G, published at 26 N.J.R. 127 through 157. The proposed Appendix 1 is not reproduced herein showing its non-adoption; for its text, please refer to the proposal.

(a)

ENVIRONMENTAL REGULATION

Land Use Regulation Program
Coastal Permit Program Rules

Readoption with Amendments: N.J.A.C. 7:7
Adopted New Rules: N.J.A.C. 7:7-1.7 and 7:7-7

Proposed: February 22, 1994 at 26 N.J.R. 918(b); see also 26 N.J.R. 1561(a).

Adopted: June 24, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Filed: June 24, 1994 as R.1994 d.378, **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. 12:5-1 et seq., 13:1D-1 et seq., 13:9A-1 et seq. 13:9B-1 et seq., and 13:19-1 et seq.

DEPE Docket Number: 08-94-01/105.

Effective Date: June 24, 1994, Readoption;
July 18, 1994, Amendments and New Rules.

Expiration Date: June 24, 1999.

Summary of Hearing Officers' Recommendation and Agency Response:

On February 22, 1994 the Department of Environmental Protection and Energy ("Department") proposed to readopt with amendments its Coastal Permit Program Rules, N.J.A.C. 7:7. These rules establish the procedures by which the Department reviews permit applications and appeals from permit decisions under the Coastal Area Facility Review Act (CAFRA)(N.J.S.A. 13:19-1 et seq.), the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.), and the Waterfront Development Act (N.J.S.A. 12:5-1 et seq.). These procedures also govern procedures for reviews of applications for Water Quality Certificates under Section 401 of the Federal Clean Water Act where such an application is made in conjunction with an application for a coastal permit. The need to propose amendments to N.J.A.C. 7:7 was largely necessitated by the adoption of P.L. 1993, c.190. This law amended CAFRA and will become effective on July 19, 1994. Generally speaking, P.L. 1993, c.190 expands the types of development required to undergo Department review particularly if development is located within 150 feet of the mean high water line or within 150 feet of the landward limit of a beach or dune.

As authorized by the three statutes, the Coastal Permit Program Rules govern the following types of activities: (1) under CAFRA, the construction of development within the coastal area described in Section 4 of CAFRA (N.J.S.A. 13:19-4); (2) under the Wetlands Act of 1970, the draining, dredging, excavation, or deposition of material, and the erection of structures, driving of pilings or placing of obstructions in any coastal wetlands which have been mapped or delineated pursuant to the Wetlands Act (a list of these maps and a full list of regulated activities appear in N.J.A.C. 7:7-2.2); and (3) under the Waterfront Development Law, the filling or dredging of, or placement or construction of structures, pilings or other obstructions in any tidal waterway, or in certain upland areas adjacent to tidal waterways (see N.J.A.C. 7:7-2.3).

The rules at N.J.A.C. 7:7 are administered by the Department's Land Use Regulation Program (Program), successor to the Division of Coastal Resources, in conjunction with the Rules on Coastal Zone Management, N.J.A.C. 7:7E. The rules at N.J.A.C. 7:7E constitute the Department's substantive rules regarding the use and development of coastal resources.

The Department held public hearings on the proposed readoption with amendments on March 11, 1994 in Trenton; March 14, 1994 in Toms River; and March 16, 1994 in Ocean City, New Jersey. The Department extended the closing date for public comment from March 24, 1994, to April 25, 1994. At the public hearings and during the public comment period, the Department also obtained public input on a related proposal (DEPE docket number 11-94-01/291) to amend the Rules on Coastal Zone Management at N.J.A.C. 7:7E. The need to amend N.J.A.C. 7:7E, like the need to amend N.J.A.C. 7:7, was largely necessitated by the adoption of P.L. 1993, c.190.

John R. Weingart, Assistant Commissioner of Environmental Regulation in the Department, presided at one of the hearings. Ernest P. Hahn, Administrator of the Land Use Regulation Program, presided over the other two hearings. As a result of the public hearings, Assistant Commissioner Weingart and Administrator Hahn recommended that the

Department adopt the proposed amendments with the changes discussed below in the Summary of Public Comments and Agency Responses. The Department agrees with this recommendation. Commissioner Robert C. Shinn has considered all comments made at the hearings, and the rule as adopted reflects that consideration.

Interested persons may inspect the public hearing record for each of the three public hearings or obtain a copy upon payment of the Department's normal copying charges by contacting Janis E. Hoagland, Esq., Department of Environmental Protection and Energy, Office of Legal Affairs, CN 402, Trenton, NJ 08625.

Summary of Public Comments and Agency Responses:

This adoption readopts and amends N.J.A.C. 7:7. The Department recently readopted this chapter without change on May 8, 1994 because the rules were scheduled to expire on May 12, 1994, pursuant to Executive Order No. 66(1978). However, since the amendments to CAFRA and the Waterfront Development Law enacted by the Legislature in July 1993 will become effective July 19, 1994, the Department needed to readopt N.J.A.C. 7:7 without change in order to have rules in place between May 12, 1994 and July 19, 1994. This adoption includes the regulatory changes necessary to implement the legislative amendments that will become effective on July 19, 1994, as well as other changes considered necessary to enable the Department's Land Use Regulation Program administer the rules implementing CAFRA, the Waterfront Development Law and the Wetlands Act of 1970 more effectively.

The adopted amendments includes new definitions of "beach," "dune," "development" and other terms used in the legislative amendments of 1993, and delete references to a CAFRA "facility" in order to reflect the legislative amendments, which provide that specific development must receive a permit (N.J.A.C. 7:7-1.3). The adoption also describes the types of developments which will require a permit under CAFRA and the Waterfront Development Law as amended in 1993 and under the Wetlands Act of 1970, as well as the types of development which are exempt from those statutes (N.J.A.C. 7:7-2.1 and 7:7-2.3).

The adopted amendments delete the previous distinction between Wetlands Type "A" and Type "B" permits (N.J.A.C. 7:7-2.2), and update the application requirements for a CAFRA permit (N.J.A.C. 7:7-4.2). These updated requirements include revised notification and other procedures necessary to enable the Department to determine whether or not to hold a public hearing on a CAFRA application within the timeframes set by the legislative amendments of 1993 and to meet other statutory deadlines. They also include revised procedures governing how and when an application will be declared complete for filing, how and when a public hearing will be held (N.J.A.C. 7:7-4.5), how and when notice of final decisions will be made (N.J.A.C. 7:7-4.8), and how permits may be modified (N.J.A.C. 7:7-4.10).

The adopted amendments delete the provision for an expedited application process for designated applications (former N.J.A.C. 7:7-4.12) and contain a new provision within N.J.A.C. 7:7-5.4 setting a deadline for the submission of public comments on a proposed settlement of a contested case involving a permit decision. In keeping with the 1993 legislative amendments, which abolished the Coastal Area Review Board ("CARB"), the adopted amendments also delete the rule pertaining to CARB (N.J.A.C. 7:7-5.5). The adopted amendments also revise the provisions governing the submission of a Compliance Statement in lieu of an Environmental Impact Statement (EIS) for minor projects (N.J.A.C. 7:7-6).

The Department is adopting a new rule governing the issuance of emergency permits (N.J.A.C. 7:7-1.7) and adding a provision allowing the Department to hold a pre-application "review" by telephone, instead of an in-person pre-application conference (N.J.A.C. 7:7-3.2). Also adopted are new rules governing General Permits and Permits-By-Rule. These new rules reflect the 1993 legislative amendments to CAFRA, which specifically authorize the Department to issue General Permits under CAFRA in lieu of individual permits.

New rule N.J.A.C. 7:7-7.1 provides general standards for the issuance of a general permit authorizing a specific activity, and describes the substantive and procedural requirements that must be met before the Department adopts a general permit or a permit-by-rule. New rule N.J.A.C. 7:7-7.2 contains a general permit allowing the construction of single family homes or duplexes on existing bulkheaded lots with sewer connections; a general permit providing for certain expansions of existing amusement piers; a general permit for beach and dune maintenance activities; and a general permit authorizing the voluntary reconstruction of a legally constructed and habitable residential or commercial development that is not damaged within the same footprint. This last general permit is included because while reconstruction or repair of damaged structures is exempt from regulation under CAFRA, CAFRA contains no exemption for the reconstruction (that is, tearing down and rebuilding) of a structure that has not been damaged by storm or other act of God. Thus, without this general permit authorization, such voluntary reconstruction would be subject to the more stringent and involved standards pertaining to the issuance of an individual permit.

New rule N.J.A.C. 7:7-7.3 contains the application procedures for general permits, which do not include the submission of an EIS or Compliance Statement and also do not include a public hearing. New rule N.J.A.C. 7:7-7.4 contains a permit-by-rule allowing the expansion of a legally constructed, habitable single family dwelling or duplex on the non-waterward side of an existing dwelling, provided the expansion does not exceed 400 square feet and is not proposed to be built on a beach, dune or wetland. A second permit-by-rule allows a similar expansion for a single family home or duplex on an existing bulkheaded lagoon lot, provided the expansion is not proposed to be built on a wetland is set back a minimum of 15 feet from the waterward face of the bulkhead. A person wishing to expand in accordance with a permit-by-rule is not required to submit an application or fee to the Department, but is only required to give notice in accordance with the rule 30 days before starting the proposed work.

The Department received many comments on the proposal to readopt N.J.A.C. 7:7 with amendments. A number of single family homeowners felt the rules would reduce their property values or make it very difficult to conduct renovations and repairs. A number of other commenters were concerned that the rules would inhibit maintenance of existing infrastructure. Many commenters opposed additional State regulation and the 1993 legislative amendments, while others supported the amendments and implementing rules. In addition, various commenters asked that specific rules be clarified or revised.

Based on the comments received, the Department has modified the proposed rules on adoption in order to provide additional clarity where necessary and in order to respond to specific concerns as warranted. These modifications include revised definitions of "development" and "reconstruction" at N.J.A.C. 7:7-1.3 intended to clarify that routine maintenance and repair activities of existing developments are not regulated "development" regardless of location and do not require permits unless they are associated with expansions. The modifications also include revisions to the proposed exemption for the construction of a patio, deck or similar structure at a residence. The revisions to this exemption section (N.J.A.C. 7:7-2.1(c)) were made to make the adopted rule consistent with the statutory language and with legislative intent of CAFRA. As revised, the exemption pertains to decks, patios, porches, balconies and verandas. The exemption also pertains to other specified structures so long as they will not involve construction on beaches and dunes. CAFRA exempts from regulation patios, decks and similar structures at residences regardless of location. See N.J.S.A. 13:19-5.

In addition, the Department made the following additional revisions to the proposed rules on adoption:

In response to comments, the Department is clarifying the rules at N.J.A.C. 7:7-2.1(b)2 to specify that certain maintenance, repair and replacement activities within the 150 foot area area are also not considered "public development" subject to regulation under CAFRA. This clarifying amendment further specifies that maintenance, repair, replacement or connection of telecommunication lines and cable television lines likewise do not constitute "public development" and thus are also not regulated under CAFRA.

The Department has clarified the rules at N.J.A.C. 7:7-2.1(b)5v to indicate that minor activities undertaken at a park facility are not regulated, unless the parking space/area threshold is to be exceeded by the addition of new parking.

The Department has deleted the word "cumulative" in N.J.A.C. 7:7-2.1(c)1 and 2 in order to make the regulatory language match the language of the legislation. The 1993 amendments to CAFRA exempt projects that received certain municipal approvals before July 19, 1994 provided that construction begins by July 19, 1997 and "continues to completion with no lapses in construction activity of more than one year." N.J.S.A. 13:19-5(a). N.J.A.C. 7:7-2.1(c)1 and 2 now duplicate that language. The Department recognizes the conflict that exists between the timeframe for starting construction under the legislative amendments to CAFRA (three years) and the duration of a municipal building permit (one year). In cases where the municipal permit expires and is renewed

or a new permit is issued, the development will remain exempt from CAFRA so long as construction starts by July 19, 1997 and documentation is provided that the new building permit authorizes exactly the same construction as the original permit. The Department has amended the regulations at N.J.A.C. 2.1(c)1 to include this provision.

The Department has provided additional clarification in the rule at N.J.A.C. 7:7-4.10 as suggested by commenters in order to specify what constitutes a "significant change." Significant changes generally include, but are not limited to, increased clearing, grading, filling or impervious coverage, reduction in buffers, and change in footprint location.

The Department has deleted the requirement at N.J.A.C. 7:7-7.2(a)1 (General Permit for construction of a (single family home or duplex on a bulkheaded lagoon lot) that previously limited landscaping on the site to "indigenous coastal species." However, the Department encourages the use of suitable plantings to the maximum extent possible in order to ensure that the plants will thrive and to avoid the need for fertilizer, pesticides and irrigation, which can affect the quality and supply of groundwater and surface water.

The following persons submitted written or oral comments on the February 22, 1994 proposal to readopt N.J.A.C. 7:7 with amendments.

(1) Abramovitch, Martin
(2) Allen, P.—petition
(3) Anderson, Leonard
(4) Anonymous
(5) AsTeuta, Joseph—petition
(6) Astinta, Arlen—petition
(7) Avery, Alan—Ocean County Planning Board
(8) Barker, (Unclear)—petition
(9) Becker, Katherine—League of Women Voters of New Jersey
(10) Bennett, Dery—American Littoral Society
(11) Bennett, Dery—Campaign for the Coast
(12) Bjornberg, Anne
(13) Block, Carl—Mayor of Stafford Township
(14) Bock, Raymond—petition
(15) Bolsman, D.—petition
(16) Bolsman, Jacqueline—petition
(17) Booth, Marilyn—Atlantic Electric
(18) Brewer, Robert—Atlantic County
(19) Brewer, Robert and Alice
(20) Brown, Earl—petition
(21) Bull, Pet—petition
(22) Burkett, Christopher
(23) Byrne, Janet—Greater Wildwood Chamber of Commerce
(24) Caesar, Joel—Northeast Spa and Pool Association
(25) Campbell, James—petition
(26) Campbell, Adrlaide—petition
(27) Casaccio, Paul
(28) Chomsky, Martin—Monmouth County Water Resources Association
(29) Churchill, Alexander
(30) Citta, Rosanne—Ocean County Board of Realtors
(31) Clayton, Ralph (32) Connors, Leonard; Connors, Christopher; and Moran, Jeffrey—N.J. Legislators—9th District
(33) Conroy, Robert Jr.—Township of Lower
(34) Cramer, Nancy—petition
(35) Cripps, George—petition
(36) Cripps, Ginny—petition
(37) Davis, Georgeanna—Venice Park Civic Association Member
(38) DeMunz, Carl—New Jersey Association of Realtors
(39) DeZao, Gary—petition
(40) DeZao, Kathryn—petition
(41) DiBeradine, Philip
(42) Deebold, Richard—Deebold Boatyard Inc.
(43) Delozier, Gregory—N.J. Association of Realtors
(44) Devitt, Shirley
(45) Dillingham, Tim—Sierra Club, N.J. Chapter
(46) Doran, Clark—Morey Development Corporation
(47) Dorsey, John—New Jersey Natural Gas Company
(48) Elder, Sherry—Venice Park Civic Association Member
(49) Farr, Helen—U.S. Department of Commerce
(50) Farragher, Clare—Assemblywoman, 12th District
(51) Fauntteroy, Jeffree—Venice Park Civic Association Member
(52) Feairheller, John—Walker, Previti, Holmes and Associates
(53) Fink, Michael—New Jersey Builders Association (NJBA)
(54) Fletcher, Thomas—Covenant Bank
(55) Foelsch, William—N.J. Recreation and Parks Association
(56) Frank, Robert
(57) Gandica, Alfonso—Atlantic Electric
(58) Geller, Michael—Gravatt, Geller and Associates
(59) Gormley, William—New Jersey Senator
(60) Gove, Joel—Habitat Management and Design, Inc.
(61) Greed, Gladys—petition
(62) Greene, Burton—Dover Pools and Supplies
(63) Gurtcheff, David and Sharon
(64) Gusmann, Vincent—petition
(65) Hall, Ann and Har—petition
(66) Hall, Loretta—petition
(67) Hall, John Jr.—petition
(68) Hawco, Jimmy and Tammy
(69) Hawco, James
(70) Hay, Frank
(71) Heard, Kay—petition
(72) Heller, John
(73) Helwig, Carl—Pureland Association
(74) Hemmert, Raymond
(75) Henderson, Keith—Henderson, Breen & Hess; Environmental Engineer, Borough of Surf City
(76) Henson, Bradley—Municipal Attorney, Borough of Surf City
(77) Hirsch, Guliet—Heritage Minerals, Inc.
(78) Holden, Theresa—Venice Park Civic Association Member
(79) Holden, Clifford—Venice Park Civic Association Member
(80) Holloway, Ronald and Angela
(81) Hoy, William—Mayor, Borough of Stone Harbor
(82) Hovnanian, Edele—Heritage Minerals, Inc.
(83) Hulmes, Leita—Monmouth County Water Resources Association
(84) Hutt, Roger and Anne—petition
(85) Iasillo, Barbara—Township of Dover
(86) James, Anthony—Venice Park Civic Association Member
(87) James, Pamela—Venice Park Civic Association Member
(88) Johnston, Charles—TEDCO, The Electrical Distributors Company
(89) Jordan, Yvonne—Venice Park Civic Association Member
(90) Keaton, William—petition
(91) Kernoghan, Florence
(92) Ketchel, Richard
(93) Klause, Jerry
(94) Knoll, Albert—Township of Dennis
(95) Kona, Charles
(96) Kozlowski, Robert—Township of Little Egg Harbor
(97) Krupp, Mr. and Mrs. Allen
(98) Lang, Lois—petition
(99) Langborgl, Peter—petition
(100) Leiss, Finny—petition
(101) Leiss, Ernest—petition
(102) Levens, Richard—petition
(103) Levens, Theresa—petition
(104) Lippi, Andrea
(105) Loud, Edward—Board of Recreation Commission, Monmouth County
(106) Lovegrove, Alan
(107) Lucas, Suzanne—petition
(108) Madden, Barbara
(109) Maher, Joseph
(110) Marinakis, George—Cape May County Municipal Utilities Authority (CMCMUA)
(111) Marinelli, Beverly and Harold
(112) Martin, Cortez—Venice Park Civic Association Member
(113) Mauer, Donald J.—South Jersey Transportation Authority
(114) McCourt, Ellen
(115) McDonough, John—Bay Beach Corporation
(116) McKeon, David—Ocean County Planning Department
(117) Miller, Raymond
(118) Miller, Raymond and Ethel
(119) Munoz, Theresa—Lynch Guilano & Associates, P.A.
(120) Murphy, Lawrence—Bankers Trust Company
(121) Murphy, Lawrence C.
(122) Noon, Todd—Legislative Office of State Senator Cafiero and Assemblymen LoBiondo and Gibson
(123) O'Brien, Donn
(124) O'Neill, Dennis—Dover Township Administrator

(125) Oliver, Bessie—Venice Park Civic Association Member
(126) Oschell, Joseph and Dorothy
(127) Oschell, William—petition
(128) Paliughi, Martin—Mayor of Avalon
(129) Palladino, Mary Kay—Riker, Danzig, Scherere, Hyland and Perretti
(130) Palombo, Aldo—City of North Wildwood
(131) Parker, Nathaniel—Venice Park Civic Association Member
(132) Patterson, Robert—Cape May County Chamber of Commerce
(133) Peed, H.—petition
(134) Pellini, Robert
(135) Peraria, Scott
(136) Perkins, Charles
(137) Plummer, Grace—Venice Park Civic Association Member
(138) Pong, Louis—petition
(139) Potosnak, Charles—petition
(140) Potosnak, Margaret—petition
(141) Prycl, Belva Ann—Association of New Jersey Environmental Commissions (ANJEC)
(142) Quinn, William—Dennis Township Economic Development Council
(143) Race, Samuel—N.J. Department of Agriculture
(144) Robert, Marshall—Michael Baker Jr., Inc.
(145) Robinson, Eugene—Venice Park Civic Association Member
(146) Rudolph, Diane—Cape May County Board of Chosen Freeholders
(147) Ryan, Kathryn—petition
(148) Ryan, John—petition
(149) Sabidussi, Tony—N.J. Department of Transportation, Bureau of Environmental Analysis (NJDOT)
(150) Sarion, Carole—petition
(151) Sauer, Burt
(152) Schatz, Jay—Chamber of Commerce of Greater Cape May
(153) Schiavo, Rita
(154) Schmidt, George
(155) Sesta, John—J.A. Sesta Real Estate Agency
(156) Sheridan, J. Howard—petition
(157) Sheridan, Marie—petition
(158) Shissias, James—Public Service Electric & Gas
(159) Simmons, Daniel—petition
(160) Simmons, Denise—petition
(161) Simpson/LaVecchia, Arthur/Kathleen—Borough of Lavallette
(162) Smith, Gary—petition
(163) Smith, Ken—Coastal Advocate, Incorporated
(164) Smith, Muriel—Department of Commerce and Economic Development
(165) Spangler, Lynn
(166) Spencer, Lorraine—Venice Park Civic Association Member
(167) Stevens, Eric—Stevens Real Estate, Inc.
(168) Swiderski, Raymond—N.J. Society of Professional Land Surveyors
(169) Thompson, Jean—petition
(170) Thompson, Jeffrey and Jean
(171) Tillman, Mary—Venice Park Civic Association Member
(172) Todd, Charlotte—Cape May City Environmental Commission
(173) Tombs, Bradley—Normandeau Associates
(174) Townsend, Roberta and Clifford Madsen—Christensen Management
(175) Turner, John—Turner Enterprises, Inc.
(176) Truncer, James—Monmouth County Board of Recreation Commissioners
(177) Unclear—Six people signed petition, but names illegible
(178) Ux, Ronald and Deanne
(179) Van Drew, Jefferson—Township of Dennis
(180) Vasser, John—Borough of West Cape May, Mayor
(181) Vaughan, Ernest—Atlantic Highlands, Highlands Regional Sewerage Authority
(182) Vehalege, S.—petition
(183) Vehalege, Pamela—petition
(184) Veitch, Gloria—petition
(185) Vertucci, Dolores—T.O.M.A.S., (Taxpayers of Manahawkin and Suburbs, Inc.)
(186) Voganiai, Zoret—petition
(187) Vosqaneaa, Lelleow—petition
(188) Vosqaneaa, Zorab—petition
(189) Walker, George—petition
(190) Wigmore, Joseph
(191) Woodward, Jack
(192) Zozzaro, Gary—petition
(193) Zozzaro, James—petition
(194) Zozzaro, Madeline—petition
(195) Zozzaro, Rhen—petition

In addition to the comments from the above-listed individuals, the Department received 54 letters submitted after the close of the comment period. Since these comments were submitted after the close of the comment period, the Department has not summarized them below, or listed the names of the senders above. The Department did review the comments, however. Four of the letters were identical, and were directed to Commissioner Shinn to express opposition to the proposed amendments. The letters stated that the original intent of CAFRA was good, but that the pending regulatory changes were not. Forty-one of the comments were submitted as a form letter sent to Governor Whitman requesting that the Legislature reconsider CAFRA II because it is entirely too restrictive and will drastically affect real estate values, and because the State needs the shore area for ratables and tourism.

The timely submitted comments and the Department's responses are summarized below. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

General

(1) COMMENT: The comment period should be extended to allow for further detailed review and analysis of the proposed amendments. The minimum 30 day period mandated by statute is insufficient time for review. The comment period should be extended to allow more people to provide their input. (7, 27, 32, 33, 38, 50, 53, 55, 94, 110, 128, 132, 142, 143, 146, 152, 158, 163, 168, 176, 179, 180)

RESPONSE: In response to requests from several legislators and the regulated community, the Department extended the public comment period for an additional 30 days from March 24, 1994 to April 25, 1994. The comment period was not extended beyond that date because the Department needed to amend many of the rules by July 19, 1994, the effective date of the 1993 amendments to CAFRA enacted by the Legislature (P.L. 1993, c.190).

(2) COMMENT: The Department should adopt only those regulations required to implement CAFRA II and delay adoption of all other regulations and planning policies until there is the opportunity for all impacted groups to evaluate and make substantive comment. (33, 53, 110, 132, 179, 180)

RESPONSE: The Department does not agree that all proposed rules not required to implement CAFRA II (P.L. 1993, c. 190) should not be adopted at this time. The Department has administered CAFRA since the Legislature first enacted it in 1973 and currently implements CAFRA through existing rules N.J.A.C. 7:7 (procedural rules), N.J.A.C. 7:7E (substantive rules), and N.J.A.C. 7:1C (fee rules). To prepare to implement the new amendments to CAFRA passed by the Legislature in 1993, the Department proposed to amend these existing regulations. In addition, the Department also proposed to change a number of rules that required revision, but were not specifically required by the new legislative amendments. These changes are intended to make the current and new program run more efficiently. The Department has considered all public comments received on the proposal and has determined that many of the regulatory changes proposed not specifically required to implement the CAFRA amendments would increase program efficiency and is adopting them, as well as the regulatory changes required to implement CAFRA II. Before deciding to adopt any amendments, including amendments not required by CAFRA II, the Department carefully considered all comments received.

(3) COMMENT: The N.J. Department of Transportation would like to acknowledge the cooperation extended by the Department of Environmental Protection and Energy during the development of the new Coastal Permit Program legislation and rules. Several concerns regarding the proposed changes to the law were raised by NJDOT, particularly in regards to their effect on our ability to implement projects and to perform required maintenance. As a result of this, the legislation was revised so that it would not be more difficult to implement needed transportation improvements and repairs, and in some cases, the process was made simpler by eliminating the mandatory requirements for public hearings and environmental impact statements. The proposed regulations properly reflect the approved legislation, and incorporate our concerns regarding transportation projects and repairs. (149)

RESPONSE: The Department acknowledges this comment in support of the revised legislation and its proposed regulations.

(4) COMMENT: The proposed rules fulfill the legislative intent of S. 1474, which stated that "The Legislature finds and declares that ... it is in the interest of the people of the State that all of the coastal area should be dedicated to those kinds of land uses which promote the public health, safety, and welfare, protect public and private property, and are reasonably consistent and compatible with the natural laws governing the physical, chemical and biological environment of the coastal area." (10)

(5) COMMENT: Both the original CAFRA legislation and the 1993 amendments to CAFRA enacted by the Legislature were enacted in recognition of the fact that coastal lands and waters need special protection because they provide important public benefits. CAFRA also recognizes that decisions about coastal land uses made by one community can have significant impacts on neighboring towns and on the citizens of New Jersey in general. Thus, it sets rules for coastal land use that will protect the public's interest while recognizing the rights of individuals to a reasonable use of property. CAFRA and its amendments and the rules that flow from them are consistent with this goal. The rules currently under consideration derive from a basic principle that land development close to tidal water is most likely to impair naturally functioning coastal ecosystems. (10)

(6) COMMENT: The rules provide additional guidance for siting and design of structures close to water by regulating "first use" development" that is within 150 feet of tidewater or of a beach or backside of a sand dune. It has been public knowledge for more than a year that such "first use" would be regulated under the 1993 legislative amendments to CAFRA, but it is clear from public testimony, stirred by inaccurate statements from public officials, that the proposed rules are being misread and therefore unfairly criticized. (10)

(7) COMMENT: The proposed rules meet the legislative intent of CAFRA II, which was to address the cumulative impact of unregulated small development (fewer than 25 units) near the tidal shoreline. (11)

(8) COMMENT: Despite the clear intent of the legislation (and the fact that CAFRA II is now almost a year old), the rules have been criticized as surprising and overbearing. It is true that more land (and landowners) will fall under CAFRA review. Indeed, that was the legislative intent. But regulation does not mean banning, nor does it mean the death knell for the shore economy. Quite the opposite; it means that coastal development will be conducted so it is consistent with the public's interest in public resources. This will be good for the shore and the shore economy. (11)

(9) COMMENT: The Department should get on with the job of protecting the coastal envionment by adopting the proposed regulations that flow from the passage of legislative amendments to CAFRA. (11)

(10) COMMENT: The League of Women Voters of New Jersey wishes to formally support the proposed regulations and urge that they be implemented promptly. We strongly supported the passage of CAFRA in 1973, recognizing and seeking to protect the environmental sensitivity of the coastal area by promoting compatible uses via a permit system. We recognize the need for further protection of the coastal area commensurate with the impact of the increased population. We are especially supportive of the provision "to close the 24 unit loophole," and the efforts to make the rules more "user friendly." (9)

(11) COMMENT: The League has promoted the informed and active participation of citizens in government including the open process of the New Jersey Register. We support the open portrayal of facts and cannot condone the current media supported scare tactics campaign concerning the proposed CAFRA rules. These tactics are not in the best interest of coastal area protection nor do they promote the general conservation of natural resources in the public interest. The proposed changes underwent a lengthy legislative process and a lengthy rule making process with ample opportunity for public input. The New Jersey Register process allows for continued public input and for the NJDEPE to respond to public concerns. It is irresponsible to allow this process to be circumvented. (9)

RESPONSE TO COMMENTS (4) THROUGH (11) ABOVE: The Department acknowledges these comments in support of its proposal.

(12) COMMENT: We recommend that the proposed rules be promulgated as published, with our suggested comments (see below). These rules clearly reflect and implement the legislative intent of the 1993 statutory changes, and carry out the Department's responsibilities established under that law. (45)

RESPONSE: The Department acknowledges this comment in support of the proposal. However, the Department has not adopted some of the policy changes it proposed that raised significant public concern and were not strictly necessary at this time.

(13) COMMENT: The Sierra Club opposes the "bifurcation" of the elements of the proposed rules which directly implement the changed statutory thresholds from other policy changes, as has been suggested at various public hearings. The changes to the approach of the program embodied in the statutory changes necessitate a reexamination and revision of many of the policies and rules. Any attempt to separate these elements, in addition to being impractical, will delay the effective operational date of the program. (45)

RESPONSE: The Department acknowledges this comment in support of the proposal.

(14) COMMENT: We encourage the Department to take further steps to reduce the regulatory burden on small projects, single family dwellings and municipal and county projects. (45)

RESPONSE: The Department is considering a number of such steps and may propose them in a future regulatory proposal.

(15) COMMENT: An enormous amount of misinformation has been generated about the impacts of these regulations. We encourage the Department to look for opportunities within the proposals where clarification of public concerns might be achieved, and to structure the rules so that these concerns are clearly responded to. (45)

(16) COMMENT: Standard adoption procedures for regulations should be followed. If corrections to the proposed rules are needed for clarity, they should be made. (11)

RESPONSE TO COMMENTS (15) AND (16) ABOVE: The Department has carefully considered all comments received and has attempted to thoroughly respond to all of them in this adoption notice. It has also clarified the rules upon adoption as necessary and appropriate. In addition, through public speaking and the preparation of related non-regulatory brochures, the Department is trying to spread accurate and helpful information.

(17) COMMENT: As the coordinator for the New Jersey Association of Environmental Commissions (ANJEC) in the southern part of our state and as a commissioner in a township which falls entirely within CAFRA boundaries, I wish to express my support for the CAFRA regulation changes and commend Department staff for the fine job they have done in articulating these changes to the citizens of my area. (141)

(18) COMMENT: The proposed new regulations and their conformity with the State Plan make it possible to have more consistent and cohesive decision-making policies with regard to coastal zones. They also close many of the loopholes in current regulations which have eroded the effectiveness of coastal protection in the past. In light of the current state of coastal resources, from the destruction of wetlands to the collapse of marine fisheries, the implementation of these new policies cannot come too quickly. (141)

(19) COMMENT: For the most part, I believe that citizens throughout this region see the new regulations as fair and reasonable, representing a compromise developed through much time and public input. Therefore attempts to delay the process at this juncture are irresponsible on the part of elected officials who seem to be listening solely to development interests. (141)

(20) COMMENT: In general, ANJEC is supportive of any CAFRA changes which would strengthen environmental protection, as are the numerous environmental commissions of the Cumberland, Salem and Cape May County region. We very much appreciate the efforts the Department is making on behalf of all the citizens of the state. (141)

RESPONSE TO COMMENTS (17) THROUGH (20) ABOVE: The Department acknowledges these comments in support of the proposal.

(21) COMMENT: We urge the Department to consider conducting informational meetings related to these proposals in each of New Jersey's coastal counties as part of a concerted effort to clarify any misconceptions regarding these proposals. (110)

(22) COMMENT: I believe the Department should take a little time and put together some general cases, a few examples of what is regulated, that can be distributed in the municipalities. Examples would tell people what the intent is and how the rules should be looked at. (27, 95)

RESPONSE TO COMMENTS (21) AND (22) ABOVE: Staff of the Department are actively involved in such public information efforts, and have already attended meetings with engineering/consultant groups, tax assessor groups, construction code officials, as well as continuing education seminars. Through public speaking and the preparation of related non-regulatory brochures, the Department is trying to spread

accurate and helpful information. Staff will continue these efforts as requested and will provide information to local officials respecting the new rules in the summer of 1994.

(23) COMMENT: We applaud closing the 24 unit loophole in the old CAFRA regulations and other constructive features of the new regulations in CAFRA II. (152)

RESPONSE: The Department acknowledges this comment in support of the revised legislation of 1993 and its proposed regulations.

(24) COMMENT: Our Environmental Commission believes that regulations are needed for small developments close to the water, beaches and dunes. We do not think that these developments should be banned, but regulated. We understand that land use can be regulated reasonably and that banning a shorefront property owner from use of his or her land based on its environmental sensitivity may indeed require compensation. We understand that the legislative intent of CAFRA II is the protection of the long-term social, economic, aesthetic and recreational interests of all of the people of the state. (172)

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

(25) COMMENT: It is our understanding that CAFRA II contains the inherent right to rebuild without a DEPE permit but not to expand. The Department also has the right to review a single family unit if it is within 150 feet of a beach, dune, marsh, or tidal water area and reviews developments of 25 units or more that are beyond 150 feet. All commercial development within 150 feet is regulated. The Cape May City Environmental Commission encourages these stronger and more stringent regulations. We cannot help but believe, from a taxpayer's point of view, that limiting growth will help benefit those of us who live here by avoiding the expenditures for infrastructure necessitated by development. (172)

RESPONSE: The specific types of development subject to Department review under CAFRA are set forth at N.J.A.C. 7:7-2.1. The commenter is referred to that rule for a complete list of regulated developments. The Department acknowledges the commenter's support for strong protection of the coastal area.

(26) COMMENT: Our coastal areas should be dedicated to those kinds of uses which promote public health, safety, education and the protection of public and private property. (172)

(27) COMMENT: The CAFRA II amendments deserve to go forward without any delay in implementation. (172)

RESPONSE TO COMMENTS (26) AND (27) ABOVE: The Department acknowledges these comments in support of the proposal.

(28) COMMENT: One commenter wrote to express his support for the new rules, although he feels that they are not strong enough. The rules should not be weakened in response to criticism. In addition, the law should be changed to not allow rebuilding of storm damaged structures. (70)

RESPONSE: The Department acknowledges this comment in support of the proposal.

(29) COMMENT: Department staff assigned to the regulations have performed admirably and professionally, balancing a wide variety of issues, interests and technology. They were always responsive to our concerns, welcomed our technical and procedural recommendations and were easily accessible for information and discussion. (47)

RESPONSE: The Department acknowledges this comment in support of its efforts.

(30) COMMENT: The Department recognizes that repair and replacement of infrastructure within existing paved areas does not constitute potential environmental degradation. This recognition, the general permit provisions, pre-application reviews, and the inclusion of utility infrastructure with development applications, should all enhance the Department's efficiency, improve the turnaround time for applications, and allow better allocation of Department resources. (47)

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

(31) COMMENT: I want to commend the Department's staff for the work they've put into these regulations. (163)

RESPONSE: The Department acknowledges this comment on the Department's effort to revise the rules.

(32) COMMENT: The Department should prepare a map that shows the location and boundaries of dunes. (53)

(33) COMMENT: A detailed map should be prepared by the State showing the exact location of the 150 foot and 500 foot regulatory line throughout the coastal zone. By necessity, the map will also have to show exactly where the head of tide is located for all tidal waters. Like a municipal zoning map, the "CAFRA map" should be divided into zones (beach, dune, overwash areas, bulkheaded areas, non bulkheaded areas, shellfish areas, etc.) showing which activities can and cannot take place within each zone. In addition, the proposed rules should not become effective until this map has undergone extensive public review. (7)

(34) COMMENT: If we are going to have a policy effecting people along the coast, there should be mapping so that there is consistency. (59)

(35) COMMENT: Maps of the affected areas are needed. (54, 116, 142, 175)

RESPONSE TO COMMENTS (32) THROUGH (35) ABOVE: This issue was discussed when legislative amendments to CAFRA were being debated by legislative committee, but the 1993 law amending CAFRA was subsequently passed without a requirement for the Department to map the dunes or the 150 foot boundary. Such a mapping requirement would be very costly and time-consuming. Moreover, any mapping done would only be accurate for a short period of time, given the dynamic nature of dune systems and the frequent occurrence of storm events altering dune boundaries. The Department will provide assistance in determining jurisdictional boundaries upon request.

(36) COMMENT: The public deserves to know if and how much of their property is impacted by the proposed rules. A regulatory program that requires a potential applicant to contact the regulatory agency to determine, for a fee, if an application is required is administratively flawed. (7)

RESPONSE: The Department does not require a potential applicant to pay a fee to find out if an application is required, and will provide jurisdictional determinations free of charge. Jurisdictional questions are ones which ask whether specific property is located within the 150 foot zone, how to tell where the dune ends, if a permit is needed to build four houses, etc. However, the Department will be charging a fee if a person wishes to receive a letter certifying that his or her development is exempt from the regulatory provisions of the law based on the receipt of prior municipal approvals. No person is required to receive a letter of exemption prior to construction, and the research necessary for the Department to prepare one can be extensive. The Department will therefore charge a fee to cover part of its costs for those people requesting such a letter. In response to public comments, the fee has been reduced from the $250.00 proposed to $125.

(37) COMMENT: Extending the Department's control beyond waterfront properties is an unwarranted and unneeded abuse of power on the part of the State of New Jersey. There are adequate zoning and planning board regulations in place at the local township level. To impose State regulations on the property owners of this State who happen to live near the oceanfronts, bayfronts, or lakefronts of this State, but not on those fronts is wrong. I urge you to reconsider the extent to which you have amended the original coastal zone development regulations. (123)

(38) COMMENT: These regulations change the entire complexion of the original CAFRA bill. (30)

(39) COMMENT: The fundamental flaw with the legislation is that it puts the burden on us to prove that we are not doing something wrong. It would be simpler and a lot more palatable to craft standards for land use and construction which could be implemented as part of the local building process. That seems infinitely easier than forcing a complex CAFRA review, with its interminable delays, outrageous expense, and convoluted application process on people who don't deserve it. (19, 92)

(40) COMMENT: The Department exists to protect us, but it also has to take into consideration that individual home owners have rights. Perhaps the threshold of one home should be extended or exempted, and only look at larger projects, perhaps three family homes and above. (41)

RESPONSE TO COMMENTS (37) THROUGH (40) ABOVE: When it enacted the amendments to CAFRA in 1993, the Legislature decided that existing laws were in certain respects inadequate to protect coastal resources. The CAFRA amendments adopted by the Legislature revised the Department's jurisdiction in the CAFRA zone and set new thresholds for State review. The Department believes the rules it is adopting reflect and are consistent with the legislation. The areas in which the proposed rules appeared to deviate from the legislation have been changed upon adoption.

(41) COMMENT: The regulations go far beyond the spirit and intent of the enabling legislation. The proposed rules are as gray as gray can get and they establish a mechanism for an abundance of arbitrary future

decisions by a future Administration that creates a very real and present danger to the property values, property rights and the future of our great New Jersey coastal communities. (32)

(42) COMMENT: We are dealing with a very complex set of regulations that I feel does not represent the legislative intent of what I was dealing with in the Legislature. (59)

(43) COMMENT: The 125 pages encompassing these rules go far beyond the spirit and intent of the enabling legislation, giving rise to the potential of violating the United States Constitution, by taking property without just compensation, and could gravely diminish the lifetime investments of coastal property owners and jeopardize the future of our great coastal communities at the New Jersey shore. (32)

(44) COMMENT: As the mayor of the coastal community for almost 30 years, I take very deep objection to the arbitrary powers that are contained within the vague words of these 125 pages of proposed rules. They are, in my view, designed to be vague, designed to camouflage the motives of the DEPE, to create disincentives for owning property at the New Jersey shore, and to use the power of regulation to cause the abandonment of our barrier island communities. (32)

RESPONSE TO COMMENTS (41) THROUGH (44) ABOVE: The Department does not believe that its regulations, as adopted, are beyond the intent of the legislation. The rules adopted by the Department are intended to implement the law enacted by the Legislature in 1993, which amended CAFRA and the Waterfront Development Law. Rules implementing these laws have been in place, in their current consolidated form, since 1984. The long term effect of these rules has been to lessen the adverse economic impacts of poorly planned development upon waterfront commerce, tourism, recreation, public access to the coast, the coastal ecosystem, and the fishing and shellfishing industries. The Department expects these effects to continue after the new legislation and rules are implemented. In addition, the Department has clarified the rules upon adoption as necessary and appropriate.

(45) COMMENT: The Department should be required to make all rules clear and concise in order that they may be realistically understood by the general public. References to any other Federal or State laws, rules or regulations should be made to include their complete text. (32)

RESPONSE: The Department has carefully considered all comments received and has attempted to thoroughly respond to all of them in this adoption notice. It has also clarified the rules upon adoption as necessary and appropriate. Further, the Department has made other efforts to make its rules easier to use and understand. For example, the Department's amendments to the Rules on Coastal Zone Management (N.J.A.C. 7:7E) adopted elsewhere in this issue of the New Jersey Register include the addition of appendices which are intended to make the rules more "user friendly" by incorporating specific design standards and specifications.

Staff of the Department are also actively involved in public information efforts to explain the new rules and new and existing standards, and have already attended meetings with engineering/consultant groups, tax assessor groups, construction code officials, as well as continuing education seminars. Staff will continue these efforts as requested and will provide information to local officials respecting the new rules in the summer of 1994. In addition, the Department is preparing an informational packet specifically for single-family homeowners.

Incorporating the entire text of all Federal and State laws referenced in N.J.A.C. 7:7 would make these rules excessively lengthy, which has been a concern of many commenters. These laws and rules are available, and the Department can provide assistance in obtaining copies if requested. Further, these federal and State laws are already applicable in the coastal area.

(46) COMMENT: We are firmly committed to the principles of the CAFRA legislation. We are equally insistent that the regulations be consistent with both the letter of the law and the intent of the legislators. (28)

RESPONSE: The Department acknowledges this comment in support of the Coastal Area Facility Review Act. The Department believes that its regulations, as adopted, are consistent with 1993 legislative amendments.

(47) COMMENT: It is requested that the Commissioner under the direction of the Governor consult with the State Legislature and request that the effective date of the Act by changed to July 19, 1995 to allow the Department to resolve these difficult regulatory issues. (132)

(48) COMMENT: The implementation of the proposed CAFRA II regulations should be delayed for a minimum period of one year and be thoroughly reevaluated for their long-term impact on individual property owners, the economy and the future of the New Jersey shore. (85, 161)

(49) COMMENT: A one year extension of the CAFRA II effective date should be supported. (30)

(50) COMMENT: Please delay the adoption of these new regulations until they can be re-examined, simplified, and provisions eliminated that jeopardize the future of the New Jersey shore. (12)

(51) COMMENT: The implementation date of July 19th must be delayed to allow further review and comment. I am sure that the public is not aware of the impact these regulations will have. (54, 175)

(52) COMMENT: There should be a minimum one year delay in CAFRA. The revisions were completed in only one year, not nearly enough time to assess the impacts. (142)

(53) COMMENT: The Department should delay implementation of these regulations and reconsider its intentions. (114)

(54) COMMENT: The time for public input should be extended for six months. (81)

(55) COMMENT: We respectfully urge you to withhold your approval of these onerous rules that will create unbearable hardships for the people of the New Jersey Shore. (32)

(56) COMMENT: As a private and average resident, I urge the withholding of approval of the onerous CAFRA regulations that will create unbearable hardships for people who own a property at the Jersey shore. (111)

(57) COMMENT: Please delay the implementation of these regulations until they can thoroughly be reevaluated for their tremendous impact on individual property owners, the economy and the long-term future of the New Jersey Shore. (63)

(58) COMMENT: Cape May County cannot withstand any more regulations that restrict its ability to promote its own prosperity. Please consider extending the time for review and public comment and delay the adoption of all regulations until this matter has been thoroughly addressed. (23)

(59) COMMENT: The time for implementation of the CAFRA regulations should be extended for 12 months in order to provide sufficient time to analyze the regulations, and to determine what changes should be made to make them more compatible with the needs of shorefront communities. (81)

(60) COMMENT: Please delay the implementation of the new CAFRA regulations. (44)

(61) COMMENT: I implore you to go very slow and accept comments from the municipalities that are affected by these regulations so that they will not create a dormant economy or stagnation of growth. (130)

RESPONSE TO COMMENTS (47) THROUGH (61) ABOVE: The regulations will be enacted by the Department in accordance with the effective date established in the legislation. The Department's proposed regulations have been reviewed through an extensive public process which included three public hearings and a 60 day public comment period. The Department has also met with numerous individuals and groups to discuss public comments on the regulations since then. The Department has carefully reviewed all of the public comments that it has received and the legislative comments on the regulations. Its adopted rules reflect that review.

The long term effect of the first 20 years of CAFRA regulation under these rules has been to lessen the adverse economic impacts of poorly planned development upon waterfront commerce, tourism, recreation, public access to the coast, the coastal ecosystem, and the fishing and shellfishing industries. The Department expects these results to continue under its newly adopted and amended rules.

(62) COMMENT: The intent of the new regulations is good but some of the provisions as we read them will so limit development or rebuilding as to make the seashore an unattractive place to live, work and visit. (152)

(63) COMMENT: While it is understood that the new regulations are designed to close loopholes in previous regulations, the result is overregulation to the detriment of coastal properties. (164, 181)

(64) COMMENT: I agree with protecting and preserving our ocean, rivers, bays and beach areas. However, the new proposed regulations are overly stringent and present an unnecessary burden on existing homeowners in the shore area. (114)

(65) COMMENT: Increasing the Department's role in regulating coastal development at the minor subdivision/site plan level is unnecessary and the increased cost and time to realize development projects will force many from our State. (22)

RESPONSE TO COMMENTS (62) THROUGH (65) ABOVE: The Department does not agree with the commenters that the regulations will make the New Jersey shore an unattractive place or amount to overregulation. The long term effect of the first 20 years of CAFRA regulation under these rules has been to lessen the adverse economic impacts of poorly planned development upon waterfront commerce, tourism, recreation, public access to the coast, the coastal ecosystem, and the fishing and shellfishing industries. The Department expects these results to continue under its newly adopted rules.

The jurisdictional and regulatory thresholds contained in the rules reflect the CAFRA amendments which were passed by the Legislature and signed into law by Governor Florio on July 19, 1993 (P.L. 1993, c.190). The proposed amendments to the Coastal Permit Program Rules, Rules on Coastal Zone Management and Ninety-Day Construction Permits-fees implement these legislative amendments. In enacting the amendments, the Legislature determined that the existing level of regulation was in certain respects inadequate, particularly within 150 feet of the mean high water line or a beach or dune.

(66) COMMENT: The regulations do not hold all entities to the same requirements, and thus ineffectively protect the environment. (164)

RESPONSE: The jurisdictional and regulatory thresholds contained in the rules reflect the CAFRA amendments which were passed by the Legislature and signed into law by Governor Florio on July 19, 1993 (P.L. 1993, c.190). The proposed amendments to the Coastal Permit Program Rules, Rules on Coastal Zone Management and Ninety-Day Construction Permits-fees implement these legislative amendments, which generally result in more regulation of properties within 150 feet of the mean high water line or a beach or dune.

The Rules on Coastal Zone Management (N.J.A.C. 7:7E) contain different development standards based on the physical characteristics of the site and surrounding area and on the type of development proposed. The Department believes it is appropriate to have separate development standards based on these factors.

(67) COMMENT: The rules as drafted will have a severe negative impact on municipal projects in the Atlantic Highlands/Highlands area and in the area represented by the Bayshore Conference of Mayors. (164, 181)

(68) COMMENT: These proposed regulations and policies will have a disproportionate impact on Cape May County, where development is already highly restricted by wetland regulations and acquisition of substantial land areas by Federal, State and county government for open space and parks. (146)

(69) COMMENT: It now appears, if the CAFRA-II regulations go through as proposed, that these rules will severely impact the value of our home as well as the economy of the Jersey Shore. (63)

RESPONSE TO COMMENTS (67) THROUGH (69) ABOVE: The proposed amendments to the Rules on Coastal Zone Management, Coastal Permit Program Rules and Ninety-day Construction Permit-fees were largely drafted to implement the amendments to CAFRA passed by the legislature and signed into law by Governor Florio on July 19, 1993. The legislative amendments to CAFRA will result in the regulation of more properties by the Department, particularly those within 150 feet of the mean high water line, a beach or a dune. While these amendments may reduce the value of specific properties, they are expected to provide long-term economic benefits by producing an enhanced coastal environment for the tourism and fishing industries, and a decrease in taxpayer expenditures to repair storm damage based on increased protection of dunes.

(70) COMMENT: The Department should demonstrate how the rule changes are consistent with the Act and will benefit resource management in the coastal zone. (132)

RESPONSE: The Department's proposed regulations have been reviewed through an extensive public process which included three public hearings and a 60 day public comment period. The Department has also met with numerous individuals and groups to discuss public comments on the regulations since then. The Department has carefully reviewed all of the public comments that it has received and the legislative comments on the regulations. The Department has addressed many concerns by including or proposing changes upon adoption of the regulations. In addition, other potential changes are under consideration. The Department believes its rules, as adopted, are consistent with the Act and appropriately reflect the public comments received.

The 1993 legislative amendments to CAFRA will provide better protection of New Jersey's beaches, sand dunes, and river and bayfronts. Specifically, the State will be able to ensure that new development does not destroy sand dunes, as 24 unit developments have been doing for the past 20 years. The new amendments also will allow the State to better manage waterfronts immediately adjacent to rivers and bays to ensure that development includes the best possible stormwater management controls and that areas that best provide water dependent activities, such as marinas and other boating facilities are used for those activities and not pre-empted by developments with no water-oriented components that could just as easily by located at a non-waterfront site. In addition, the new law will enable the State to better protect the coastal area's more inland environmentally sensitive areas by requiring a permit for commercial facilities that contain 50 or more parking spaces, as opposed to the current threshold of 300 or more parking spaces.

(71) COMMENT: As the State legislators for the largest District along the New Jersey Shore, we are unalterably opposed to these onerous rule. In our view, the rules will ultimately pose the threat of confiscation of private property without just compensation by the use of oppressive regulations that deny property owners the right to use their land. (32)

RESPONSE: The rules adopted by the Department are intended to implement the law enacted by the Legislature in 1993, which amended CAFRA and the Waterfront Development Law. Rules implementing these laws have been in place, in their current consolidated form, since 1984. The long term effect of those rules has been to lessen the adverse economic impacts of poorly planned development upon waterfront commerce, tourism, recreation, public access to the coast, the coastal ecosystem, and the fishing and shellfishing industries. The Department expects these effects to continue after the new legislation and rules are implemented.

The legislation and the Department's regulations regulate, but do not ban, development, and do not deny property owners the right to use their land. The regulations contain specific provisions intended to ease the regulatory burden on the single-family homeowner. For example, repairs/maintenance to existing dwellings are exempt from regulation. This means that a person can paint a house, change shutters, replace roofs, windows and siding without obtaining a CAFRA permit. The 1993 legislative amendments to CAFRA also exempt the construction of a patio, deck or similar structure at a residential development.

The Department has amended and clarified the rules at N.J.A.C. 7:7-2.1(c)5 upon adoption to specifically provide, in accordance with the legislative intent of the 1993 amendments to CAFRA, that the construction of a patio, deck or similar structure at a residential development is exempt. For the purpose of this exemption, "similar structures" are porches, balconies and verandas. The Department's adopted rules further provide that the following structures and activities will also be exempt at a residential development, provided that they do not include the placement of pilings or placement of a structure on a beach or dune: open fences, open carports, flower boxes, gardens, gazebos, satellite dishes and antennas, sheds, wooden boardwalks and gravel or brick/paver block walkways, showers/spa/hot tubs which do not discharge to surface waters or wetlands. The construction of timber dune walkover structures constructed in accordance with Department specifications found at N.J.A.C.7E, Rules on Coastal Zone Management will also be allowed at a residential development.

The Department has also adopted several General Permits and Permits-By-Rule to lessen the regulatory burden on small property owners. In addition, the Department is considering a number of additional steps to reduce the regulatory burden on small projects, and may propose them in a future regulatory proposal. The Department will be publishing a rule proposal in a future issue of the New Jersey Register that will propose additional General Permits and Permits-By-Rule.

(72) COMMENT: The proposed amendments to the Coastal Permit Program Rules overstep the reasonable regulation of development in the coastal zone. I strongly urge a delay in the adoption of the amendments until such time as they can be objectively reviewed and understood by those they will so profoundly affect. (22)

RESPONSE: The Department does not believe that its regulations, as adopted, are beyond the intent of the legislation. The Department's proposed regulations have been reviewed through an extensive public process which included three public hearings and a 60 day public comment period. The Department has also met with numerous individuals and groups to discuss public comments on the regulations since then. The Department has carefully reviewed all of the public comments that it has received and the legislative comments on the regulations. The Department has addressed many concerns raised by the public by including or proposing changes upon adoption of the regulations.

(73) COMMENT: Neither the rules proposed for adoption nor the public participation process meets the test of good government. Therefore, the rules should not be adopted without resubmission in an appropriate public participation process after the ambiguities and conflicts with other State laws and regulations are resolved. (132)

RESPONSE: The Department does not agree with the commenter. The Department proposed and adopted these regulations in accordance with the Administrative Procedure Act which requires publication of proposed regulations in the New Jersey Register and a public comment period. The Department's proposed regulations have been reviewed through an extensive public process which included three public hearings and a 60 day public comment period. The Department has also met with numerous individuals and groups to discuss public comments on the regulations since then. The Department has carefully reviewed all of the public comments that it has received and the legislative comments on the regulations. The Department has addressed numerous concerns raised during this public comment process by proposing or considering changes upon adoption of the regulations.

(74) COMMENT: The proposed amendments contain changes which are contrary to legislative authorization or ambiguous and likely to lead to unpredictable administrative interpretations. (82)

(75) COMMENT: The proposed regulations in many respects will be unnecessarily onerous, burdensome and costly and may violate the spirit and intent of the Legislature in enacting the amendments to CAFRA. Such far-reaching regulations may operate to stifle many beneficial public projects, including those that enhance public access to, and recreational interest in, our water resources, which are stated objectives of CAFRA. (28, 83)

(76) COMMENT: The regulations go significantly beyond the legislative intent and impose an overreaching and burdensome regulatory challenge to the property rights of individuals. The economic loss to individual home owners, the tourism industry, and the local communities will be significant. (85)

(77) COMMENT: It's my belief that the regulations go way beyond the intent of the Legislature. (31)

(78) COMMENT: CAFRA II as interpreted by the DEPE goes well beyond the intended purview of the bill passed last year by the State Senate and Assembly. It is clearly an attempt by the DEPE to overstep its bounds and impose its bureaucratic will on an unsuspecting public. (115)

(79) COMMENT: The proposed rules and the rulemaking process are not necessary to implement and go well beyond the intent of the enabling legislation. (132)

(80) COMMENT: While the State's proposed rules were intended to address existing loopholes in CAFRA, the rule changes appear to go far beyond the legislative intent. (4)

(81) COMMENT: Some proposed rules supersede the intent of the enabling legislation and as such must not be adopted until they are consistent. (132)

(82) COMMENT: I urge the withdrawal of the damaging provisions and ask the Department to reevaluate the real need for over-regulation of the coastal zone. (190)

RESPONSE TO COMMENTS (74) THROUGH (82) ABOVE: The Department does not believe that its regulations, as adopted, are beyond the intent of the legislation. The Department has carefully reviewed all of the comments received on the proposed regulations and has made changes on adoption to clarify any questions where necessary. These changes include modifying the proposed definitions of "development" and "reconstruction" to clarify that repair/maintenance of existing structures is not "development" subject to regulation, and clarifying the exemption for patios and decks at residences. The Department will be publishing a rule proposal in a future issue of the New Jersey Register that will propose additional General Permits and Permits-By-Rule.

(83) COMMENT: The proposed rule changes are confusing, ambiguous and inconsistent with themselves and are inconsistent with other State regulatory laws, regulations and processes. (132)

RESPONSE: The Department does not agree with the commenter's general statement. The Department has carefully reviewed all of the comments received on the proposed regulations and has made changes on adoption to clarify any questions and inconsistencies where necessary.

(84) COMMENT: The present regulations should be totally thrown out. With new people and new ideas, a new draft can be proposed. (136)

(85) COMMENT: CAFRA II should be repealed, not delayed, because the Department has not followed the legislative intent and, in my opinion, is incapable of doing so. The legislative vision of the permit review process was a simple one, involving statewide general permits that could be applied for and successfully completed by the layperson, without numerous experts and thousands of dollars. The Department has delivered an extremely complicated and costly regulatory program that will prevent the individual taxpayer from the enjoyment of his existing or proposed seashore home, thereby eroding the tax base of our municipalities. I believe many inverse condemnation lawsuits will follow the full enforcement of the CAFRA II regulatory program. (33)

(86) COMMENT: Many of the proposed rule changes will increase regulatory duplication, impose technically unattainable and arbitrary standards, impose conflicting regulatory procedures, and further and unreasonably broaden the Department's authority to impose subjective standards and submission requirements. (4)

RESPONSE TO COMMENTS (84) THROUGH (86) ABOVE: The Department does not believe that its regulations, as adopted, are beyond the intent of the legislation or should be discarded. The rules adopted by the Department are intended to implement the law enacted by the Legislature in 1993, which amended CAFRA and the Waterfront Development Law. Rules implementing these laws have been in place, in their current consolidated form, since 1984. The long term effect of the first 20 years of CAFRA regulation under these rules has been to lessen the adverse economic impacts of poorly planned development upon waterfront commerce, tourism, recreation, public access to the coast, the coastal ecosystem, and the fishing and shellfishing industries. The Department expects these effects to continue after the new legislation and rules are implemented.

The Department has adopted several General Permits and Permits-By-Rule to lessen the regulatory burden on small property owners. A General Permit involves fewer procedural and substantive requirements than an individual permit and a smaller fee. If a person wishes to engage in an activity covered by a permit-by-rule, he is only required to submit a letter to the Department, not an application. In addition, the Department is considering a number of additional steps to reduce the regulatory burden on small projects, and may propose them in a future regulatory proposal. The Department will be publishing a rule proposal in a future issue of the New Jersey Register that will propose additional General Permits and Permits-By-Rule.

(87) COMMENT: The amendments proposed by the DEPE will seriously jeopardize not only my future and that of my family and my office, but also the financial well-being of my five employees and anyone who lives, owns or conducts business on the Jersey Shore. I therefore respectfully request that you relax your proposed standards and seek a compromise that protects the environment without adversely impacting the entire economy on Long Beach Island. (167)

RESPONSE: In developing this regulatory proposal, the Department attempted to balance the competing interests in the use of coastal resources, and considered both local needs and cumulative environmental impacts. It is expected that the standards proposed will enhance the coastal environment in the long term, thereby benefiting the coastal tourism industry and fishing industry. It is also expected that the standards will in the long term reduce the amount of taxpayer expenditures required to address storm damage, by providing additional protection for dunes and other storm protection systems. The regulatory changes are therefore expected to benefit the environment and state as a whole.

(88) COMMENT: CAFRA II will prevent Dennis Township from increasing the amount of commercial ratables, improving existing business, and providing service and jobs. CAFRA II will have a negative impact on the future of Dennis Township by stalling or eliminating economic growth, creating high regulatory costs, scaring off investors and ultimately decreasing property values. (142)

(89) COMMENT: The regulations will unfairly threaten Cape May County, an area of the state that, at present, is highly restricted by (1) wetlands and wetland buffer regulations; (2) substantial land areas of Cape May County have been acquired by Federal wildlife management areas, county/municipal parks—all removing value from the tax base and restricting tax contributions, and (3) seasonal employment and income opportunities. (132, 180)

(90) COMMENT: A preliminary evaluation of the proposed regulations and proposed planning policies indicate that they will adversely affect the economic recovery of the area, adversely impact total ratables and therefore escalate property taxes, and threaten the economic future of Cape May County audits municipalities through the erosion of equity in privately owned lands. (132, 180)

(91) COMMENT: In the request to close the CAFRA loophole, the Department has gone to the extreme of over-regulation, imposed undo oppressive costs on municipalities and taxpayers without solving any adverse environmental situations with regard to public recreation and health, safety, and welfare of municipal recreation projects. (128)

(92) COMMENT: Our membership is alarmed and opposed to the proposed regulations pertaining to SCS-1475. These regulations will control our costal communities and make them hostage. These rules deny property owners their inherent rights. They will devalue properties. This will be reflected in lower municipal, county and state ratables which will result in higher taxes. It will make homes unmarketable, thereby affecting the entire economy. (185)

(93) COMMENT: The objectionable rule changes contain obvious significant adverse economic impacts that were not properly addressed by the State, and have no meaningful environmental benefit. The State has not quantified the apparent detrimental economic impacts, has not presented evidence which demonstrates a need for the rule changes, nor any evidence which justifies the presumed conclusions cited in the State's Social, Environmental and Economic Impact assessment sections. (4)

(94) COMMENT: If we are to value the present income produced by the shore areas for the entire State, the regulations need to be reevaluated. The provisions will create a tremendous economic downturn starting with the first 18 months of execution. The first people that will be hurt will be the construction industry, landscaping businesses, surveyors, lumber yards, etc. Second will be the homeowners who will lose values on their properties. Third, since the values will drop due to restricting if not disallowing improvements on properties, slowly the towns will be unable to support the costs of any real beach maintenance. (136)

(95) COMMENT: The rules will erode the tax base of much of southern New Jersey. (190)

(96) COMMENT: The negative impact which such stringent restrictions would have on the New Jersey tourism industry as well as the loss of tax ratables by diminishing the value of shorefront property should be considered before such rules are implemented. (12)

(97) COMMENT: The implications of CAFRA II's potential economic impact on our community is at best confusing. Inadequate review and analysis may cause unwarranted hardship in a time of limited growth and development. (23)

(98) COMMENT: The proposed rules should not be adopted until adequate support information is provided to the public analyzing in detail the economic and social impact of these rules on the people of all areas of the coastal zone. (132, 180)

(99) COMMENT: Several commenters requested the Department to provide an economic analysis of the impact of the proposed regulations, with adequate time for review of this information. The commenters stated that the proposed rules would devalue properties and result in lower municipal, county and state ratables and in higher taxes. (33, 54, 132, 146, 175, 179, 180, 110)

(100) COMMENT: The regulations have the potential to greatly diminish the lifetime investments of Shore property owners. (32)

(101) COMMENT: In a seashore community such as North Wildwood, we too are concerned about the overexpansion and misuse of environmentally sensitive ground. However, our feeling is that too many restrictions imposed by the State can seriously impact our growth. (130)

(102) COMMENT: The proposed rules and the rule making process must provide full disclosure of anticipated economic and social impacts in order to have meaningful evaluation and comments. (132)

(103) COMMENT: In the proposed regulations, there is only a very small portion dedicated to the economic impact. (38)

(104) COMMENT: The values of properties along the waterfront are going to be affected by this. It affects the tax rates of municipalities. (41)

(105) COMMENT: We are concerned about the potential negative impact that the regulations may have on future development in Cape May County. As Cape May County's legislators, it is our duty to not only insure the economic viability of the area, but to make certain that the regulation which is intended to benefit the state as a whole does not have a severe negative impact upon one county in particular. (122)

RESPONSE TO COMMENTS (88) THROUGH (105) ABOVE: The economic impact of the CAFRA regulatory amendments are largely attributable to the Legislature, which amended CAFRA in 1993 to regulate more persons and property. Through this enactment, the Legislature acknowledged that there was a need for increased protection of natural resources within New Jersey's coastal area. The result of this legislation is that more people and properties will be subject to regulation by the Department. In developing these amendments and rules, the Department considered the concerns of those who will be regulated for the first time under CAFRA and tried to structure the amendments to provide a concise and specific regulatory framework designed to facilitate the preparation, submission and review of permit applications. The Department has also made an effort to reduce the economic burden of its regulations on single family/duplex developments through specific regulatory proposals such as general permits, permits-by-rule, and revisions to the Rules on Coastal Zone Management, specifically N.J.A.C. 7:7E-3.28 (Wetland Buffers); 7:7E-7.2 (Housing Use); and 7:7E-8.11 (Public Access to the Waterfront).

The coastal permit procedures in N.J.A.C. 7:7 provide an orderly and efficient method for preparing, reviewing, issuing and enforcing coastal permit applications and coastal permit decisions. Because the 1993 legislative amendments to CAFRA require the Department to review smaller developments, more property owners in the coastal area will be subject to regulation and/or promotion of certain types of land use, which may continue to adversely affect the development value of their property. For those developments requiring approval from the Department, applicants may incur engineering, consulting and legal fees in addition to the application fees outlined above. These application preparation fees will vary widely depending on the complexity of the development. In addition, construction costs on certain developments may increase as a result of modifying structures or whole developments to comply with the readopted coastal permit program rules and policies.

The proposed amendments concerning Environmental Impact Statements and Compliance Statements should have a positive economic impact on some CAFRA applicants since, as a result of the CAFRA amendments of 1993, all applicants will no longer be required to submitt an EIS. Therefore, for those applicants with smaller projects the costs associated with preparing the information should be less than if they were required to submit an EIS. The Department expects that the proposed General Permits and Permits-by-Rule will also have a positive social impact since applicants with eligible developments will not be required to submit a complete individual CAFRA permit application but will be able to follow an expedited application process.

The long term past effect of CAFRA decisions under these rules has been to lessen the adverse economic impacts of poorly planned development upon waterfront commerce, tourism, recreation, public access to the coast, the coastal ecosystem, and the fishing and shellfishing industries. Losses in specific property value and the compliance costs associated with the coastal permit program rules have been offset by the economic loss avoided as a result of comprehensively regulating uses of the coastal area. The Department expects these effects to continue after the statutory and regulatory changes to CAFRA become effective on July 19, 1994.

In addition, the Northeaster storm of December 1992 cost the taxpayers of New Jersey approximately $75 million in debris removal, protective measures and repairs to public buildings, roads, bridges and utilities. The 1993 amendments to CAFRA and implementing regualtions provide additional protection for dunes. The CAFRA amendments will in the short term result in the regulation of more properties and some decrease in the economic value of some properties. However, these amendments should have a positive long term economic impact on the taxpayers of New Jersey as a whole by lowering the amount of money spent to recover after a future storm such like the storm of December 1992 and assure that the coastal environment remains attractive to tourists, fishermen, and other members of the public dependent on clean water and on an aesthetically pleasing coastal environment.

(106) COMMENT: The proposed rules and the rulemaking process will adversely affect the economic recovery of the coast by intimidating legitimate investors in coastal development/redevelopment and will create economic hardship through burdensome fees and a cumbersome bureaucratic process. (132)

(107) COMMENT: The proposed rules and the rulemaking process will significantly restrict lending and will require significant costs and delays in financing that will inhibit investment in coastal businesses, real estate development, and agricultural development. (132)

(108) COMMENT: The banking-financial industry will severely restrict lending and will require significant costs and delays in financing that will inhibit development on the coast. (180)

RESPONSE TO COMMENTS (106) THROUGH (108) ABOVE: The Department does not agree with these comments. The long term

past effect of these rules has been to lessen the adverse economic impacts of poorly planned development upon waterfront commerce, tourism, recreation, public access to the coast, the coastal ecosystem, and the fishing and shellfishing industries. Losses in specific property value and the compliance costs associated with the coastal permit program rules have been offset by the economic loss avoided as a result of comprehensively regulating uses of the coastal area. The Department expects these effects to continue after the statutory and regulatory changes to CAFRA become effective on July 19, 1994.

(109) COMMENT: The proposed regulations will not only potentially drive property values down, hence tax ratables, but will also take away the rights of homeowners to build, rebuild or remodel if we have storm damage. (121)

RESPONSE: The proposed amendments to the Rules on Coastal Zone Management, Coastal Permit Program Rules and Ninety-day Construction Permit-fees were largely drafted to implement the amendments to CAFRA passed by the legislature and signed into law by Governor Florio on July 19, 1993. The legislative amendments to CAFRA will result in the regulation of more properties by the Department, particularly those within 150 feet of the mean high water line, a beach or a dune. These amendments are expected to provide long-term economic benefits by producing an enhanced coastal environment for the tourism and fishing industries, and a decrease in taxpayer expenditures to repair storm damage.

In addition, the regulations clearly state that the subchapter does not apply to "the reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law." This language is taken directly from the legislative amendments to CAFRA enacted in 1993. Thus, under both the 1993 amendments and the Department's regulations, homeowners may repair or rebuild storm-damaged structures.

(110) COMMENT: The proposed regulations impose standards and rules within coastal areas that fail to take into account that lands within coastal areas are not, under reasonable analysis, "coastal" in nature, and apply rules and standards in an inconsistent manner under the same or similar physical and/or environmental conditions. (28, 83)

RESPONSE: The CAFRA boundary was established by the Legislature in 1973. The boundary remains essentially unchanged by the 1993 amendments to CAFRA, except for the deletion of a small overlap area between CAFRA and the Pinelands Protection Area. CAFRA requires the Department to review development within the established coastal zone and establishes the thresholds of development subject to review, and thus, subject to the Department's Rules on Coastal Zone Management (N.J.A.C. 7:7E). Those rules contain different standards for development which are dependent on the environmental and other features of each specific site and its surrounding area.

(111) COMMENT: The CAFRA II regulations are intended to close loop holes and to protect the coastal area from inappropriate or excessive development. However, minimal land availability, existing regulations, environmentally sensitive residents and local government already manage any threats to the coastal environment. (142)

(112) COMMENT: I concur with the concept of restricting condos and hi-rise buildings from lining the oceanfront. However, the CAFRA amendments are overkill to the point of punishing homeowners and the economy of the coast. (56, 190)

(113) COMMENT: Permitting should be left to local authorities. (56, 190)

(114) COMMENT: It should be government's job to govern in the most efficient, direct and economical manner. Local officials are in place to enforce the building codes and requirements of the State of New Jersey. Has anyone in Trenton looked into using the system already in place to enforce CAFRA regulations? (108)

RESPONSE TO COMMENTS (111) THROUGH (114) ABOVE: When the legislature enacted the CAFRA amendments in 1993, it decided that existing laws were in certain respects inadequate to protect coastal resources. The regulations were generally adopted to implement the legislative intent or to increase program efficiency. The Act provides for state regulation in order to promote comprehensive coastal planning and protection; it does not provide the Department with the authority to delegate its regulatory authority to local officials.

(115) COMMENT: The CAFRA regulations run against the theme of trying to promote tourism in New Jersey and hence, the need for a viable shore community. (121)

RESPONSE: The Department does not agree with this comment. The long term past effect of these rules has been to lessen the adverse economic impacts of poorly planned development upon waterfront commerce, tourism, recreation, public access to the coast, the coastal ecosystem, and the fishing and shellfishing industries. Losses in specific property values and the compliance costs associated with the coastal permit program rules have been offset by the economic loss avoided as a result of comprehensively regulating uses of the coastal area. The Department expects these effects to continue after the statutory and regulatory changes to CAFRA become effective.

(116) COMMENT: The Dennis Township Economic Development Council requests simplification of the proposed document to eliminate confusing interpretations and a longer period of public education and review. (142)

RESPONSE: The Department's proposed amendments to the Rules on Coastal Zone Management include the addition of appendices which are intended to make the rules more "user friendly" by incorporating specific design standards and specifications. In addition, before proposing the amendments on February 22, 1994, the Department held public meetings on September 20, September 30 and October 1, 1993 in Ocean, Cumberland and Monmouth Counties respectively to discuss the CAFRA amendments and to solicit comments and suggestions from the public regarding the implementation of the new legislation. The Department also extended the public comment period by 30 days after proposing the amendments. The adopted rules contain numerous provisions which reflect this public input, including clarifications to the rules where appropriate.

The Department will provide training for local officials respecting the new rules in the summer of 1994. In addition, if after the new rules are adopted further ways to simplify them are identified, the Department will propose further regulatory amendments. As mentioned previously, the Department will be publishing a rule proposal in a future issue of the New Jersey Register that will propose additional General Permits and Permits-By-Rule.

(117) COMMENT: The public hearing held in Ocean City was not conducted for the benefit of those people who thought they would learn something about the regulations. It was instead a place to comment on the record about the specifics of the proposed regulations. There was a lack of information at the hearing. The Department should have made copies of the proposed regulations available for public review. (94)

RESPONSE: The commenter is correct that the hearing was a place to comment on the record about the specifics of the regulations. The Department may, under the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), hold a public hearing on proposed regulatory amendments. The Department held three hearings, each in a different location at a different time of day in order to provide sufficient opportunity for individuals to submit their comments on the rule proposals. Department staff were available both before and after the three hearings to answer any questions. In addition, the Department did bring copies of the rule proposals to the hearings, distributed the copies to those that requested them, and took names and addresses in order to mail out copies when the demand exceeded the available supply. Finally, the Department returned to Ocean City first to participate in a legislative hearing on CAFRA and most recently for Governor Whitman's Coastal Allaince meeting which was open to the public and at which a large amount of information about CAFRA was exchanged.

(118) COMMENT: The Township of Dennis contains many lots located within the Pinelands overlap area that may be located within 150 feet of freshwater wetlands. Who has jurisdiction over these areas? (94)

RESPONSE: In the area subject to CAFRA jurisdiction, the rules at N.J.A.C. 7:7E will apply. N.J.A.C. 7:7E-3.27 and 3.28 are the applicable rules on wetlands and wetland buffers.

(119) COMMENT: How does the Department plan to process all of the new applications resulting from the new rules in a timely manner? (110)

(120) COMMENT: There's a timetable for decisions. What happens when if the timetable is not met? (72)

RESPONSE TO COMMENTS (119) AND (120) ABOVE: The Department will be reviewing applications in accordance with the timeframes outlined in the regulations.

(121) COMMENT: Will the Department hire a significant number of new staff members to deal with this review process? (110)

(122) COMMENT: The cost of the review process is not going to be carried just by the homeowner. It's somehow going to be carried by the

taxpayers Because the program is going to need additional people in the Department. The Department is going to need to staff up to review all these single family applications. (41)

RESPONSE TO COMMENTS (121) AND (122) ABOVE: The Department does not anticipate hiring new staff at this time.

(123) COMMENT: Will the Department hire outside consultants to assist with the timely review of permit applications? (110)

RESPONSE: The Department will not be hiring outside consultants to assist with the review of permit applications. Since hiring outside consultants will increase the costs of processing applications, outside consultants will only be retained if expertise not readily available in the Department is required for review and if the applicant agrees to pay the associated cost.

(124) COMMENT: In light of the recent cuts in staff at the state and increased pressure to further downsize government, it remains a question in our minds as to how the Department staff will be able to handle the increase in permit applications as a result of the CAFRA amendments. (7, 116)

RESPONSE: The review periods are set by the 90-Day Construction Permit Rules, and will be followed by the Department in the review of all CAFRA permit applications.

(125) COMMENT: Will the Department's budget reflect escalated legal, advertising and other administrative costs which will increase as a result of the expanded requirements of CAFRA II? (110)

RESPONSE: The Department anticipates the additional fees generated by the new permit applications will offset its administrative costs.

(126) COMMENT: The expansion of an already oversized bureaucracy is not the answer to preserving the coastal areas of New Jersey. Creating more red-tape and duplication of efforts within the Department is not the most expedient way to mitigate environmental impacts. Instead of spending an enormous sum of taxpayer funds on overregulation, the State Legislature and the Department should deal directly with the real failure of CAFRA I which, for Cape May County, was the piecemeal construction of an unprecedented number of 24 dwelling unit developments. The CAFRA statutes and proposed regulations should be modified only to the extent necessary to address this loophole in the original CAFRA legislation. (110)

(127) COMMENT: While I support the underlying concept that regulations to govern development in the coastal zone are needed, the new rules grossly underestimate the social and financial affects of the rules and are further evidence that the Department is generally out of control. The proposed rules seek to increase state review of development projects such that the number of projects to be reviewed will likely double or triple. This increase in developments requiring a permit will no doubt require significant increases in review and administrative personnel by the Department. These additions to a Department which is already the largest and of questionable efficiency in the discharge of its' duties is ill advised. (22)

RESPONSE TO COMMENTS (126) AND (127) ABOVE: These regulations are intended to implement CAFRA as enacted by the Legislature. When it amended CAFRA in 1993, the Legislature determined that specified development should be regulated by the Department. Thus, any requests for revisions to CAFRA are beyond the purview of the Department. Implementation of CAFRA II should not result in an expanded bureaucracy, because the Department does not expect to hire additional staff.

(128) COMMENT: We believe in environmental protection and land stewardship; however, the programs coming out of the Land Use Regulation Program have created horrendous conflicts with the regulated public. (132)

RESPONSE: These regulations are intended to implement CAFRA as enacted by the Legislature. When it amended CAFRA in 1993, the Legislature determined that specified development should be regulated by the Department. An enormous amount of misinformation has been generated about the impacts of these regulations. The Department has tried to clarify those impacts in this adoption document where possible and has also clarified some of the rules on adoption where appropriate, in order to address and respond to public concerns raised during the public comment period.

(129) COMMENT: The public funds that would be saved by not having to expand the bureaucracy should be used to create a "Coastal Area Environmental Preservation Fund" to purchase privately held beach and bay front parcels in the most environmentally sensitive, remaining undeveloped areas of the coastal zone. (110)

RESPONSE: Implementation of CAFRA II should not result in an expanded bureaucracy, because the Department does not expect to hire additional staff.

(130) COMMENT: Three commenters submitted an identical letter stating their support for efforts to change the regulations pertaining to the CAFRA legislation and their belief that property owners have the right to build or rebuild on their own waterfront. (117, 118, 154)

RESPONSE: The rules adopted by the Department are intended to implement the law enacted by the Legislature in 1993, which amended CAFRA and the Waterfront Development Law. Thus, suggestions for changes in that law are beyond the purview of the Department. In addition, the rules do not automatically prohibit building or rebuilding. Rather, consistent with the enabling legislation, the rules allow specified rebuilding to occur and also allow the construction of single family homes and duplexes by general permit on specified locations. The statute and regulations regulate, but do not necessarily prevent, rebuilding or building on the waterfront. However, the rules are intended to minimize the environmental impacts of such construction.

(131) COMMENT: Four commenters wrote that they oppose CAFRA II and support the opinions that appeared in an editorial in "The Beacon" newspaper on March 31, 1994. The editorial urges anyone who lives on Long Beach Island, or in a lagoon or lake community on the mainland, to submit comments on the proposed regulations. (80, 178)

(132) COMMENT: The proposed regulations are onerous to property owners who have made the economic decision to purchase and live on a barrier island. The regulations make no economic sense and in many cases seem vindictive to people who have made this economic choice. In addition, the proposed regulations will have an impact on property values. The proposed regulations fly in the face of practicality and common sense. (120)

RESPONSE TO COMMENTS (131) AND (132) ABOVE: The rules adopted by the Department are intended to implement the law enacted by the Legislature in 1993. The Department does not agree with the editorial opinion that the rules are onerous, outrageously stringent and intended to punish those that live along the shore. Rules implementing CAFRA were first adopted in 1973. The long term effect of those rules has been to reduce the adverse economic impacts of poorly planned development upon waterfront commerce, tourism, recreation, public access to the coast, the coastal ecosystem, and the fishing and shellfishing industries, and to thereby benefit the State as a whole. The Department expects these effects to continue once CAFRA II and its implementing regulations become effective.

(133) COMMENT: The rules are voluminous and vague and should be made as simple as possible. (76, 124)

RESPONSE: The Department has made every effort to propose rules which are clear, concise and understandable by the public. In addition, staff of the Department have prepared informational packages and conducted public meetings and seminars for the purpose of explaining the proposed regulations.

(134) COMMENT: The regulations are voluminous, extremely restrictive, self contradictory, confusing, lacking in empirical logic and create additional bureaucracy in a self-serving manner. Further, they do not take into account variables of locale. Individual locations were never given an opportunity for study and input in the rules' preparation. You have prohibited everything except a frog sitting on a leaf. (153)

RESPONSE: The current and proposed rules represent standards for resource protection and site development, and do take into account variations in site location, environmental sensitivity and surrounding development. The rules are intended to allow for coastal development in a manner which affords adequate protection of the unique resources of this area. The 1993 legislative amendments to CAFRA and the adopted regulations do not prohibit development; they regulate it. Before proposing the rules, the Department held a number of public meetings in the coastal area to solicit comments on the CAFRA amendments of 1993 and the best way to implement them.

(135) COMMENT: The legislation evolved without public notice or hearings and with insufficient time to plan to attend these meetings. These meetings were planned when most citizens were preoccupied with the new taxation reports due on April 15, 1994. Also, it was a time when most property or landowners affected by the legislation were not in the area because they had returned to school or work at great distances from the hearing locations. In addition, the hearing announcements are made with a very short lead time so there is no opportunity to plan one's work and still attend. Notices of hearings and meetings have been directed

to the Realtors and Builders of South Jersey. However, there was no notice to the individual private land or property owners who will be heavily impacted by the legislation. (153)

(136) COMMENT: The proposed rules and the rulemaking process precluded many landowners, businesses, and tax payers, the regulated public in the coastal zone, from providing comment because of their absence from the area at this time. (132)

(137) COMMENT: When you indicated that you got comments from home builders and realtors and such, of course you didn't mention what their comments were because I believe if their comments were read into the minutes, as they are being taken now, the people in this room would realize that the regulations, as they have been promulgated, are not the way the home builders industry would like to see them. (41)

RESPONSE TO COMMENTS (135) THROUGH (137) ABOVE: There has been significant public input into the development of this rule proposal. The legislative amendments to CAFRA were passed by the Legislature in May 1993 and signed into law by Governor Florio on July 19, 1993. These amendments followed 13 years of debate on a wide variety of proposals on how the coastal area should be regulated. Following the signing of the legislative amendments into law, the Department convened a series of public meetings, in conjunction with the County Planing Boards, and spoke with a variety of groups throughout the fall to gain initial public comment prior to the preparation of the rule proposal. In addition, the Department met on several occasions with the Builders Advisory Group and the Environmental Advisory Group to gain their input on the proposal. The public hearings which were held following the the publication of this rule proposal in the New Jersey Register were arranged and conducted in accordance with the requirements of the Administrative Procedures Act. The published proposal and public hearings resulted in the submission of many written and oral comments to the Department. The final adopted rules reflect this high level of public input, as many of the proposed rules have been modified and clarified on adoption in response to comments received.

(138) COMMENT: Sixty-three commenters signed a petition expressing disapproval with the proposed amendments to the Coastal Permit Program Rules. The petitioners stated that the new rules, as written, would destroy property values, increase unemployment, increase taxes and permit fees and have an unnecessary adverse impact on the single family home owner. The commenters requested a delay in adopting the regulations until revisions could be made which would safeguard the environment without requiring them to give up our homes and livelihood. (2, 5, 6, 8, 14-16, 20, 21, 25, 26, 34-36, 39, 40, 61, 64-67, 71, 84, 90, 98-103, 107, 127, 133, 138-140, 147, 148, 150, 156, 157, 159, 160, 162, 169, 177, 182-184, 186-189, 192-195)

(139) COMMENT: The present proposed regulations will have a definite adverse effect on private property rights in the State of New Jersey. (30)

RESPONSE TO COMMENTS (138) AND (139) ABOVE: The rules adopted by the Department are intended to implement the law enacted by the Legislature in 1993, which amended CAFRA and the Waterfront Development Law. The regulations will be enacted by the Department in accordance with the effective date established in the legislation. Any suggestions for changes in the effective date of the law are beyond the purview of the Department.

The Department disagrees with the commenters as to the impact of these regulations. Rules implementing CAFRA and the Waterfront Development Law were first adopted in their current consolidated form in 1984. Since then, those rules have reduced the adverse economic impacts of poorly planned development upon waterfront commerce, tourism, recreation, public access to the coast, the coastal ecosystem, and the fishing and shellfishing industries. The Department expects these effects to continue after the new CAFRA amendments and rules become effective. In addition, the regulations contain specific provisions intended to ease the regulatory burden on the single-family homeowner. For example, repairs/maintenance to existing dwellings are exempt from regulation. This means that a person can paint a house, change shutters, replace roofs, windows and siding without obtaining a CAFRA permit.

(140) COMMENT: One commenter wrote to Commissioner Shinn to voice his opposition to the new CAFRA rules without their review and acceptance by the Legislature. (1)

RESPONSE: The Department has proposed and adopted these regulations in accordance with the Administrative Procedure Act, which requires publication of proposed regulations in the new Jersey Register and a public comment period. As mentioned above, the Department provided significant opportunities for public input into these regulations. In addition, the Department has taken into consideration the comments that it has received from members of the Legislature and from the Assembly and Senate Regulatory Oversight Committees. The adopted rules reflect these comments.

(141) COMMENT: It is essential that an honest forum be created to provide the regulated public the opportunity to work in partnership with the new administration to clarify and adopt appropriate procedural rules used to review coastal permit applications, policies that the Department uses in review of coastal permit applications, and permit fees.

RESPONSE: The Department has proposed and adopted these regulations in accordance with the Administrative Procedure Act, which requires publication of proposed regulations in the new Jersey Register and a public comment period. As mentioned above, the Department provided significant opportunities for public input into these regulations. In addition, the Department has taken into consideration the comments that it has received from members of the Legislature and from the Assembly and Senate Regulatory Oversight Committees. The adopted rules reflect these comments.

(142) COMMENT: The Program must have clear rules. They must provide a service to the regulated public by helping the public to meet the intent of the enabling legislation, not creating animosity, absolute frustration and financial loss. (132)

RESPONSE: The Department has carefully reviewed all of the public comments that it has received and has clarified the regulations on adoption where appropriate and necessary.

(143) COMMENT: The Land Use Regulation Program has not met their obligations to the regulated public by providing adequate guidance in pre-application conferences, follow-up guidance letters, project evaluation and response to inquiries to guide project planning and permit applications. (132)

RESPONSE: The Department disagrees with the commenter. The Program has conducted thousands of pre-application conferences and provided follow-up letters and guidance, and will continue to do so.

(144) COMMENT: The Mayor and governing body of Lavallette have been advised that the vagueness of the pending rules will present an opportunity for future administrations and Department Commissioners to interpret broadly the powerful provisions contained within the regulations which could trigger the potential implementation of onerous prohibitions on coastal property owners including, but not limited to, the denial of the reconstruction of existing homes and businesses in the wake of coastal storms, fire or other natural hazards, denial of single family building permits, or permits for even such innocuous projects, the planting of lawns, and additions. (161)

RESPONSE: The Department made every effort to propose rules were clear, concise and understandable. Reconstruction of structures damaged by fire, storm, natural hazard or act of God are exempt from CAFRA under N.J.S.A. 13:19-5 and N.J.A.C. 7:7-2.1(c). The Department has also adopted a General Permit at N.J.A.C. 7:7-7.2 for the voluntary reconstruction of a non-damaged structure. A General Permit involves lesser application requirements and a smaller fee than an individual permit.

Repairs to existing homes, such as painting, replacing windows, shutters and roofs, are not regulated by CAFRA. The Department's proposed and adopted regulations also do not regulate the type of plantings at existing single-family homes. However, new developments of three or more dwelling units will be limited in the type of species that can be planted at the time of initial construction. This will be done to ensure that the plants will thrive and to avoid the need for fertilizer, pesticides and irrigation, which can affect the quality and supply of groundwater and surface water. The regulations apply only to plantings at the initial time of construction as a means of encouraging the use of suitable plantings to the maximum extent possible. Nothing in the regulations will prevent any homeowner from subsequently adding non-approved plant species at a later date.

The Department has amended and clarified the rules at N.J.A.C. 7:7-2.1(c)5 upon adoption to specifically exempt, in accordance with the legislative intent, the construction of a patio, deck or similar structure at a residential development. For the purposes of this exemption, "similar structure" includes porches, balconies and verandas. The Department's adopted rules also provide that the following structures or activities will be allowed at a residential development, provided that they do not include the placement of pilings or placement of a structure on a beach or dune: open fences, open carports, flower boxes, gardens, gazebos,

satellite dishes and antennas, sheds, wooden boardwalks and gravel or brick/paver block walkways, showers/spa/hot tubs which do not discharge to surface waters or wetlands. The construction of timber dune walkover structures constructed in accordance with Department specifications found at N.J.A.C.7E, Rules on Coastal Zone Management, will also be allowed at a residential development.

In addition, the Department has adopted a Permit-By-Rule that will allow the expansion of a legally constructed, habitable single family or duplex dwelling on a bulkheaded lagoon lot, provided that the expansion does not exceed a cumulative surface area of 400 square feet, the expansion is not proposed on a wetland, and the expansion is set back a minimum of 15 feet from the waterway face of the bulkhead. A Permit-By-Rule simply requires the submission of a letter to the Department, not an application.

(145) COMMENT: The new CAFRA regulations stink. We now pay a total of $4,000 in taxes, to be told that we have no control over what can and cannot do to our property. I cannot even plant a shrub unless it is conducive to the area. (97)

RESPONSE: The 1993 legislative amendments to CAFRA provide the Department with the authority to regulate development in the coastal area including single-family homes. However, the law's impact on existing single-family homes will be much less extreme than has been represented. The Department's proposed and adopted regulations do not regulate plantings at existing single-family homes or repair or maintenance of existing homes that are not associated with expansions. This means that a person can paint a house, change shutters, replace roofs, windows and siding without obtaining a CAFRA permit. The 1993 legislative amendments to CAFRA also exempt the construction of a patio, deck or similar structure at a residential development.

The Department has amended and further clarified the rules at N.J.A.C. 7:7-2.1(c)5 upon adoption to specifically provide, in accordance with the legislative intent of the 1993 amendments to CAFRA that the construction of a patio, deck or similar structure at a residential development is exempt. For the purposes of this exemption, "similar structures" are porches, balconies and verandas. The Department's adoption provides that other activities or structures will also not be regulated at a residential development, provided that they do not include the placement of pilings or placement of a structure on a beach or dune. These activities and structures are open fences, open carports, flower boxes, gardens, gazebos, satellite dishes and antennas, sheds, wooden boardwalks and gravel or brick/paver block walkways, showers/spa/hot tubs which do not discharge to surface waters or wetlands. The construction of timber dune walkover structures constructed in accordance with Department specifications found at N.J.A.C.7E, Rules on Coastal Zone Management will also be allowed at a residential development. In addition, the Department has adopted two Permits-By-Rule that allow for the expansion of a legally constructed, habitable single family or duplex dwelling.

(146) COMMENT: The Department has again become an over zealous regulator. I am an owner of a bayfront property in High Bar Harbor with an adjacent bayfront lot with wetlands on one side. My interpretation of the regulations is that they will prohibit construction on this vacant piece of property. (3)

RESPONSE: The decision to approve or deny a proposed project is based on the project's compliance with the applicable rules. The presence of wetlands on or adjacent to a site does not automatically result in the denial of an application.

(147) COMMENT: Six individuals expressed their concern that the regulations will allow for more than single family detached dwellings (SFDD). If anything other than SFDD's are built in our residential area, it will add to the existing dilemma. There are now four housing developments that are contiguously located in the Lagoon/Venice Park area. The area is not maintained properly, and it will add to more severe problems: traffic, flooding, parking, waste removal, and an exorbitant amount of wear on the small and only access bridge into the area. We encourage the Department to conduct a full and comprehensive study to completely understand all the possible affects or the impact of multiple family dwellings. The population will be increased dramatically with multi/duplex/owner rental properties. SFDD is the most that can be allowed in the lagoon neighborhood with a present population of between 1,500 and 2,000. It is hoped that the Department will be more specific in defining what types of homes are permitted. (37, 48, 51, 78, 79, 86, 87, 89, 112, 125, 131, 137, 145, 166, 171)

RESPONSE: The Department does not have the authority to only require the construction of single family dwellings. The jurisdiction and regulatory thresholds contained in the rules reflect the CAFRA amendments which were passed by the Legislature and signed into law by Governor Florio on July 19, 1993. However, the Department's rules provide that the environmental impacts of new development, including traffic and flooding, must be assessed before that development can be approved.

(148) COMMENT: The Department wants to revise the Coastal Area Facility Review Act of 1973 to close what it calls "loopholes" that previously permitted developments of 24 units or less to avoid the legislation and seek only local approval. The new legislation not only removes that possibility, but it now requires permits for everything and anything within 150 feet of tidal water. It was not an oversight in 1973 to sanction only developments of 25 units or more, it was a good management decision. (155)

RESPONSE: The jurisdiction and regulatory thresholds contained in the rules reflect the CAFRA amendments which were passed by the Legislature and signed into law by Governor Florio on July 19, 1993. These regulations are intended to implement CAFRA as enacted by the Legislature. When it amended CAFRA in 1993, the Legislature determined that specified development should be regulated by the Department. Any suggested changes in jurisdiction or regulatory thresholds are beyond the Department's purview.

(149) COMMENT: It is time for the government to listen and pay their way in buying out people's rights. Unless the State restores the financial loss suffered by land owners and subsidize the loss of ratables to municipalities for the devaluation of real estate values, the CAFRA revisions equal land "confiscation without compensation." (155)

RESPONSE: The 1993 legislative amendments to CAFRA and the Department's implementing regulations do not prohibit development in the coastal area; rather, they regulate development. Moreover, previous regualtion already lessened the adverse economic impacts of poorly planned development upon waterfront commerce, tourism, recreation, public access to the coast, the coastal ecosystem, and the fishing and shellfishing industries. Thus, the Department does not agree that the CAFRA amendments and rules equal "confiscation without compensation" or that they will have an overall adverse economic impact.

Subchapter 1. General Provisions

N.J.A.C. 7:7-1.3 Definitions

(150) COMMENT: We strongly support the proposed definitions of "development" and "intervening structure." (45)

RESPONSE: The Department acknowledges this comment in support of the proposal.

(151) COMMENT: The inclusion of site preparation within the definition of "development" is absolutely necessary to establish adequate regulatory jurisdiction over activities (excavation and alteration of coastal features) and resources (dunes, beaches) directly related to the Legislature's objective of managing near shore projects and activities affecting coastal features. (45)

RESPONSE: The Department acknowledges this comment in support of the proposal.

(152) COMMENT: The proposed regulations include in the definition of "development" the reconstruction or like-kind replacement of structures after casualty or other losses, thus requiring Department approval in all such cases. (28, 83)

(153) COMMENT: The definitions of development contained in the regulations should be much more narrow than the broad and all encompassing definitions proposed. (85)

RESPONSE TO COMMENTS (152) AND (153) ABOVE: The definition of development contained in the Department's regulations follows the plain language of the Act. The rules proposed by the Department are intended to implement the law as enacted by the Legislature. Any suggestions for changes in the law are beyond the purview of the Department. "Development" that is regulated under the CAFRA amendments and rules is defined as the construction, relocation or enlargement of any building or structure, including all site preparation. Thus, repairs of existing structures that are not associated with enlargements do not constitute regulated "development." Moreover, these activities have minimal environmental impacts. The Department has clarified both the definitions of "development" and "reconstruction" on adoption to make it clearer that routine maintenance/repairs of existing structures, that are not associated with expansions, do not constitute regulated "development."

(154) COMMENT: We would like to have the definition of "development" changed to exclude reconstruction for storm damage, and that will solve that issue. (75)

(155) COMMENT: The way the regulations are proposed and utilized creates a very undesirable effect. At N.J.A.C. 7:7-1, single family residential and public development activities have been included in the definition of development. Then in N.J.A.C. 7:7-2, the development activities which specifically require a CAFRA permit are enumerated. Therefore, although some activities such as the reconstruction of houses from storm damage do not specifically require a CAFRA permit, these activities are still included in the definition which has created a very gray area as to the future of their regulation. (75)

RESPONSE TO COMMENTS (154) AND (155) ABOVE: The definition of "development" is based on the definition contained in the CAFRA amendments. The Department does not have the authority to change the definitions since some types of reconstruction are regulated. Those activities which are statutorily exempt from regulation will not require a permit and the exemption section of the regulations, N.J.A.C. 7:7-2.1(c) includes the provisions from the Act. The 1993 legislative amendments to CAFRA clearly exempt the reconstruction of storm damaged structures and this exemption is contained in the regulations at N.J.A.C. 7:7-2.1(c)3.

(156) COMMENT: The proposed definition for "development" should be revised to exclude any reference to activities associated with (1) general maintenance, such as debris cleaning, erection of snow fence, boardwalks and platforms for handicap access, necessary signage for dune preservation, etc.; (2) development associated with environmental education and research, and (3) beach nourishment/replacement activities. (119)

(157) COMMENT: The Mayor and Governing body of Lavallette have been advised by licensed professionals that the municipality could be tied up by the necessity to obtain a full-blown CAFRA permit to complete beach repair and maintenance. (161)

(158) COMMENT: The rules require a CAFRA permit for beach maintenance activities including debris removal and clean-up, mechanical sifting; maintenance of accessways; removal of sand from street ends, boardwalks and residential properties; repair or reconstruction of existing boardwalks, gazebos, and dune walkover structures; and limits sand transfers from the lower beach to the upper beach. (75).

RESPONSE TO COMMENTS (156) THROUGH (158) ABOVE: The Department is adopting a general permit authorization for beach and dune maintenance activities provided that the activities are conducted in accordance with Best Management Practices, as defined in the Department's Rules on Coastal Zone Management, N.J.A.C. 7:7E. (N.J.A.C. 7:7-7.2(a)2) The activities that may be authorized under this general permit include the activities mentioned by the commenter. Thus, a "full blown" CAFRA permit will not be required for beach maintenance and repair.

(159) COMMENT: Is the State introducing new uses subject to the New Jersey Coastal Management Program by replacing "facility" with "development?" (49)

RESPONSE: The 1993 legislative amendments to CAFRA replace "facility" with "development." As a result of the amendments, the Department now regulates smaller projects closer to the water's edge than it did previously under CAFRA. In addition, the legislation changes the parking space threshold for commercial developments from 300 parking spaces to 50 parking spaces for those commercial developments located beyond 150 feet from the mean high water line, or landward limit of a beach or dune. This again makes more developments subject to review under CAFRA.

(160) COMMENT: The proposed definition of dune is too encompassing and could include an entire barrier island. When combined with a 25 foot setback, the definition would preclude development in vast areas and especially hurt single-family lot owners. The definition should be revised to require that a dune be part of a shore protection system. (53)

RESPONSE: The definition of "dune" contained in the rules is consistent with the definition of "dune" contained in the statute. The Legislature chose to provide for the regulation of development on or within 150 feet of dunes when it amended CAFRA in 1993 in part to enable the Department to maximize the protection of dunes which provide a natural cost-effective system of shore protection.

(161) COMMENT: A more specific definition of "dune" is needed. The barrier islands are in danger of being lost to any development because of the vague definition of this term. We would request more specific language and mapping to clearly define dune lines prior to enforcement of these rules. (43)

RESPONSE: The definition of "dune" contained in the rules is consistent with Legislative intent, with the shore protection provided by dunes, and with the definition of "dune" contained in the statute. A requirement for dune mapping was discussed when various legislative amendments were being debated by legislative committee, but the law amending CAFRA was subsequently passed in 1993 without a requirement for the Department to map the dunes or the 150 foot boundary. Such a mapping requirement would be very costly and time-consuming. Moreover, any mapping done would only be accurate for a short period of time, given the dynamic nature of dune systems and the frequent occurrence of storm events altering dune boundaries. Department staff will be available to address specific questions on dune locations and boundaries upon request.

(162) COMMENT: N.J.A.C. 7:7-1.3 defines a "habitable structure" and fails to recognize that the vast majority of existing structures predate 1975 and the adoption of N.J.A.C. 5:23. The application of this definition requires additional rules to address those properties that predate 1975. (52)

(163) COMMENT: The Department should delete the requirement that a structure would have to be legally occupied for the most recent five year period in order to be qualify for the General Permit for voluntary reconstruction. The Department does not have the authority to determine what is a habitable structure. Also, such a definition would significantly limit those structures which could be re-built. This condition is also inconsistent with the State Plan that directs growth to urban blighted areas that have infrastructure. (53)

RESPONSE TO COMMENTS (162) AND (163) ABOVE: This General Permit is intended to allow the reconstruction of existing structures that are in use, as opposed to the reconstruction of derelict, uninhabited structures that are not in use. The Department disagrees that its rules are inconsistent with the State Plan because while an individual permit may be required to rebuild on an urban site with an abandoned building, the Rules on Coastal Zone Management will promote the environmentally-sensitive design and approval of the new building.

(164) COMMENT: The definition of "intervening development" avoids the possible failure to establish necessary jurisdiction based on the presence of small, inconsequential structures which have no impact on the broader policy objectives of the statute and program. Minor structures and activities should not be allowed to prevent regulated activities from coming under the purview of CAFRA. (45)

RESPONSE: The Department acknowledges this comment in support of the proposal.

(165) COMMENT: The definition of "intervening development" should be revised to include all permanent structures at grade or above, including paved roads. (43)

(166) COMMENT: The definition of "intervening development" should be re-defined to include any permanent above ground structures as provided for in the statute, including cabanas, pump stations, bath houses and also including paved public roads. (53, 73)

(167) COMMENT: Intervening development excludes several types of property improvements as intervening development, however, a permit would be required to construct such improvements. This is an inconsistency that expands the scope of the law beyond legislative intent. Intervening development should include all activities that would be regulated. (144)

RESPONSE TO COMMENTS (165) THROUGH (167) ABOVE: The Department has not amended the definition of intervening development as suggested. The adopted regulation includes development with permanent above ground structures as "intervening development." The definition of "intervening development" does not include small structures which have no impact on the broader policy objectives of the statute or in providing protection to landward structures. The intent of the CAFRA legislative amendments is that, in general, the first house or other significant structure inland of the water's edge be regulated.

(168) COMMENT: Intervening development in residential areas should exclude all front yard areas from the front of the primary structure to the curbline of the public roadway. This will prevent unneeded control of the second, third or fourth homes inland of first development. Variable yard depths is a goal of most planners to reduce visual monotony. Also, minimum setbacks are controlled by the municipality. (144)

RESPONSE: The Department has not amended the definition of "intervening development" as suggested. CAFRA approval is not required for any individual house inland of the first.

(169) COMMENT: The definition for public development means solid waste facilities, highways, wastewater treatment facilities, etc. A better term for these facilities would be "public utilities or infrastructure." (18)

(170) COMMENT: Public open space and parks should have a separate definition to distinguish them from the facilities listed in the definition of public development. (18)

RESPONSE TO COMMENTS (169) AND (170) ABOVE: The definition of "public development" contained in the regulations follows the language of the Act. The rules adopted by the Department are intended to implement the law enacted by the Legislature in 1993. Thus, suggestions for changes in that law are beyond the purview of the Department.

(171) COMMENT: We would appreciate refinements to the definition of "public development." "Public development" includes a "public facility," but "public facility" is not defined. (158)

RESPONSE: The definition of "public development" contained in the regulations follows the language of CAFRA. A "public facility" includes, but is not limited to, structures such as a municipal building, a police station, a fire house, and a library.

(172) COMMENT: The definition of reconstruction should include minor deviations for public roadways where required to meet current design standards for safe highways. (144)

RESPONSE: The Department has not amended the definition as suggested. The legislative amendments contain an exemption for "services provided, within the existing public right-of-way, by any governmental agency." This exemption can be found at N.J.A.C. 7:7-2.1(c)6.

(173) COMMENT: The reference to fences should be completely deleted from the definition of "structures." Fences should be deemed exempt, particularly open fences on public facilities. (7)

(174) COMMENT: The proposed regulations include in the definition of "structures" any assembly of materials above, on or below land or water, thus requiring Department approval in all such cases, irrespective of the nature, extent or impact of the structure. (28, 83)

(175) COMMENT: Due to its use in conjunction with the new definition of "development," the definition of "structure" which includes "any assembly of materials above, on or below the surface of the land or water" (including fences) is far too inclusive. This definition could be interpreted in a way that would require permits at small commercial and public facilities for the installation of any of the similar structures listed at N.J.A.C.7:7-2.1(c)5i as exempt on private residences. (7)

RESPONSE TO COMMENTS (173) THROUGH (175) ABOVE: Any structure on a beach or dune is regulated. However, a CAFRA permit will not be required for the construction of structures, including fences, at existing commercial developments and public facilities which provide government services and are not specifically listed in the definition of public development or provide recreational areas unless the development is regulated by virtue of the number of parking spaces. The Department will only regulate development when the proposed construction contains additional parking spaces which will cause the modified development to meet or exceed the regulatory threshold. For example, a commercial facility with 30 existing spaces that has a planned expansion that will include 20 additional parking spaces will be regulated, but if the facility is adding a storage shed or 19 or fewer parking spaces, no permit will be needed. The rule has been amended upon adoption at N.J.A.C. 7:7-2.1(b)5v to clarify this. In addition, pursuant to N.J.A.C. 7:7-2.1(c)5ii, open fences may be constructed at residential development without a CAFRA permit, unless on a beach or dune.

(176) COMMENT: The new rules may be too restrictive and onerous in some cases. For example, a "CAFRA" permit is required for any "construction, relocation or enlargement of any building or structure..." We do not agree with the Department's attempt to extend jurisdiction over the installation of fences and other insignificant structures at industrial facilities. A strict interpretation of the definition of "structure" could require permits for gates or barriers across roads, gravel parking lots, driveway culverts over drainage ditches, and flood protection dikes. In fact, fences are not regulated by the Uniform Construction Code, N.J.A.C. 5:23. (158)

RESPONSE: The Department agrees that some of the activities listed by the commenter are minor activities, such as gates and barriers across roads, and will consider a Permit-By-Rule for such activities. In the future, the Department may determine that additional types of industrial development should qualify for a General Permit and may propose a General Permit for such development.

(177) COMMENT: The definitions are very vague and give the Department a greatly expanded and broad areas of authority. (128)

RESPONSE: The definitions contained in the Department's regulations follow the language of the Act. The rules proposed by the Department are intended to implement the law as enacted by the Legislature. The Department has clarified both the definitions of "development" and "reconstruction" on adoption to make it clearer that routine maintenance/repairs of existing structures, that are not associated with expansions, do not constitute regulated "development."

(178) COMMENT: We suggest the Department use the same definitions found in the Uniform Construction Code and coordinate with other State departments so that definitions are consistent with all State programs. (158)

RESPONSE: The majority of the new definitions contained in the regulations are taken directly from the 1993 legislative amendments to CAFRA. When a definition is provided in legislation, the Department lacks the authority to redefine the term, although it can clarify the definition if appropriate by providing more detail. Other definitions included in the regulations are intended to be consistent with the definitions in other Departmental programs. The Department will seek advice from the Department of Community Affairs which administers the Uniform Construction Code for any opportunities to provide more consistency between the definitions in the UCC and those used by the Department under the coastal environmental programs.

N.J.A.C. 7:7-1.5 Permits and permit conditions

(179) COMMENT: Applicants should be allowed to readily make minor changes to plans or specifications without obtaining written permission from the Department. Only major or substantial changes should require approval from the Department. (53, 73)

(180) COMMENT: The Department should eliminate the requirement that minor changes to a plan upon which a permit approval is based require written departmental permission. This requirement is unnecessary for such modifications. If the Department must keep track then a written notification, not subject to review, would be more in order. Written permission for major alterations may still be required. (43)

(181) COMMENT: The existing regulatory language at N.J.A.C. 7:7-1.5 should be retained. Minor changes in plans or specifications, such as interior layout or deck modifications, which have no environmental impact should be permitted without requiring the written authorization of the Department. Such a requirement will represent an unnecessary and time consuming burden for both the permittee and the Department. (110)

(182) COMMENT: Any change or revision, no matter how small, is under the Department's jurisdiction and requires approval in the form of a new permit application or a modification. The Department should acknowledge that CAFRA permits are construction permits and not operating permits. (109)

RESPONSE TO COMMENTS (179) THROUGH (182) ABOVE: After a careful review of a proposed project in which the Department examines the exact footprint, drainage, clearing, etc. for a proposed development, the Department approves a specific plan or plans. Therefore, any changes made to the plans, even if perceived to be minor by the applicant, may have adverse environmental impacts and require Departmental review. This change in the regulations reflects the current Department practice because every issued permit already contains this clause as a standard condition. Thus, the regulatory change will not impose a new requirement.

(183) COMMENT: The Soil Conservation Districts are the agencies responsible for review and enforcement of the Soil Erosion and Sediment Control Act. Including provisions for enforcement of this act in this regulation represents unnecessary and duplicative review by two different agencies. All references to including soil erosion and sediment control as part of CAFRA or other coastal permit should be stricken. This comment also applies to all other sections of this rule, including N.J.A.C. 7:7-4.2(a). (144)

RESPONSE: The Department has not amended the rule as suggested. The Department has traditionally reviewed soil erosion and sediment control plans as it reviews development applications since there are exemptions from the Soil Erosion and Sediment Control Act and the Department's review ensures consistency for all projects under its review. This is not a new requirement.

(184) COMMENT: A permit should not expire if construction is not completed within the initial five year period and if, before completion of the project, construction stops for a cumulative period of one year or longer. Although the enabling legislation provides for an exemption and addresses lapses in construction for more than one year, the term "cumulative" was clearly not used and purposely not included. (53, 73)

(185) COMMENT: The word "cumulative" should be revised to "consecutive" in N.J.A.C. 7:7-1.5. Normal interruption in construction for the winter and for adverse weather could add up to 12 months in a five year period and void the permit. In some cases, permits prevent construction during spawning months for anadromous fish. (144)

(186) COMMENT: The "grandfathering" provisions of the proposal at N.J.A.C. 7:7-1.5(d) cause difficulties. The rules allow five years for completion or a lapse of one year in construction to void the "grandfathered approvals." The inclusion of a cumulative one year lapse within the five year window clearly is outside the scope of the legislative authorization. The New Jersey Association of Realtors requests that the references to cumulative construction lapses be removed from the proposal. (43)

(187) COMMENT: The Department should reaffirm that permits last for five years or for the duration of ongoing construction activities. Beyond this timeframe, any construction activities proposed would be subject to the same jurisdiction and requirements as a new project. This would include thresholds, so that if an expansion or design change standing alone is not within the permit threshold requirements, than the change is not regulated. (109)

RESPONSE TO COMMENTS (184) THROUGH (187) ABOVE: N.J.A.C. 7:7-1.5(d) governs with the validity and duration of permits and permit conditions and is not a grandparenting provision. Pursuant to the rule, a permit is valid for an initial period of five years. Where construction commences within this five-year period, the permit, with the exception of permits issued for activities located below the mean high water line, shall be valid, as long as construction continues, upon written authorization of the Department. If construction continues beyond the five year period, and then, prior to completion of the project, stops for a cumulative period of one year or longer, the permit shall expire. The Department has amended N.J.A.C. 7:7-1.5(d)1 on adoption to be consistent with N.J.A.C. 7:1C-1.5(b) and to indicate that for projects of unusual size or scope or for projects which are delayed due to circumstances beyond the permittee's control, the Department may extend the permit for a total of 10 years from its original effective date if the applicant requests the extension before the original term of the permit expires. N.J.A.C. 7:7-1.5(d) specifies the duration of permits. The 1993 legislative amendments to CAFRA referenced by the commenters only address lapses in construction activity for exempt projects, not those with permit approval. The Department amended the section upon adoption to be consistent with N.J.A.C. 7:1C-1.5(b) and in specific response to Comment (185). In response to Comments (282) and (283), the Department has deleted the word "cumulative" in N.J.A.C. 7:7-2.1(c)1 and 2 in order to make the regulatory language match the langauge of the legislation.

(188) COMMENT: It is unnecessary for an applicant who wishes to continue construction beyond the expiration of a permit to request authorization from the Department no later than 20 business days prior to the expiration date of the permit. Such notice or request for authorization is unnecessary, especially if a project is under active construction. (53, 73)

RESPONSE: The Department disagrees with this comment. It is necessary for the Department to be aware of developments still under construction at the time of permit expiration. The Department does not require an applicant to reapply to continue its authorization. It simply requires a letter containing notification of the continuation so that the letter may be incorporated into the project file and that all Departmental personnel can be made aware that continued construction is authorized.

(189) COMMENT: The Department should include a provision that allows for waivers in certain cases, especially since the Department already provides for these in practice. (53)

RESPONSE: The Department interprets this comment to apply to the requirement that an applicant seeking to continue construction after a permit has expired must request authorization 20 days before the permit expires. The Department has not amended the rule as requested to waive the requirement for notice for the reasons explained in the Response to Comment (188) above. The rule simply requires a letter containing notification of the continuation so that the letter may be incorporated into the project file.

N.J.A.C. 7:7-1.7 Emergency permit authorization

(190) COMMENT: The proposed emergency permit authorization, which provides for the application for this permit by telephone when an imminent threat to lives, property or the environment exists, is strongly supported by the Cape May County Municipal Utilities Authority. (110)

RESPONSE: The Department acknowledges this comment in support of the proposal.

(191) COMMENT: This procedure should be expanded to require the Department to complete its inspection of the subject site within 24 hours of the telephone call requesting such emergency authorization. (110)

(192) COMMENT: The Department should be required to make a final determination on the issuance of an emergency permit authorization within 24 hours of completion of the site inspection. The expedient response of the Department is critical when dealing with an imminent threat to lives, property or the environment. (110)

RESPONSE TO COMMENTS (191) AND (192) ABOVE: Based on the nature and urgency of the situation, a site inspection may not be possible or necessary. The Department takes into account and seeks the opinions of municipal engineers and other appropriate individuals responsible for the operation of infrastructure when making a determination of imminent threat. Where the Department determines that there is an imminent threat, the Department will act as expeditiously as possible. Experience has shown that the Department has issued emergency permits within considerably less than 24 hours of a request.

(193) COMMENT: We recommend strengthening and clarifying when the Bureau of Coastal and Land Use Enforcement will inspect potentially hazardous sites (emergency situations) to determine if an emergency permit is necessary. "Whenever feasible" appears ambiguous and does not cover all instances in which an inspection should be conducted. (49)

RESPONSE: "Whenever feasible" refers to the nature of the situation as well as to other constraints on the Department. For example, a broken sewer line crossing a stream is a situation in which the Department would not conduct a site inspection.

(194) COMMENT: The regulations should be clear that approval for an emergency permit is based on the same standards as a regular permit; it is simply an expedited process. (49)

RESPONSE: The Department has amended the rules at N.J.A.C. 7:7-1.7(a)4 upon adoption to clarify that the application will be reviewed in accordance with the Rules on Coastal Zone Management, N.J.A.C. 7:7E.

(195) COMMENT: Standards to guide inspectors' decisions concerning emergency permit authorizations should be included or referenced. (49)

RESPONSE: The Department has not amended the rule as suggested because inspectors only evaluate the situation and do not issue the authorization of work. In addition, as stated above, N.J.A.C. 7:7-1.7(a)4 has been amended on adoption to provide that written applications will be reviewed based on the standards of N.J.A.C. 7:7E.

(196) COMMENT: Storms and other natural disasters have the ability to destroy or damage many of our facilities, especially overhead distribution and transmission lines. The proposed notifications and inspections by the Bureau of Coastal and Land Use Enforcement will result in lengthy delays in the issuance of an emergency permit. Such delays are unacceptable and will jeopardize the safety and health of the residents. This section should be revised to reflect that damage to existing electrical facilities may be repaired immediately with subsequent notification to the Bureau of Coastal and Land Use Enforcement. (17)

RESPONSE: The reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and federal law, is specifically exempted by the 1993 legislative amendments to CAFRA. Repairs necessitated by storms may therefore be conducted without applying for an emergency permit.

(197) COMMENT: The determinations of imminent threat for public infrastructure should include opinions of the engineers responsible for their operation. Notification within a specified period to the Department should be consistent with all other regulatory programs administered by the Department. In cases of non-public infrastructure, imminent threat determinations should be made by local health officers, police and fire department officials. There are circumstances that could occur that require expertise not normally found in the Land Use Regulation Program. (144)

RESPONSE: The Department does take into account and seek opinions from engineers and other appropriate individuals responsible for the operation of infrastructure when making a determination of imminent threat. This practice will continue.

(198) COMMENT: The proposed submission of a complete application under the Emergency Permit Authorization within 10 working days is not a sufficient amount of time to develop and produce site plans and detailed engineering documentation. Complex emergency applications such as bulkhead restoration or utility repairs require topographical and detailed engineering information in order to assess the impact on application Coastal Zone Management Policies. The time allowable for submittal of a complete application should be lengthened to a minimum of 30 working days after the job is complete. (158)

RESPONSE: The Department believes that 10 working days is a sufficient amount of time in which to submit an application following an emergency permit authorization. If an incomplete application is submitted due to the lack of time to prepare a complete one, the Department will allow for the submission of additional information.

(199) COMMENT: The Borough of Avalon has cooperated with the Department on prior beach maintenance but we should retain the right to decide on our own what emergency post storm restoration measures are necessary. The procedures for an emergency permit may force the communities to violate the law if the Act is to provide emergency protection without the adequate verbal or written permit. If it is the permit versus the public safety and the health and welfare of the Borough of Avalon, I intend to break the law and hold the effect of the permit. (128)

RESPONSE: The Department has adopted a General Permit for beach and dune maintenance activities. This General Permit will authorize routine and emergency activities on beaches and dunes, including dune creation projects, sand transfers using mechanical equipment, emergency post-storm beach and dune restoration activities, fencing, and the construction of beach accessways for five years provided they meet a set of Best Management Practices contained in N.J.A.C. 7:7E. In addition, the Department has adopted at N.J.A.C. 7:7-1.7, a procedure whereby an emergency permit authorization can be obtained when the Department determines there is an imminent threat to lives or property unless regulated construction activities are immediately commenced. Experience has shown that the Department has issued emergency permits within hours of such a request.

Subchapter 2. Activities for which a Permit is Required

N.J.A.C. 7:7-2.1 CAFRA

(200) COMMENT: The concept of basing review jurisdiction on distance from the mean high water line is a sensible way to address the 24 unit loophole. This section, by itself, is worth adopting. Unfortunately the Department complicates matters by placing it in with the rest of the proposed CAFRA changes. (18)

RESPONSE: The rules adopted by the Department are intended to implement the 1993 legislative amendments to CAFRA. It is the legislative amendments to CAFRA that establish the regulatory thresholds. As part of the current proposed rule changes to implement the legislative amendments to CAFRA, the Department also proposed to change a number of policies that seemed in need of revision, though not specifically because of the new legislative amendments. These proposed changes will help the current and new program run more efficiently. The Department considers it more efficient to propose necessary changes in one rule making process, rather than pursuing two efforts.

(201) COMMENT: The construction, relocation or enlargement of any building or structure on any beach/dune area should require a CAFRA permit. (110)

RESPONSE: The Department acknowledges this comment in support of the 1993 legislative amendments which provide the Department with the authority to regulate most activities on beaches and dunes.

(202) COMMENT: We have waited many years to have a home on Long Beach Island. Our intention is to retire there, and the prospect of being unable to do any repairs or reconstruction to our property is absolutely mind-boggling. (126)

(203) COMMENT: The individual, hard-working homeowner residing on the coast who is trying to raise a family and who will follow the rules now in place for minor upkeep, construction and alterations to his or her home should be considered. (1)

(204) COMMENT: The regulations have the potential to completely halt renovations of thousands of homes in lagoon communities. (32)

(205) COMMENT: The additional permitting requirements in the event that I want to remodel my home are objectionable. (190)

(206) COMMENT: My home on a lagoon was purchased with plans to remodel and expand it to accommodate my family. If CAFRA II goes into effect as it currently stands, my "American Dream" will seem more like a nightmare. My home needs work and we are willing and looking forward to doing it. We are being punished for wanting to have an attractive home at the shore. (68)

(207) COMMENT: The home we purchased is very small and needs considerable repairs. We had planned an addition within the next few years, turning our home into our "dream home." However, if CAFRA II goes into effect our "dream home" will turn into a nightmare. CAFRA II will prevent all new construction and upkeep on a home to maintain an attractive property or to make it energy efficient. (69)

(208) COMMENT: I oppose the new CAFRA regulations which would severely limit the ability of homeowners in the coastal area to maintain, modify or reconstruct their homes. (114)

(209) COMMENT: The CAFRA legislation might very well interfere with our "dream" house for retirement and enjoyment of the family. (165)

(210) COMMENT: From what I have been reading in recent weeks, the CAFRA amendments will not permit us to fulfill our dreams without an inordinate amount of permits and excessive costs, which would be a financial burden to us. (56)

(211) COMMENT: Single family dwellings and pertaining lots represent a private investment that is somebody's dream. The proposed CAFRA rules would prevent most from fulfilling their dream. If someone wants to build, renovate, tear down/re-build, it's better than a 50 percent probability that they will not be allowed to do so. (135)

(212) COMMENT: I have a 40 by 130 foot waterfront lot with a 50 year old cottage on it. Eventually I will want to either expand the cottage or tear it down and rebuild another house on the same property because it is very small. Now I can't expand my house or remove it and rebuild another without going through CAFRA. I think this is absolutely unacceptable. (151)

(213) COMMENT: I have a 40 by 130 foot property and a 600 square foot cottage. I want to retire here and build a house about 1400 square feet. It sounds like I'm not going to be able to do that without having a leaning Tower of Pisa, or something like that. (74)

(214) COMMENT: What can homes in lagoon communities do? How are you going to treat the couple who retires to a summer home and decides to put on an addition? (13)

(215) COMMENT: How do the regulations affect single family homeowners and their ability to make improvements to their residences? (116)

(216) COMMENT: The regulations affect every single homeowner within 150 feet of the water. Every single homeowner within 150 feet needs to come before the Department with a permit to be approved. (41)

RESPONSE TO COMMENTS (202) THROUGH (216) ABOVE: The 1993 legislative amendments to CAFRA and the Department's regulations do not require a person to obtain a CAFRA permit to conduct repairs or maintenance at his or her existing house. This means that a person can paint a house, change shutters, replace roofs, windows and siding without obtaining a CAFRA permit. The 1993 legislative amendments to CAFRA also exempt the construction of a patio, deck or similar structure at a residential development.

The Department has amended and clarified the rules at N.J.A.C. 7:7-2.1(c)5 upon adoption to specifically provide, in accordance with the legislative intent of the 1993 amendments to CAFRA that the construction of a patio, deck or similar structure at a residential development is exempt. For the purpose of this exemption, "similar structures" are porches, balconies and verandas. The Department's adopted rules further provide that the following structures and activities will also be exempt at a residential development, provided that they do not include the placement of pilings or placement of a structure on a beach or dune: open fences, open carports, flower boxes, gardens, gazebos, satellite dishes and antennas, sheds, wooden boardwalks and gravel or brick/paver block walkways, showers/spa/hot tubs which do not discharge to surface waters or wetlands. The construction of timber dune walkover structures constructed in accordance with Department specifications found at N.J.A.C.7E, Rules on Coastal Zone Management will also be allowed at a residential development.

In addition, the Department has adopted two Permits-By-Rule that allow for the expansion of a legally constructed, habitable single family

or duplex dwelling. One of which will allow the expansion of a legally constructed, habitable single family or duplex dwelling on a bulkheaded lagoon lot, provided that the expansion does not exceed a cumulative surface area of 400 square feet, the expansion is not proposed on a wetland, and the expansion is set back a minimum of 15 feet from the waterway face of the bulkhead. The Department has also adopted a General Permit for the voluntary reconstruction (that is, tearing down and replacing) of an undamaged home. A General Permit involves a simpler application process, fewer requirements, and a smaller fee than an individual permit. These provisions are intended to ease the regulatory burden on single family homeowners.

(217) COMMENT: All of our mortgages, debts, etc, are paid off with hopes of building on our property, as this was our plan for retirement. We feel that the new CAFRA regulations will affect us in a very negative way. (42)

RESPONSE: The 1993 legislative amendments to CAFRA and the Department's regulations do not prohibit development, rather they regulate it. The Department has included a number of provisions aimed at reducing the regulatory burden on the single-family homeowner as mentioned above, and will consider further steps in the future for small business owners.

(218) COMMENT: All single family homes should be exempt from CAFRA. (135, 174)

RESPONSE: These regulations are intended to implement CAFRA as enacted by the Legislature. When it amended CAFRA in 1993, the Legislature determined that specified development, including single family homes, should be regulated by the Department. Any requests for revisions to CAFRA are beyond the purview of the Department. As previously mentioned, it should be noted that the Department has adopted a number of provisions aimed at reducing the regulatory burden on the single family homeowner.

(219) COMMENT: Certainly we don't want people building homes on the dunes or beaches, but there are many homes that currently exist within 150 feet of the mean high water line. (88)

RESPONSE: The 1993 legislative amendments and these regulatory amendments to CAFRA will not significantly impact people who now live at the shore or now own houses at the shore. If there is another house closer to the water, or if a house is more than 150 feet inland from the mean high water lime or landward limit of the beach or dune, the property is exempt from CAFRA, unless the owner decides to build three or more houses on the land. Moreover, if property lies within the 150 foot area, there are a number of things that the owner can do on it without Departmental approval, such as maintenance and repairs, expansions that do not expand the footprint of the structure, and construction of a patio or deck. If a house is the first house in from the water and is within 150 feet of the mean high water line or inland limit of a beach or dune, CAFRA approval is needed in two circumstances, namely if an addition to the house is proposed or the owner wants to tear down the house and build a new one.

(220) COMMENT: The red tape and expense involved for single-family homeowners to gain permission just to add landscaping sounds like a bureaucratic nightmare with little positive impact on the environment. (12)

RESPONSE: The Department's proposed and adopted regulations do not regulate the type of plantings at existing single-family homes. However, new developments of three or more dwelling units will be limited in the type of species that can be planted at the time of initial construction under their CAFRA permits. This will be done to ensure that the plants will thrive and to avoid the need for fertilizer, pesticides and irrigation, which can affect the quality and supply of groundwater and surface water. The regulations apply only to plantings at the initial time of construction as a means of encouraging the use of suitable plantings to the maximum extent possible. Nothing in the regulations will prevent any homeowner from subsequently adding the plant species of their choice at a later date.

(221) COMMENT: The red tape and expense involved for single-family homeowners to gain permission just to hook up a telephone or TV cable sounds like a bureaucratic nightmare with little positive impact on the environment. (12)

RESPONSE: The Department does not regulate an individual homeowner's hook up to a telephone or TV cable. The Department has added N.J.A.C. 7:7-2.1(b)2iii on adoption to clarify this.

(222) COMMENT: To prevent homeowners from rebuilding or reconstructing their home or landscaping their property and to prevent the local township and county from replacing or building sewer lines, utilities, etc. is a violation of private ownership and unconstitutional. (126)

RESPONSE: The 1993 legislative amendments to CAFRA and the Department's regulations do not prevent any of the activities listed by the commenter. Homeowners are not prohibited from rebuilding their homes. Repairs and maintenance may be conducted without a CAFRA permit. Reconstruction of structures damaged by fire, storm, natural hazard or act of God are exempt from CAFRA. In addition, the Department has adopted a General Permit for the voluntary reconstruction of a non-damaged structure.

As stated above, the Department's proposed and adopted regulations do not regulate the type of plantings at existing single-family homes. New developments of three or more dwelling units will be limited in the type of species that can be planted at the time of initial construction under their CAFRA permits. This will be done to ensure that the plants will thrive and to avoid the need for fertilizer, pesticides and irrigation, which can affect the quality and supply of groundwater and surface water. The regulations apply only to plantings at the time of initial construction as a means of encouraging the use of suitable plantings to the maximum extent possible. Nothing in the regulations will prevent any homeowner from subsequently adding non-approved plant species at a later date.

Last, townships and counties are not prohibited from replacing or building sewer lines. N.J.A.C. 7:7-2.1(b)1 applies to development beyond 150 feet from the mean high water line or inland limit of a beach or dune and excludes from regulation the construction of a new road, sanitary sewer pipeline, storm sewer system, petroleum pipeline or natural gas pipeline of less than 1,200 feet in length or the extension of a road, sanitary sewer pipeline, storm sewer system, petroleum pipeline or natural gas pipeline of less than 1,200 feet in length, not to exceed a cumulative total of 1,200 feet in any one municipality at any one site, unless the construction is located within a development requiring a CAFRA permit in which case it shall be considered part of the development for which a permit is required; the maintenance, repair or replacement of existing water, petroleum, sewage or natural gas pipelines, and associated pump stations and connection junctions, located completely within paved roadways or paved, gravel, or cleared and maintained rights-of way, provided that the replacement of sewage pipelines and associated pump stations does not result in an increase in the associated sewer service area; the repair, modification, or replacement of sanitary system components, including upgrading of systems from primary to secondary treatment, provided that an increase in design effluent flow will not result; and the construction, maintenance, repair or replacement of water lines, telecommunication lines and cable television lines.

The Department's proposed regulations excluded the routine maintenance, repair and replacement of public infrastructure beyond 150 feet from the mean high water line from the definition of "public development" and thus allowed those activities to occur without a CAFRA permit. However, the proposed rules inadvertently failed to exclude those activities from the definition if they occurred within 150 feet from the mean high water line or the landward limit of a beach or dune. The Department is therefore clarifying the rules at N.J.A.C. 7:7-2.1(b)2 upon adoption to specify that those maintenance, repair and replacement activities within this area are also not considered "public development" subject to regulation under CAFRA. This clarifying amendment further specifies that maintenance, repair, replacement or connection of telecommunication lines and cable television lines likewise do not constitute "public development" and thus are also not regulated under CAFRA.

"Development" that is regulated under the CAFRA amendments and rules is defined as the construction, relocation or enlargement of any building or structure, including all site preparation. Thus, repairs of existing structures that are not associated with enlargements do not constitute regulated "development." Moreover, these activities have minimal environmental impacts. By specifically excluding these maintenance and repair activities from the definition of "public development," the clarifying amendments should eliminate previous confusion in this area.

(223) COMMENT: N.J.A.C. 7:7-2.1(a)2 requires a CAFRA permit for any minor and routine roadway project within 150 feet of the mean high water line regardless of whether or not it already requires a waterfront development permit. This rule conflicts with the intention of other rules specifically intended to minimize unnecessary regulation of minor and routine transportation construction. (173)

RESPONSE: The language at N.J.A.C. 7:7-2.1(a)2 follows the statutory language which establishes the Department's regulatory authority. Activities located within the CAFRA zone landward of the mean high water line will no longer be regulated under the Waterfront Development Act as of July 19, 1994 as a result of the 1993 legislative amendments to CAFRA. The provision at N.J.A.C. 7:7-2.1(a)2 does not conflict with the exemption provision of the law concerning transportation projects which can be found in the regulations at N.J.A.C. 7:7-2.1(c)6.

(224) COMMENT: We are concerned about whether we will be permitted to make changes in the future, replace plantings that may die or require modification, change a driveway location, raise our home to a piling height, etc. These are some of our concerns, and we only live in the center of our barrier island, not a waterfront home. (170)

RESPONSE: The 1993 legislative amendments to CAFRA and these regulatory amendments will have very little impact on people who now live at the shore or now own houses at the shore. If there is another house closer to the water, or if a house is more than 150 feet inland from the mean high water lime or landward limit of the beach or dune, the property is exempt from CAFRA, unless the owner decides to build three or more houses on the land. Moreover, if property lies within the 150 foot area, many things can be done without CAFRA approval. If your house is the first house in from the water and it is within 150 feet of the mean high water line or inland limit of a beach or dune, CAFRA approval is needed in two circumstances: if you wish to add an addition to your house or if you want to tear down your house and build a new one.

As stated above, the Department's proposed and adopted regulations do not regulate the type of plantings at existing single-family homes. However, new developments of three or more dwelling units will be limited in the type of species that can be planted at the time of initial construction under their CAFRA permits. This will be done toe ensure that the plants will thrive and to avoid the need for fertilizer, pesticides and irrigation, which can affect the quality and supply of groundwater and surface water. The regulations apply only to plantings at the time of initial construction as a means of encouraging the use of suitable plantings to the maximum extent possible. Nothing in the regulations will prevent any homeowner from subsequently adding non-approved plant species at a later date.

(225) COMMENT: The construction of a seasonal or temporary structure related to the tourism industry, such as a lifeguard facility or public restrooms adjacent to a beach or waterfront park should not, but would under the proposed regulation, require a CAFRA permit. Such over regulation will result in the needless expenditure of taxpayer funds and will also deter the development of non-residential public services which are essential to Cape May County's tourism based economy. This requirement, as currently proposed, is unnecessarily burdensome and will cause undue financial hardship to Cape May County residents while providing little, if any, protection to the coastal area it seeks to preserve. (110)

RESPONSE: The Department has amended the definition of such seasonal structures upon adoption to clarify that seasonal and temporary structures related to the tourism industry may be placed on a beach or dune provided that such placement does not involve the excavation, grading or filling of the beach or dune. This will exclude such temporary structures from permitting requirements but will not exempt structures such as public restrooms, which will need a permit to determine the feasible location and design with least environmental impact.

(226) COMMENT: The "150 foot rule" should be clarified. If a person's building lot is 100 feet from the back of a dune, but there is an intervening road between the dune and the lot, is the lot the "first use?" (10)

RESPONSE: The Department's definition of "intervening development" which can be found at N.J.A.C. 7:7-1.3 specifies the types of development which qualify as a first use. A road does not meet the definition because it is not "an above ground structure, excluding any shore protection structure or sand fencing." The Department has clarified the definition upon adoption to specifically exclude "roadways" from the definition since roads are not considered to be substantial aboveground structures.

(227) COMMENT: A permit should not be required for the "first" landward structure if the development is compatible, that is, similar in use and type, to existing adjacent development. For example, the construction of a single family home or duplex on a bulkheaded bayfront lot directly adjacent to an existing duplex should be considered compatible "infill" development and therefore should not require a CAFRA permit. The construction of a triplex or commercial establishment on this same lot would require a CAFRA permit. (110)

(228) COMMENT: A permit should not be required for subsequent landward structures if the development is compatible, that is, similar in use and type, to existing adjacent development. For example, the construction of a triplex or quadraplex residence on a second lot back from the beach or bulkhead should be allowable if a quadraplex exists on the seaward beachfront lot or the adjacent bulkheaded lot. The proposed requirement is unreasonable and will result in an economic burden to Cape May County property owners while providing insignificant, if any, protection to the coastal area it seeks to preserve. A more appropriate regulatory limit for requiring a CAFRA permit would be residential development with 5 or more dwelling units within this zone. (110)

(229) COMMENT: A permit should not be required for subsequent commercial or public landward structures if the development is compatible, that is, similar in use and type, to existing adjacent development. For example, the construction of a restaurant (commercial development) either adjacent to or as a component of, an existing marina which has access to sewerage service should not require a CAFRA permit. The adverse environmental impacts to such an area would be few while the economic and tourism related benefits are great. The permit requirement for industrial development within this zone is inappropriate. (110)

RESPONSE TO COMMENTS (227) THROUGH (229) ABOVE: The rules adopted by the Department are intended to implement the law enacted by the Legislature in 1993. The factors mentioned in the comments would be taken into account in the Department's decision of whether to approve particular permit applications. However, to exempt these types of development would require a change in the law which is beyond the purview of the Department. The regulations found at N.J.A.C. 7:7-2.1(a) implement the regulatory thresholds contained in P.L. 1993, Chapter 190, Section 5.

(230) COMMENT: The proposed CAFRA permit requirement for all solid waste facilities, wastewater treatment plants or sanitary sewerage pipelines within the entire CAFRA zone represents overregulation. Solid waste and wastewater treatment facilities/pipelines are currently required to obtain NJDEPE permits from the Department's Division of Solid Waste Management and Division of Water Quality, respectively, prior to their operation. The addition of a CAFRA permit will result in the needless expenditure of public funds and duplicate efforts within the Department since environmental impact assessments for wastewater trust and solid waste projects are already required. CAFRA participation as part of an on-going review process led by one of the above-noted agencies would be less confusing, less time consuming and less costly for the applicants, many of whom are public agencies. (110)

RESPONSE: Solid waste facilities, wastewater treatment plants or sanitary sewerage pipelines have been regulated since enactment of the original CAFRA law passed by the Legislature in 1973. The CAFRA review addresses site-specific impacts as well as the secondary impacts of the construction of the facility which are not addressed by the other programs mentioned, and does not address operation and design. The rules adopted by the Department are intended to implement the law enacted by the Legislature in 1993. The definition of "public development" contained in the regulations is the same definition that is contained in the 1993 legislative amendments.

(231) COMMENT: Regulations on development beyond 150 feet landward of a high water line or dune should take into consideration whether that land is at water level or considerably above when determining review requirements. (164, 181)

RESPONSE: The jurisdiction and regulatory thresholds contained in the rules reflect the 1993 legislative amendments to CAFRA. However, if development is regulated under these amendments, site topography is a factor considered in determining whether development should be approved.

(232) COMMENT: Additional zones of diminishing regulatory requirements should be created. It is unreasonable to subject development thousands of feet or more landward of the coast to the same review as development within 150 feet of the coast. (176)

RESPONSE: The jurisdiction and regulatory thresholds contained in the rules reflect the 1993 legislative amendments to CAFRA.

(233) COMMENT: The complexity of the program rules will require municipalities and authorities to retain professional services and will also delay any projects because of the application process. (164, 181)

RESPONSE: Department staff routinely assist the public in the regulatory process and will continue to do so after the rules are in effect. In addition, the Department encourages people with questions about a specific site and building project they are considering to request a pre-application review. This review includes discussions with Department staff on the apparent strengths and weaknesses of a proposed development, as well as discussion of the procedures and policies that will apply to a particular development. The pre-application review is described at N.J.A.C. 7:7-3.

(234)COMMENT: It is important that the 500 foot 75 unit threshold applies to Atlantic City. Under the "qualifying municipality" criteria (urban aid) it does not, but it qualifies as a fourth class city with a population greater than 30,000. (18)

RESPONSE: Under the 1993 legislative amendments to CAFRA, this threshold does apply to CAFRA. The law contains different regulatory thresholds for developments located in the CAFRA area beyond 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, and which are located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L. 1978, c.14 (N.J.S.A. 52:27D-178), or which are located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census. At this time, Atlantic City is the only municipality qualifying under the second criteria.

(235)COMMENT: The 500 foot threshold should be consistent with the urban centers proposed in the planning policies for CAFRA. (18)

RESPONSE: The 1993 legislative amendments to CAFRA contain different regulatory thresholds for developments located in the CAFRA area beyond 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, and which are located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L. 1978, c.14 (N.J.S.A. 52:27D-178), or which are located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census. The Department does not have the authority to extend this regulatory threshold beyond those municipalities meeting the specified criteria. The municipalities meeting the definitions in 1993 are: Asbury Park, Bridgeton, Keansburg, Lakewood, Long Branch, Millville, Neptune, Pleasantville, Salem City, and Atlantic City. The planning policies of CAFRA are the subject of a public discussion document that was published in the February 22, 1994 New Jersey Register, and will be the subject of a subsequent rule proposal.

(236) COMMENT: The Sierra Club strongly supports the Department's interpretation of its obligations as described in N.J.A.C. 7:7-2.1(b). The policy objectives outlined in CAFRA, as well as the nature of the impacts and activities which the Department must control to achieve those objectives require that sites be controlled in their entity, for example, stormwater control—the Department cannot effectively manage stormwater if it only has jurisdiction over part of the site. Prohibiting segmentation of projects which are functionally connected for the purposes of review is a well established standard which the Department should apply to the implementation of CAFRA. (45)

RESPONSE: The Department acknowledges this comment in support of its proposed amendments.

(237) COMMENT: The Department should not review an entire development if only a portion of that development is located within the CAFRA review zone. The Department should limit its jurisdiction only to those portions of a development that fall within the CAFRA review zones. (53)

(238) COMMENT: The proposal attempts to bring large areas into the CAFRA zone if a portion of the project falls within the zone. The Department is exceeding its authority by attempting to extend jurisdiction to these projects. While we would concede that projects which largely (a majority of the development area) fall in the zone should be subject to review, the New Jersey Association of Realtors opposes the inclusion of non-zone areas for portions of a project beyond the delineated line. (43)

(239) COMMENT: A CAFRA permit should be required only for areas specifically within CAFRA jurisdiction and not reach out to all components of a development if only part of the development falls within the area for which a CAFRA permit is required. (132)

(240) COMMENT: CAFRA jurisdiction is set by the Legislature and cannot be extended by administrative regulation. (77, 82)

(241) COMMENT: How will the Department deal with development when a part of it is exempt from CAFRA review? (77, 82)

(242) COMMENT: In those instances where only a small portion of a development with relatively minor impacts triggers the regulatory threshold of CAFRA, some type of relief should be provided with regard to the onerous plan submission and review requirements. (110)

RESPONSE TO COMMENTS (237) THROUGH (242) ABOVE: The Department will review all of the components of a development that spans the regulatory zones if the total development exceeds a regulatory threshold. The Department will not segment projects and review only the part that triggered the regulatory threshold. The Department is not attempting to extend its jurisdiction into other areas through this process. Prohibiting segmentation of projects which are functionally connected will ensure that all impacts of a proposed development are assessed. Given the nature of the impacts and activities which the Department regulates, sites that trigger a regulatory threshold must looked at in their entirety. For example, the Department cannot effectively manage stormwater if it only has jurisdiction over part of the site.

(243) COMMENT: How will the Department deal with a project which is partly in the Pinelands Area subject to Pinelands Commission review? (77, 82)

RESPONSE: The Department will not review projects which are subject to Pinelands Commission review, unless the proposed development crosses the boundary line of Pinelands Commission and CAFRA jurisdiction. The Department has a Memorandum of Agreement with the Pinelands Commission to ensure coordination of the reviews of such applications.

(244) COMMENT: Words appear to be missing from N.J.A.C. 7:7-2.1(a)5. (158)

RESPONSE: Words are not missing from this section. It is a continuation of the section preceding it (N.J.A.C. 7:7-2.1(a)) and must be read as such.

(245) COMMENT: The Mayor and governing body of Lavallette have been advised by licensed professionals that the municipality could either be prohibited from performing many essential and routine maintenance services on infrastructure, or that to repair, replace or upgrade infrastructure in areas of the municipality affected by the regulations, the municipality could be tied up by the necessity to obtain a full-blown CAFRA permit. (161)

(246) COMMENT: The regulations have the potential to prohibit municipalities in the beach/dune area plus 150 feet from the maintenance, repair and replacement of public infrastructure systems. (32)

(247) COMMENT: Are permits needed for the replacement of water and sewer lines? (13)

(248) COMMENT: The rules require a CAFRA permit within the 150 foot area for all public development regardless of size or length including construction, reconstruction, repair and/or maintenance of sanitary sewers, water mains, petroleum and natural gas pipelines, pump stations, telecommunication lines, and cable television lines. (75)

(249) COMMENT: The issue of need a permit to hook up cable television and telecommunication lines within the first 150 feet needs to be addressed. (76)

(250) COMMENT: Even the installation or repair of a telephone line or a cable television service could trigger a CAFRA permit if the Department bureaucracy should decide on any given day, at any point in time to implement these onerous rules to their greatest extent. (32)

(251) COMMENT: These rules will cost local taxpayers untold thousands of dollars for professional fees and application costs for CAFRA permits for the construction, maintenance, repair or replacement of public infrastructure. (32)

RESPONSE TO COMMENTS (245) THROUGH (251) ABOVE: The Department's proposed regulations at N.J.A.C. 7:7-2.1(b)1 excluded the routine maintenance, repair and replacement of public infrastructure beyond 150 feet from the mean high water line from the definition of "public development" and thus allowed those activities to occur without a CAFRA permit. However, the proposed rules inadvertently failed to exclude those activities from the definition if they occurred within 150 feet from the mean high water line or the landward limit of a beach or dune. The Department is therefore clarifying the rules at N.J.A.C. 7:7-2.1(b)2 upon adoption to specify that those maintenance, repair and replacement activities within this area are also not considered "public development" subject to regulation under CAFRA. This clarifying amendment further specifies that maintenance, repair, replacement or

connection of telecommunication lines and cable television lines likewise do not constitute "public development" and thus are also not regulated under CAFRA.

"Development" that is regulated under the CAFRA amendments and rules is defined as the construction, relocation or enlargement of any building or structure, including all site preparation. Thus, repairs of existing structures that are not associated with enlargements do not constitute regulated "development." Moreover, these activities have minimal environmental impacts. By specifically excluding these maintenance and repair activities from the definition of "public development," the clarifying amendments should eliminate previous confusion in this area.

(252) COMMENT: The Department should clarify that the 1200 foot threshold for utility lines (public development) is not to be measured as an aggregate of both on-site and off-site lines. For example, utility lines of less than 1200 feet, by themselves, would not trigger the need for a CAFRA permit. (53)

(253) COMMENT: The Department should clarify that "minor extensions of utility lines" do not fall under the Department's jurisdiction and do not trigger the need for a CAFRA permit. For example, the extension of utility lines (for example, sewer, gas, etc.) involving lines that are located on site of either a CAFRA-exempt project or an already CAFRA-permitted project would not be regulated, regardless of the length of the utility line. Once, however, the length of the line that is located off-site of the project exceeds 1,200 feet, a permit would be required. This figure of 1,200 feet is not to be measured as an aggregate of both on-site and off-site lines. (53)

RESPONSE TO COMMENTS (252) AND (253) ABOVE: The Department agrees that utility lines of less than 1,200 feet, by themselves, do not require a CAFRA permit, unless they are part of a larger development that requires a CAFRA permit. However, the Department disagrees that the 1,200 feet should not be measured as an aggregate of both on-site and off-site lines because there is a potential for adverse environmental impacts and secondary effects whenever 1,200 feet is exceeded.

(254) COMMENT: N.J.A.C. 7:7-2.1(b)1ii exempts sanitary sewer main reconstruction from CAFRA permitting and will expedite the replacement of leaking sanitary sewers within the coastal zone. This will allow the operating agencies to perform needed replacement projects that will result in the protection of the environment at a reduced cost. (52)

RESPONSE: The Department acknowledges this comment in support of its proposal.

(255) COMMENT: The only nice thing I find in the rules is that N.J.A.C. 7:7-2.1(b) has been eliminated, which means reconstruction of existing sewer maintenance will be permitted without a CAFRA permit. (72)

RESPONSE: While the Department has not eliminated this section as stated by the commenter, the maintenance, repair or replacement of sewerage pipelines does not require a CAFRA permit provided that the replacement of sewerage pipelines and associated pump stations does not result in an increase in associated sewer service area.

(256) COMMENT: It is of greatest importance that the final structure of these rules does not delay any projects which are deigned to improve the public safety and health of the residents of the state. (116)

RESPONSE: The maintenance and repair of existing infrastructure is allowed in accordance with the rules at N.J.A.C. 7:7-2.1(b)1 and 2 without the need to obtain a CAFRA approval. The regulations contain an exemption for certain safety improvements on public highways. This exemption can be found at N.J.A.C. 7:7-2.1(c)6. Last, the Department has adopted a procedure through which an emergency permit can be obtained in situations where there is an imminent threat to lives and property if construction activities are not immediately commenced.

(257) COMMENT: The rules limit the exemption for repair and reconstruction of pipelines and pump stations to those within the rights-of-way. Sewer mains and other pipelines are also located within easements and pump stations are often located on lots or portions of lots identified by easements. The inclusion of an exemption for the repair of pump stations and pipelines located within easements and on lots is recommended. (52)

RESPONSE: The statute provides an exemption for services by a government entity within an existing right-of-way. Expanding the exemption to cover services within an easement or lot and not within a right-of-way would not be consistent with the statute, and such projects could have negative impacts on coastal resources if not sited and designed appropriately.

(258) COMMENT: The Department should exempt utility lines and substations from the need to obtain CAFRA permits. (17)

(259) COMMENT: Electric lines are not included in the public development exclusions section found on page 26 N.J.R. 927 (Tuesday, February 22, 1994). The omission should be resolved by adding "the construction, maintenance, repair or replacement of electric lines and associated substations" to the public development exclusion found at N.J.A.C. 7:7-2.1(b)1. This will put all utility systems at the same level of exclusion in the public development section of the proposed regulations. (57)

RESPONSE TO COMMENTS (258) AND (250) ABOVE: The definition of "public development" contained in the 1993 legislative amendments to CAFRA excludes electric power lines from regulation. The Department has clarified the regulations at N.J.A.C. 7:7-2.1(b)1 and 2 upon adoption to specify that the maintenance, repair or replacement of substations associated with electric lines are not regulated under CAFRA. However, the construction of new substations would be regulated.

(260) COMMENT: N.J.A.C. 7:7-2.1(b)2 states that public facilities which provide government services or provide recreational areas and are not specifically listed in the definition of public development at N.J.A.C. 7:7-1.3 and are not proposed on a beach or dune will be regulated in accordance with the thresholds for commercial development. This was not mandated by the 1993 CAFRA amendments. The development of public facilities does not deserve the level of State scrutiny that commercial development does and should be deleted. (7)

RESPONSE: The Department has not deleted this section as suggested. The legislation provides that these activities be regulated, and the Department proposed this section of the rules to provide these types of public development with a lesser review than that established in the 1993 legislative amendments to CAFRA, which provide for State review of any public development. Deletion of this section would subject these public facilities to a stricter review than commercial developments. The provision is consistent with the Assembly Environment Committee Statement to Senate Committee Substitute for Senate No. 1475, dated June 17, 1993.

(261) COMMENT: Outdoor public recreational areas should not be regulated under the thresholds for commercial developments. (18)

RESPONSE: The Department proposed this section in order to provide these types of public development with a lesser review than that established in the 1993 legislative amendments to CAFRA, which provides for State review of any public development. Deletion of this section would subject these facilities to a stricter review than commercial developments. The provision is consistent with the Assembly Environment Committee Statement to Senate Committee Substitute for Senate No. 1475, dated June 17, 1993. The 1993 legislative amendments to CAFRA do not contain a statutory exemption for public recreation, ocean space and park projects.

(262) COMMENT: The Department should acknowledge that public recreational projects provide a public benefit in recreation and environmental protection. The Department should acknowledge that the agencies administering them are well qualified to design and operate them, and they should be exempt from permitting requirements. (109)

(263) COMMENT: Open space and parks should be given a preferential status similar to the exemption for seasonal or temporary structures related to the tourism industry. (18)

RESPONSE TO COMMENTS (262) AND (263) ABOVE: The 1993 legislative amendments to CAFRA specifically exempt the construction of a "seasonal or temporary structure related to the tourism industry." The legislative amendments do not provide a similar exemption for open space and parks. The Department plans, however, to consider proposal of a General Permit or Permit-By-Rule to include park and open space expansions.

(264) COMMENT: The rules should allow for non-intrusive park development without cumbersome steps. In general, we believe that truly public park facilities—Federal, State, or municipal—should be encouraged along the coast, and that such development can be encouraged with little or no environmental impact. For example, while the construction of parking facilities in a proposed shorefront park demands tight regulation, the procedures for allowing the addition of split rail fencing around such a facility need not be as stringent. (10)

(265) COMMENT: Because of the broad definitions of "development" and "structure," the treatment of all development beyond the 150 foot land mark, the high water mark or dune line, and the unreasonable review of development thousands of feet from the coastal zone at the same level as review of development that is within 150 feet, the rules will inevitably and cumulatively serve to discourage public recreation in the coastal area. (128, 176)

(266) COMMENT: A different test of development impact for triggering regulation is needed for park activities. Building size or area of disturbance might be a fairer test of the likelihood of environmental impact. If, as proposed, parking is to be used as a measure of development impact, it should be based on new parking only. Site improvements which require little or no additional parking should not be automatically and universally presumed to have a potential adverse environmental impact. (176)

RESPONSE TO COMMENTS (264) THROUGH (266) ABOVE: The Department has clarified the rules at N.J.A.C. 7:7-2.1(b)5v upon adoption to indicate that minor activities undertaken at a park facility are not regulated, unless the parking space/area threshold is to be exceeded by the addition of new parking. The Department will only regulate development when the proposed construction contains additional parking spaces which will cause the modified development to meet or exceed the regulatory threshold.

(267) COMMENT: What possible adverse environmental impact is being avoided that would justify subjecting such simple projects as posting rail fence or snow fence to prevent people from encroaching into environmentally sensitive areas, or placement of playground equipment one mile from the coastal zone? (128, 176)

(268) COMMENT: If the Parks System wanted to construct a $100 feet of fencing at Huber Wood Park, it would cost a little over $100.00 for the material and installation, plus $4,000 for a DEPE permit plus engineering fees for the "development" plans, plus a hearing, plus a 30 day comment period, and finally a decision by the Department could be expected within 60 days. This is bureaucracy gone mad. (105)

RESPONSE TO COMMENTS (267) AND (268) ABOVE: The Department only regulates the construction of a fence, by itself, when it is located on a beach or dune. The Parks System would be able to apply for the General Permit for beach and dune maintenance which is good for five years with an application fee of $250.00. If the fence is to be constructed at a park facility located landward of the mean high water line or landward limit of a beach or dune, the fence would not be regulated unless it was accompanied by the construction of new parking spaces/area.

(269) COMMENT: Governmental agencies are not exempt. This is unnecessary, expensive, and conflicts with the intent of this and other enabling legislation. Projects for the Department's Divisions of Parks and Forestry and Fish, Game and Wildlife, as well as municipal and county parks and other recreational or interpretive environmental uses, should be exempt. (109)

(270) COMMENT: The proposed regulations subject public recreation projects with minimal environmental impact to the time and expense required for permit review. (28, 83)

RESPONSE TO COMMENTS (269) AND (270) ABOVE: The 1993 legislative amendments to CAFRA did not contain a statutory exemption for government agencies or for public recreation, ocean space and park projects. The Department's adopted regulations contain a provision at N.J.A.C. 7:7-2.1(b)2 to provide these types of projects with a more lenient regulatory threshold than for other public developments.

(271) COMMENT: The proposed regulations negatively and unreasonably impact potentially beneficial public projects in Monmouth County by needlessly imposing parking, buffering and other permitting requirements where the environmental impact would be negligible at best. (28, 83)

(272) COMMENT: The Cape May County Park Commission feels strongly that the proposed rules will have a negative impact on the municipal and county recreational projects in the coastal area. (128)

RESPONSE TO COMMENTS (271) AND (272) ABOVE: The CAFRA legislation establishes regulatory jurisdiction, not the Department's regulations. As indicated previously, the Department has clarified the regulations on adoption to indicate that minor activities undertaken at a park facility are not regulated, unless the parking space/area threshold is to be exceeded by the addition of new parking. The Department is considering proposing further amendments, which may contain general permit authorizations for certain public projects.

(273) COMMENT: If a building permit has been obtained prior to July 19, 1994, what process will be required to obtain a permit? (94)

RESPONSE: A development with a valid building permit issued prior to July 19, 1994 is automatically exempt from CAFRA unless it would have required a CAFRA permit prior to the legislative amendments.

(274) COMMENT: There are many questions regarding properties subdivided prior to the effective date of the Municipal Land Use Law. If those projects do not receive a building permit prior to July 19, 1994 and don't then start construction within three years, does that property become a non-buildable lot? If buildable lots within the Township of Dennis become non-buildable lots the Township is concerned about the effect of lost ratables. (94)

(275) COMMENT: If you have an existing single family lot, will that lot require a permit after July 19th? If that lot is re-subdivided, will a permit be required? Will a bayfront lot in Ocean City that was not subdivided after the Municipal Land Use Law came into effect need a CAFRA permit? (31)

RESPONSE TO COMMENTS (274) AND (275) ABOVE: The 1993 legislative amendments to CAFRA contain specific exemption provisions for those projects which received preliminary site plan approval pursuant to the Municipal Land Use Law or preliminary subdivision approval or minor subdivision approval, where no subsequent site plan approval is required, provided that construction begins within three years of the effective date of the CAFRA amendments (July 19, 1997) and continues to completion with no lapses in construction activity of more than one year. These provisions do not apply to any development that required a CAFRA permit prior to the legislative amendments. If a proposed development has not obtained these approvals prior to July 19, 1994, or started construction by July 19, 1997, the proposal will be regulated and be required to comply with the Coastal Permit Program Rules, N.J.A.C. 7:7, and the Rules on Coastal Zone Management, N.J.A.C. 7:7E. This does not mean that the property will become a "non-buildable lot," but that development of the property will be subject to the standards of N.J.A.C. 7:7E.

(276) COMMENT: The Department should interpret the exemption for developments which have received preliminary site plan approval as including those developments which have received capital project review. The Municipal Land Use Law exempts public projects from site plan approval; public projects instead must undergo capital project review by the municipal planning board. The Department should recognize capital project review as the public project equivalent of site plan approval and accept the official record of this review as evidence that the project is eligible for exemption. Public agencies do receive municipal building permits. A strict interpretation of this exemption, which would entitle building construction to proceed but require CAFRA review and permits for the associated improvements, would be irrational. (50, 55, 176)

RESPONSE: The Department has followed the plain language of the Act and lacks the authority to expand the exemption provisions of the Act to those approvals clearly not included within those provisions. The 1993 legislative amendments to CAFRA exempt those developments which have received preliminary site plan approval pursuant to the Municipal Land Use Law or a final municipal building or construction permit, and exempt residential developments that received preliminary subdivision approval or minor subdivision approval, but do not exempt projects that have received capital project review. However, if a development is exempt under the Act, the exempt development will include infrastructure directly associated with the development.

(277) COMMENT: The Sierra Club strongly supports the definition of "construction" as excluding site preparation. The past history of CAFRA exemptions shows that exclusions based upon minimal site work are likely if the definition does include these activities. The Legislature clearly only intended to exempt projects well advanced in the review process in which a substantial investment had already been made, not those which performed minimal work which required no interaction with the regulatory process, or investment of time and resources. To exempt project sites on which some dirt has been moved around will undermine the efficacy of the statute. (45)

RESPONSE: The Department acknowledges this comment in support of the proposal.

(278) COMMENT: The Department's proposed definition of construction as it applies to the exemption provisions is inconsistent with the definition of construction as it applies to the manner in which application fees are calculated. Whereas the application fees are based on the total construction cost, which includes everything from the early to late stages such as clearing vegetation, bringing construction materials

to the site, site grading and earth work, the exemption language uses a much more narrow definition, and limits construction to advanced stages such as having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. The Department should either scale down the type of activities that are reflected in the construction cost or broaden the types of activities that allow a development to be grandfathered from the new CAFRA requirements. This section should also be modified to clarify that foundations also include the driving of pilings and footings. (53)

(279) COMMENT: The Legislature required only that construction "begin" within three years. It did not define construction as the proposed regulations do. The proposal is inconsistent with ordinary construction practices where "construction begins" with site clearing and grading. This proposal also penalizes larger developments which cannot economically install all foundations, utilities and roads just to beat this deadline. This regulation is patterned on the Freshwater Wetlands Protection Act exemption which has a totally different legislative history and context. (77, 82)

(280) COMMENT: The Department is attempting to place an unreasonable standard on the state of construction within three years with respect to "grandfathering." The legislation clearly states that any construction begun within 3 years is exempt, however the Department requires construction in an advanced stage. We believe the reference to an advanced stage exceeds the Department's authority and should be deleted. (43)

RESPONSE TO COMMENTS (278) THROUGH (280) ABOVE: Construction, for the purposes of determining fees, is based on all construction activities due to the cost of evaluating the impact of all construction on environmental resources. However, for the purpose of conferring an exemption, construction should reflect actual work effort and expenditures on a development. When it amended CAFRA in 1993, the Legislature sought to exempt those projects which were far along in the review process and actively being pursued. The exemption provisions of the CAFRA amendments (CAFRA II) do not apply to those larger projects which previously required a CAFRA permit under CAFRA I. Thus, since the exemptions only apply to the class of smaller-scale projects now subject to review under the CAFRA amendments of 1993, three years after obtaining municipal approval should be a sufficient amount of time for a project to reach an advanced stage of construction and thus remain exempt from CAFRA II.

More importantly, past experience has shown it is impossible to fairly and objectively enforce a rule that is based on the start of site clearing or grading. Such activity is often separated by months or even years from any future work on the site and, therefore, while it does occur before construction, does not appear to actually be "construction."

(281) COMMENT: A permit shall not be required for any development which has received all necessary municipal approvals/ permits prior to the effective date of these regulations, provided that construction begins within three years of the effective date of these regulations and continues to completion with no lapses in construction of more than one year. This provision is strongly supported. (110)

RESPONSE: The Department acknowledges this comment in support of the proposal.

(282) COMMENT: The enabling legislation clearly exempts those projects which received preliminary or minor subdivision approval or preliminary site plan approval prior to July 19, 1994, provided that "construction begins" within three years (by July 19, 1997). (53)

(283) COMMENT: The Legislature required that the exemption apply only when there is "no lapse in construction activity of more than one year." I believe this language intentionally tracks the Uniform Construction Code Act, under which building permits expire under the same circumstances. See N.J.S.A. 52:27D-131(a). The proposal, which would cause an exemption to expire when there has been a cumulative but not necessarily sequential lapse of one year, will cause substantial problems for larger developments which necessarily take many years to build out with "lapses" of construction each winter season. (77, 82)

RESPONSE TO COMMENTS (282) AND (283) ABOVE: The statute exempts projects that received certain municipal approvals before July 19, 1994 provided that construction begins by July 19, 1997 and "continues to completion with no lapses in construction activity of more than one year." N.J.S.A. 13:19-5(a). The Department has deleted the word "cumulative" in N.J.A.C. 7:7-2.1(c)1 and 2 upon adoption since it seems to go beyond legislative intent.

(284) COMMENT: The provision that a building permit would be good for three years is in direct violation of the BOCA code. The BOCA code requires that a permit is only good for one year or six months after any work has stopped on the building. Therefore, if building could not be completed within the required time, it would be necessary to return for a new permit. If it was after July 19, 1994, the building inspector would then require a CAFRA permit before issuing the local permit. (174)

RESPONSE: The 1993 amendments to CAFRA exempt projects that received certain municipal approvals before July 19, 1994 provided that construction begins by July 19, 1997 and "continues to completion with no lapses in construction activity of more than one year." N.J.S.A. 13:19-5(a). The Department recognizes the conflict that exists between the timeframe in the amendments and the BOCA code. Should the final municipal building or construction permit expire, and the permit be renewed or a new permit obtained for exactly the same development, the development will remain exempt provided construction begins by July 19, 1997. In cases where the municipal permit expires and is renewed or a new permit is issued, the Department will require documentation that the new permit authorizes exactly the same construction as the original permit. The Department has amended the regulations at N.J.A.C. 7:7-2.1(c)1 on adoption to include this provision.

(285) COMMENT: If demolition of an existing structure is required, the demolition would have to be completed and all utilities cut off before one could even apply for the building permit. (174)

RESPONSE: The Department will not consider a demolition permit received by July 19, 1994 sufficient to qualify for exemption from the permitting requirements of CAFRA. The Department has followed the language of the Act and lacks the authority to expand the exemption provisions of the Act to those approvals clearly not included within those provisions. The 1993 legislative amendments to CAFRA exempt those developments which have received preliminary site plan approval pursuant to the Municipal Land Use Law or a final municipal building or construction permit, and exempt residential developments that received preliminary subdivision approval or minor subdivision approval, but do not exempt projects that have received demolition permits.

(286) COMMENT: There has been considerable confusion over the property owner's right to rebuild as stated at N.J.A.C. 7:7-2.1(c)3. This section should be clarified so that there is no doubt that a development can be reconstructed on its original footprint after being damaged or destroyed through fire, storm, natural hazard or act of God. (7)

(287) COMMENT: One last issue that we wish to address has to do with the reconstruction of any development that is damaged or destroyed in whole or in part by fire, storm, natural hazard, or act of God provided that such reconstruction is in compliance with existing requirements or codes of municipal state or federal law. Under the regulations, this reconstruction activity is specifically exempted from the permitting requirements of N.J.A.C. 7:7-2.1. Our concern, however, is that this activity has not been exempted specifically from all the rules and regulations contained in N.J.A.C. 7:7-1 and the Coastal Zone Management rules found in N.J.A.C. 7:7E. The language of the regulations is very vague and that concerns us because when the language is vague, anything can happen. (75)

RESPONSE TO COMMENTS (286) AND (287) ABOVE: A CAFRA permit is not required for "the reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law." This language is taken directly from the legislative amendments to CAFRA enacted in 1993, and is contained in the regulations at N.J.A.C. 7:7-2.1(c)3.

(288) COMMENT: If legislation existed like this in the Midwest in 1993, there would be thousands still homeless awaiting permit review, little tax base left, and the entire State of Iowa would be condemned. Has anyone looked at the economic impact of condemning the Jersey Shore? (108)

RESPONSE: The regulations clearly state that the subchapter does not apply to "the reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law." This language is taken directly from the legislative amendments to CAFRA enacted in 1993. Thus, the commenter's analogy does not reflect the rules. In addition, the long term effect of these rules has been to lessen the adverse economic impacts of poorly planned development upon

waterfront commerce, tourism, recreation, public access to the coast, the coastal ecosystem, and the fishing and shellfishing industries.

(289) COMMENT: I strongly feel that those people who have homes near the waterfront, not on the water, should be permitted to rebuild if they are devastated by coastal storms. However, I wholeheartedly agree that those people who build their homes near or on the dunes facing the ocean should not rebuild. Those who live near inland waters should be permitted to rebuild. (91)

(290) COMMENT: Rebuilding of structures destroyed for any reason should be allowed. (56)

(291) COMMENT: There should be a reconstruction guarantee for any reason, not just fire, storm, natural hazard or act of God. If you are replacing the same building should the reason that you are doing it be subject for review? (19, 92)

(292) COMMENT: What I find objectionable in the proposed rules is the unconstitutional confiscation provisions in the event of storm damage. (190)

RESPONSE TO COMMENTS (289) THROUGH (292) ABOVE: The CAFRA amendments adopted by the Legislature exempt the reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with the existing requirements or codes of municipal law. This exemption is contained in the Department's rules at N.J.A.C. 7:7-2.1(c)3. The amendments to CAFRA enacted by the Legislature do not exempt the reconstruction of undamaged development. Accordingly, the Department has adopted a General Permit to facilitate such voluntary, non-exempt reconstruction. Without this General Permit, reconstruction of undamaged development would need to comply with the more detailed standards of N.J.A.C. 7:7E.

(293) COMMENT: The outrageous proposals to amend the CAFRA rules and regulations eliminate the right to rebuild or repair and even confiscate private property in violation after a storm or flood with no much mention of payment of fair market value. (191)

RESPONSE: The CAFRA amendments adopted by the Legislature exempt the reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with the existing requirements or codes of municipal law. This exemption is contained in the Department's rules at N.J.A.C. 7:7-2.1(c)3. In addition, the Department's rules do not generally prohibit building or rebuilding. Instead, consistent with the enabling legislation, the rules allow specified rebuilding to occur and also allow single family homes and duplexes by general permits at specified locations. The statute and regulations regulate, but do not ordinarily prevent rebuilding or building on the waterfront.

(294) COMMENT: The Department should relax the restrictions on the right to reconstruct those developments damaged or destroyed by storm, natural hazard or act of God, to allow applicants the right to rebuild the structures as long as the disturbed area is the same or less square footage and provided it is not any closer to wetlands, dunes and/or tidal waters. The proposed prohibition on relocating the footprint of the development can be onerous due to restrictions imposed by either the fire code or due to functional obsolescence. The Department should specify that relocation of the footprint landward or laterally is allowed provided that such relocation would result in the same or less environmental impact than the damaged or destroyed development. (53)

(295) COMMENT: The language requiring reconstruction to be in the same footprint for non-review must be more flexible. Certain conditions may require movement of the footprint for code or safety reasons. We request language allowing movement of the footprint if it will have a similar impact on the environment. (43)

(296) COMMENT: The legislative amendments regarding reconstruction are strongly supported but should be expanded to provide for "hardship" cases where the reconstruction of the structure would not be able to meet all existing codes/requirements if rebuilt to the same "footprint" even if there is no enlargement of the area within the original "footprint." (110)

RESPONSE TO COMMENTS (294) THROUGH (296) ABOVE: The Department has amended the rule at N.J.A.C. 7:7-2.1(c)3iii upon adoption to also allow for the relocation of a damaged structure laterally as well landward if such a relocation would result in less environmental impact than the damaged or destroyed development.

(297) COMMENT: We do not fully understand the difference between N.J.A.C. 7:7-2.1(c)4 (exemption from CAFRA for enlargement of any development) and N.J.A.C. 7:7-7.2(a)4 (need for a general permit for voluntary reconstruction of residential or commercial structures). As long as the development footprint and number of dwelling units or parking spaces does not change, "reconstruction" should not be regulated. (158)

(298) COMMENT: The proposed rules allow for reconstruction of undamaged residential or commercial development unlike the provisions of the statute, which clearly provide for the reconstruction of any development (including public and industrial development) that is damaged or destroyed by, in whole or in part, by fire, storm, natural hazard or act of God. (132)

RESPONSE TO COMMENTS (297) AND (298) ABOVE: Specifically exempted from regulation under the legislative amendments enacted in 1993 are the reconstruction of any development that was damaged or destroyed by fire, storm, natural hazard or act of God, and enlargements that do not increase the footprint or number of dwelling units of the development. The legislative amendments thus require that the voluntary reconstruction of non-damaged developments be regulated. The Department will authorize voluntary reconstruction of legally constructed, currently habitable, residential dwellings within the same footprint by a General Permit because it should cause no environmental damage as long as the reconstruction does not result in the enlargement or relocation of the footprint of development, and the reconstruction does not result in an increase in the number of dwelling units or parking spaces within the development. This proposal is intended to facilitate reconstruction that is not exempt but will not cause environmental damage. Without the General Permit provision, non-exempt reconstruction would be required to meet the more detailed standards for individual permits contained in N.J.A.C. 7:7E.

The Department has clarified the definition of "reconstruction" in N.J.A.C. 7:7-1.3 upon adoption to make it clear that maintenance and repairs that are not associated with expansions are not considered to be "reconstruction." In addition, the Department has also clarified the General Permit for Voluntary Reconstruction contained at N.J.A.C. 7:7-7.2 upon adoption so that it is clear that existing homes and commercial developments do not need a GP for routine maintenance and repairs.

Last, the 1993 legislative amendments exempt the enlargement of any development provided that such enlargement does not result in the enlargement of the footprint of the development or an increase in the number of dwelling units or parking spaces within the development. The Department's rules contain this exemption.

(299) COMMENT: The exemption provision at N.J.A.C. 7:7-2.1(c)4 should be expanded to require only local approvals for the renovation of existing structures which enlarge the "footprint" of the development by up to 700 square feet. Such expansions will not cause any detectable environmental harm but will provide many aesthetic and economic benefits for growing families and businesses. It should be noted that the Freshwater Wetlands Protection Act similarly provided for "footprint" expansion (up to 700 square feet) for "grandfathered" existing structures. (110)

(300) COMMENT: The exemption provision for expansion of existing facilities, especially existing residential and commercial structures, should be at least consistent with the Freshwater Wetlands Protection Act by providing for expansion of up to 700 square feet for existing structures without additional agency regulatory action. (132)

RESPONSE TO COMMENTS (299) AND (300) ABOVE: The Department has followed the language of the Act in providing the exemption at N.J.A.C. 7:7-2.1(c)4, which allows for the enlargement of any development provided that such enlargement does not result in the enlargement of the footprint or an increase in the number of dwelling units or parking spaces within the development. The Department lacks the authority to expand this statutory exemption provision. However, at N.J.A.C. 7:7-7.4, Permits-By-Rule, the Department has provided two permits-by-rule which allow the expansion of single-family or duplex dwellings up to a cumulative surface area of 400 square feet.

(301) COMMENT: Minor development at residential properties is not proposed to be regulated (N.J.A.C. 7:7-2.1(c)5)). There is no difference in the environment impact between the minor residential development listed at N.J.A.C. 7:7-2.1(c)5i and similar insignificant development at commercial, industrial or public properties. This exemption for minor development at residential properties should also be extended to commercial, public and industrial developments. (158)

RESPONSE: The 1993 legislative amendments specifically sought to lessen the regulation of relatively minor changes to residential properties, and to exempt the construction of a "patio, deck or similar structure

at a residential development." The legislative amendments do not extend this exemption to commercial, public or industrial developments.

(302) COMMENT: In addition to patios or decks at existing structures not requiring regulatory agency actions, swimming pools, garages, retaining walls, revetments to protect private property or the environment, driveways, parking areas, outbuildings and similar construction on existing developed lots should not require regulatory actions. (132)

(303) COMMENT: The exemption provision at N.J.A.C. 7:7-2.1(c)5 should be expanded to enable homeowners to build a garage or outbuilding as well as installing driveways with associated parking areas, retaining walls, swimming pools and other recreational activities which require limited paving of yard areas on their residential property by obtaining only local approvals. The proposed requirement for a CAFRA permit to construct a garage or swimming poll behind an existing residential dwelling or installing a driveway represents unnecessary regulation by the Department and, in our opinion, is inconsistent with the intent of the Legislature when it specifically authorized the construction of "similar" structures at a residential development without the need to obtain a permit. (110)

RESPONSE TO COMMENTS (302) AND (303) ABOVE: The Department does not agree with the commenters. The 1993 legislative amendments to CAFRA specifically exempt the construction of a patio, deck or similar structure at a residential development. The Department has amended and clarified the rules at N.J.A.C. 7:7-2.1(c)5 upon adoption to specifically provide, in accordance with the legislative intent of the 1993 amendments to CAFRA, that the construction of a patio, deck or similar structure at a residential development is exempt. For the purpose of this exemption, "similar structures" are porches, balconies and verandas. The Department's adopted rules further provide that the following structures and activities will also be exempt at a residential development, provided that they do not include the placement of pilings or placement of a structure on a beach or dune. These structures and activities are open fences, open carports, flower boxes, gardens, gazebos, satellite dishes and antennas, sheds, wooden boardwalks and gravel or brick/paver block walkways, showers/spa/hot tubs which do not discharge to surface waters or wetlands. The construction of timber dune walkover structures constructed in accordance with Department specifications found at N.J.A.C.7E, Rules on Coastal Zone Management will also be allowed at a residential development.

The Department does not consider a garage, outbuilding, driveway/parking area, retaining wall or swimming pool to be "similar" to a patio or deck. Depending on the scope of these proposed activities, they may be approved under the adopted Permits-By-Rule or General Permit or proposed General Permits. However, these activities can have negative environmental impacts if not sited and designed appropriately.

(304) COMMENT: Is it the intent of the rules to identify a swimming pool installed at a residential development as a "similar structure?" Swimming pools do not increase run-off, they do not generate contaminated run-off, they are small in size, retain rain water, and provide a source of emergency water supply in times of crisis. Further, swimming pools cannot be utilized to increase the number of inhabitants at a residential development. (24, 62)

(305) COMMENT: N.J.A.C. 7:7-2.1 and 1.5(c) should be amended to clarify that residential swimming pools are specifically excluded from the definition of "development" and from activities which require a CAFRA permit. (62)

(306) COMMENT: N.J.A.C. 7:7-2.1 and 1.5(c) should be amended to clarify that residential swimming pools are specifically excluded from the definition of "development" and from activities which require a CAFRA permit. (62)

RESPONSE TO COMMENTS (304) THROUGH (306) ABOVE: The Department does not agree with these comments and has not amended the rule as suggested. The installation of swimming pools generally requires clearing and grading to accommodate the placement of pools, and in the case of in-ground pools, requires excavation and filling. These activities could have adverse impacts on special areas, particularly beaches and dunes, and therefore should be subject to CAFRA review. Depending on the scope of these proposed activities, they may be approvable under the adopted Permits-By-Rule or General permit or proposed General Permits.

(307) COMMENT: N.J.A.C. 7:7-2.1(c)6i should be clarified to state that the paving of a currently "unpaved" roadway is not considered to be a substantially similar functional replacement. (149)

(308) COMMENT: We do not support the requirement of a permit for repaving on existing paved highways. We therefore recommend that repaving be considered to be routine reconstruction, or maintenance or repair of a public highway. (158)

(309) COMMENT: N.J.A.C. 7:7-2.1(c)6i appears to exclude normal repaving and maintenance of existing paved roads. This section should be rewritten to specifically exclude maintenance activities on existing paved roads, driveways and parking lots. (144)

(310) COMMENT: The statement that "the paving of an existing roadway is not considered to be a substantially similar functional replacement" is unclear. It appears that this statement would apply to the paving of an existing roadway which is not presently paved. Since the term "not presently paved" is lacking from this statement, than the paving of any roadway, including an overlay, would need a CAFRA permit. (29)

(311) COMMENT: N.J.A.C. 7:7-2.1(c)6i is vague. The rule implies that paving an existing paved road is not considered to be a substantially similar functional replacement. Additional clarification is needed. (173)

(312) COMMENT: The rules very clearly say that you have to get a permit to repave an existing paved roadway. (32, 75)

(313) COMMENT: Clarification is needed regarding the proposal stating both that a permit shall not be required for the substantially similar functional replacement of public highways and that paving an existing roadway is not considered to be a substantially similar functional replacement. This apparent oversight should be corrected by the Department since it could not possibly be the intent of the Department to require a CAFRA permit for paving a highway. (110)

RESPONSE TO COMMENTS (307) THROUGH (313) ABOVE: The Department acknowledges these comments and has clarified the section on adoption by adding the word "unpaved" as recommended by NJDOT. The paving of an existing roadway which is not presently paved will require a permit. The paving of a presently paved roadway will not require a CAFRA permit. Paving an unpaved road increases stormwater runoff and has other adverse environmental impacts.

(314) COMMENT: Improvements that meet the exemption provision at N.J.A.C. 7:7-2.1(c)6, but do not fall within the existing public right-of-way, should be exempt. Almost all intersection improvements require some amount of right-of-way or easement acquisition. It is recommended that references to "within the existing public right of way" be stricken. (144)

(315) COMMENT: Most public highway lane widening, intersection and shoulder improvement projects require obtaining additional right-of-way. Based on the wording "provided within the existing public right-of-way," it appears that a roadway project which requires any additional right-of-way, even though the project will not increase the number of through lanes, will require a CAFRA permit. (29)

RESPONSE TO COMMENTS (314) AND (315) ABOVE: The 1993 amendments to CAFRA adopted by the Legislature specifically exempt "services provided, within the existing public right-of-way." The exemption language suggested by the commenters would expand the exemption provisions of the statute and has therefore not been adopted.

(316) COMMENT: Exempt activities should include services provided within the existing public right-of-way by private entities as well as governmental entities. (53)

RESPONSE: The 1993 amendments to CAFRA adopted by the Legislature specifically exempt "services provided, within the existing public right-of-way, by any governmental entity." The exemption language suggested by the commenter would expand the exemption provisions of the statute and has therefore not been adopted.

(317) COMMENT: The Department should clarify that increasing the number of travel lanes by re-striping the roadway, adding jug handles or adding toll booths do not trigger the need for a CAFRA permit. (53)

RESPONSE: The Department has amended the rule at N.J.A.C. 7:7-2.1(c)6 on adoption as suggested to clarify that increasing the number of travel lanes by re-striping the roadway or adding toll booths are not regulated, provided that the activities do not result in an increase in impervious coverage. The Department has not amended the regulations to provide for the adding of jug handles without a CAFRA permit because this addition will increase impervious surfaces and can have adverse environmental impacts.

(318) COMMENT: Conrail is extremely concerned with the safety of its employees, the public, the environment and customer shipments. To this end, it continues to expend millions of dollars every year on track and signal rehabilitation and other improvements to offer smoother and safer operations. It undertakes repairs in advance of problems occurring

on its property and it should not be exposed to potentially onerous regulation which could inadvertently affect its regular maintenance and track repairs. Conrail would like a similar exemption to that granted to public highways at N.J.A.C. 7:7-2.1(c)6. (129)

(319) COMMENT: Conrail's primary operations are outside the coastal area. Nonetheless, it will need flexibility to continue to make repairs and to maintain its property, including in the existing rights-of-way, without being subject to CAFRA regulation. It recognizes that construction of new buildings or track on acquired property would not be exempt from regulation. (129)

(320) COMMENT: Railroads have been specifically excluded from the definition of "intervening development" and "the elimination or improvement of crossings of railroads and highways" has been included in the definition of "public highways" under the regulation. For this reason, Conrail believes it is necessary for the regulations to specifically exclude the reconstruction, repair, replacement or maintenance of a railroad rights-of-way and buildings or structures related to that right-of-way. Any repair activity undertaken by Conrail will comport with the requirements set forth in the regulation's definition of "reconstruction" which provides that the repair or replacement must not increase or change the location of the footprint of the preexisting development, ... increase the area of impervious coverage associated with the development, and does not result in a change in the use of the development. (129)

(321) COMMENT: In the event that the Department declines to grant an exemption for railroads, Conrail would like specific language authorizing a General Permit or Permit-By-Rule for its repair activity. (129)

RESPONSE TO COMMENTS (318) THROUGH (321) ABOVE: The 1993 amendments to CAFRA adopted by the Legislature specifically exempt "services provided, within the existing public right-of-way, by any governmental entity." The exemption language suggested by the commenter would expand the exemption provisions of the statute and has therefore not been adopted. However, the Department has amended the regulations at N.J.A.C. 7:7-2.1(b)1 and 2 on adoption to specify that the maintenance, repair, or replacing of currently existing and functional railroads and related structures located completely within cleared and maintained rights-of way does not constitute regulated development.

(322) COMMENT: Public projects designed to meet public health, safety and welfare concerns, including road reconstruction, intersection improvements, reconstruction of stormwater drainage systems and sanitary sewers, should be approved with minimal regulatory impediments. (7)

RESPONSE: The 1993 legislative amendments to CAFRA exempt from regulation those services provided, within the existing public right-of-way, by any governmental entity which involve: the routine reconstruction, substantially similar functional replacement, or maintenance or repair of public highways; public highway lane widening, intersection and shoulder improvement projects which do not increase the number of travel lanes; and public highway signing, lighting, guide rail and other nonintrusive safety projects, including traffic control devices. In addition, the Department has provided that, beyond the 150 foot zone, the following activities will not require a permit: the construction of a new road, sanitary sewer pipeline, storm sewer system, petroleum pipeline or natural gas pipeline of less than 1,200 feet in length or the extension of a road, sanitary sewer pipeline, storm sewer system, petroleum pipeline or natural gas pipeline of less than 1,200 feet in length, not to exceed a cumulative total of 1,200 feet in any one municipality at any one site, unless the construction is located within a development requiring a CAFRA permit in which case it shall be considered part of the development for which a permit is required; the maintenance, repair or replacement of existing water, petroleum, sewage or natural gas pipelines, and associated pump stations and connection junctions, located completely within paved roadways or paved, gravel, or cleared and maintained rights-of way, provided that the replacement of sewage pipelines and associated pump stations does not result in an increase in the associated sewer service area; and the repair, modification, or replacement of sanitary system components, including upgrading of systems from primary to secondary treatment, provided that an increase in design effluent flow will not result. The Department has also amended N.J.A.C. 7:7-2.1(b) to clarify that the maintenance and repair of specified infrastructure within the 150 foot zone will also not require a CAFRA permit.

(323) COMMENT: The implementation of these new regulations will affect the normal operation and maintenance of the Atlantic City Expressway, Atlantic City International Airport, and bus management facilities in Atlantic City. While the South Jersey Transportation Authority can empathize with the Department's desire to manage growth, development and infill development in the coastal zone, it is our belief that regulation of normal, routine maintenance is not in the best interest of the economic development mandate of the Authority. We believe that roadway overlays, ditch cleaning, pavement resurfacing and other capitally intensive maintenance activities do not fall in the adverse development category. Inclusion of such items of work into the permit process will significantly add to the cost of said project, and increase the timeframe to implement the project as well as the workload of the Department staff. (113)

RESPONSE: The jurisdiction and regulatory thresholds contained in the adopted regulations reflect the CAFRA amendments which were passed by the Legislature. The regulations include a statutory exemption for services provided by a government entity within an existing right-of-way. The services included in this exemption are the routine reconstruction, maintenance or repair of a public highway, including safety and repaving improvements. This exemption is contained in the adopted regulations at N.J.A.C. 7:7-2.1(c)6. Ditch-cleaning that conforms to the original configuration of the ditch is considered to be routine maintenance and therefore exempt from CAFRA. In addition, the Department has amended the regulations upon adoption to clarify that the paving of a presently paved roadway will not require a CAFRA permit. The paving of an existing roadway which is presently not paved will require a permit since paving an unpaved roadway has environmental impacts such as an increase in stormwater runoff.

(324) COMMENT: The amusement pier exemption at N.J.A.C. 7:7-2.1(c)8 is unworkable. No functional amusement pier is located in the area beyond 150 feet landward of a beach or dune. Therefore, expansions would not be exempt from CAFRA permitting. (110)

RESPONSE: The exemption at N.J.A.C. 7:7-2.1(c)8 directly follows the language of the Act although the Department agrees with the commenter that the language in the law does not actually apply to any New Jersey facility. To accomplish the intent of the legislation, the Department has adopted a General Permit that provides for the expansion of existing, functional amusement piers provided that such expansion is 150 feet landward of the mean high water line. This will allow the expansion of amusement piers on beaches and dunes.

(325) COMMENT: Some exemptions under the legislation require a permitting process in the proposed rules. (132)

RESPONSE: This is not the case. If a project is exempt under the Act, no permitting process is required. The commenter may be referring to the General Permit for expansion of amusement piers which is explained in the previous response.

(326) COMMENT: We object to the provision which causes any exemption based on on-site construction prior to September 1973 to expire on July 19, 1997. This section should be deleted. (53)

RESPONSE: The Department has not deleted this section which applies to facilities which were exempt from CAFRA based on on-site construction prior to September 19, 1973. These facilities will have had 24 years in which to have been completed.

N.J.A.C. 7:7-2.2 Wetlands

(327) COMMENT: The Department has proposed to redefine the permits authorized under the Wetlands Act of 1970 through the elimination of the dual Type A and Type B permit classification structure. The explanation presented in the Summary indicates that the change is intended to eliminate confusion on the part of the general public. We disagree that the system as it currently exists is confusing. The system was originally proposed to discriminate between those activities which would have a significant adverse impact on the State's wetland resources and those which would have minimal or no significant adverse impact. Under the proposed system all activities which would encroach upon mapped coastal wetlands will be subject to identical application requirements. Thus, mitigation will be required for projects as minor as the extension of a residential dock from a single residence. This rule change will also have a negative fiscal impact on public capital projects such as bridge and road repair, and amenities to public parks and access areas, which were originally recognized as having little or no significant adverse impact. We suggest that the current permit classification system be retained. (77)

(328) COMMENT: Atlantic Electric objects to the deletion of the classification of the coastal wetland permits into "Type A" and "Type B." (17)

RESPONSE TO COMMENTS (327) AND (328) ABOVE: The elimination of the Type A and Type B classification system will not change the manner in which these permits are reviewed, including when wetlands mitigation will be required. The deletion of the distinction will simplify the application process by eliminating questions of whether an A permit or B permit is required. This arbitrary classification has been confusing to the regulated public and the Department has decided based on its experience that it is unnecessary. However, the application of the Rules on Coastal Zone Management, N.J.A.C. 7:7E, will not be affected by this administrative change.

N.J.A.C. 7:7-2.3 Waterfront development

(329) COMMENT: At N.J.A.C. 7:7-2.3(c)4, New Jersey is proposing to remove the permit exemption for Federal agencies conducting dredging and navigation activities. This, in effect, introduces new Federal uses subject to the New Jersey Coastal Management Program. (49)

RESPONSE: The Department is not proposing to change the manner in which it reviews dredging and navigation activities conducted by Federal agencies. The Department will continue to review these activities through a Federal Consistency review. N.J.A.C. 7:7-2.3(c) lists those development activities that require a waterfront development permit in that portion of the waterfront area at or below the mean high water line. Since dredging, the installation of aids-to-navigation, or other similar activities directly related to navigation do not require a waterfront development permit when conducted by an agency of the federal government, the Department deleted this exemption from the section for consistency.

(330) COMMENT: In N.J.A.C. 7:7-2.3(g)2i, the Department states that any interruption in the process of construction and in completion of the development may be cause for denial of an exemption request, or where previously exempted may be cause for revocation of such an exemption. The Department does not have the authority to revoke exemptions for this reason especially in those situations where the interruption is less than one year. (53, 73)

(331) COMMENT: NJAR refers back to the comments on construction lapses under the "grandfathering" provisions outlined above in requesting deletion of the one year interruption language. (43)

(332) COMMENT: Normal interruptions for winter season and other weather related interruptions should not be considered as an interruption of activity or "interruption of the process." (144)

RESPONSE TO COMMENTS (330) THROUGH (332) ABOVE: N.J.A.C. 7:7-2.3(g) exempts from the Waterfront Development Law certain development which was in progress on or before September 26, 1980. Thus, these developments have theoretically been "in progress" for at least 14 years. The Department has amended this section upon adoption to state that any lapse in construction activity of more than one year may be cause for denial of an exemption request, or where previously exempted, it may be cause for revocation of such exemption, by the Department.

(333) COMMENT: Currently, a single Zane Letter can be issued for waterfront activities which involve replacement of structures in the same exact footprint or locations. Specifically, if a bulkhead is to be replaced/repaired and it is constructed in the same location, a Zane Letter can be issued by the Department's Bureau of Coastal and Land Use Enforcement. It appears that the proposed rules, specifically "section 7:7-7(.1)(.2)," do not exclude bulkhead construction or repair as described above. Therefore, it is unclear if both a CAFRA permit and/or a Zane Letter would need to be obtained for such a project. The Department should clearly address this conflict and present a solution. (119)

RESPONSE: The commenter is apparently referring to the provisions regarding general permits and permits-by-rule in subchapter 7. Within the CAFRA zone, the Waterfront Development Act only regulates those activities at or below the mean high water line. If an activity is exempt under the Waterfront Development Act it will receive a Zane letter. If the bulkhead to be replaced is legally existing and the repair, replacement or renovation will not have any additional permanent adverse effects, it will not require a CAFRA permit.

Subchapter 3. Pre-application Reviews

(334) COMMENT: The continued use of pre-application reviews is strongly supported. These preliminary reviews allow potential applicants to gain insight from the Department regarding any areas of particular concern or interest that the NJDEPE believes should be addressed/emphasized in the application for a proposed development, as well as the procedures and policies that would apply to the particular development. (110)

(335) COMMENT: The Department's extension of the formal time frame from receipt of the written request for completion of such preliminary reviews from 20 days to 30 days is acceptable. This time frame will still assure potential applicants that the use of the pre-application review process will not unduly delay their proposed developments. (110)

RESPONSE: The Department acknowledges these comments in support of its proposal.

(336) COMMENT: Pre-application conferences should be taken seriously and not be discouraged. The Department appears to be proposing changes to the pre-application procedures and requirements (for example, requiring an applicant to submit a conceptual proposal at the time a request for a pre-application meeting is made) so as to discourage the applicant from requesting these conferences. We believe that in many instances, these conferences afford the applicant the opportunity to ask pertinent questions and to receive vital information. We are also concerned that by conducting pre-application conferences over the telephone, the Department may not view them as seriously. (53)

(337) COMMENT: It should be made clear that applicants have the right to request a pre-application conference if they desire. (17)

(338) COMMENT: The Department has suggested that pre-application "reviews" will only occur "if one is warranted." This implies that the Department will determine when such a review is warranted. The proposed rule further suggests a telephone review of projects as an alternative to the standard pre-application conferences. We agree that these changes in procedure may be beneficial in some cases in terms of time savings for the Department and client. However, we do not feel that the Department should make the decision as to whether the "review" will take place at all or whether it will be conducted by telephone or in person. Conferences are extremely useful and we do not wish to have our rights to the existing procedure diminished. Although the Department may consider the project to have a small-number of relatively straightforward issues that need discussion, thus not warranting a pre-application conference, a conference should be held if the applicant requests one. We suggest the addition of the following language to assuage our concerns: "The decision as to whether the pre-application review will occur, and whether in person or through a telephone conversation will rest with the applicant." (77)

RESPONSE TO COMMENTS (336) THROUGH (338) ABOVE: The Department does not intend to discourage applicants from requesting either pre-application "conferences" or "reviews," and has deleted the phrase "if one is warranted" upon adoption. The amendment is simply intended to inform permit applicants and their consultants that, in many cases, it may be quicker and cheaper for them to discuss a proposed development with the Department by telephone rather than at a meeting. Such telephone discussions can be used for smaller developments or if only a small number of relatively straightforward issues need discussion, and should save both the Department and applicants time. The amendment is aimed mainly at the smaller-scale developments that are now subject to review by virtue of the amendments to CAFRA adopted in 1993. This change is also intended to allow the Department to continue to provide this service free of charge at a time when permit workload is increasing and review staff is not. Pre-application "conferences" will still be available for more complex developments or for anyone who prefers an in person "conference" to a telephone "review."

(339) COMMENT: Pre-application reviews must reflect legislative intent, regulations and policy. (132)

RESPONSE: The Department's adopted regulations reflect the legislative intent. These rules form the basis for the pre-application review.

(340) COMMENT: This proposal should be revised to eliminate the requirement for a conceptual proposal. (53)

RESPONSE: The requirement for a conceptual proposal is intended to allow for a more thorough review on the part of the Department with more specific guidance being provided to prospective permit applicants. The conceptual proposal does not have to include detailed design and engineering, and therefore, the Department does not feel this is a burdensome requirement. This will provide greater assistance

to permit applicants in the preparation of an Environmental Impact Statement or Compliance Statement. Therefore, the Department has not eliminated the requirement.

(341) COMMENT: The Department proposes to modify N.J.A.C. 7:7-3.4 to clarify that, upon request, the Department shall prepare a written memorandum of record or policy compliance checklist after the pre-application review. This proposal does not significantly change the existing rule. Presently, the applicant must request that the Department prepare a written memorandum of record or policy compliance. This policy should be enforced by the Department. It has been our experience that, even when such documentation is requested, the Department requests that the applicant submit a memorandum of record. (77)

RESPONSE: The Department does not require that the applicant prepare the memorandum of record. However, applicants often prepare the memorandum and submit it to the Department for concurrence in order to expedite the process.

(342) COMMENT: Failure to submit a Memorandum of Record should not be grounds to declare a project administratively incomplete. (17)

RESPONSE: The requirement for the applicant to submit a copy of the memorandum of record is not a new requirement. This requirement was included in the previous regulations and the Department will continue to require it because it enables Department staff to build from the information in the memorandum and to review an application more quickly.

(343) COMMENT: The Memorandum of Record should not be binding for either the applicant or the Department. (17)

RESPONSE: The Department agrees and does not consider the memorandum of record to be binding based on the conceptual nature of the project and cursory review of information at this stage in the development process. At the same time, the Department strives to cover as many issues that need to be addressed as possible at that early stage in the review process.

(344) COMMENT: A land user must be able to rely on information provided by Department staff at pre-application meetings. (132)

RESPONSE: The guidance provided by Department staff at a pre-application conference is not binding on the Department since typically only a conceptual proposal is being addressed. The Department does not have specific information relating to the site and proposed development in order to provide binding guidance. The pre-application conferences/reviews are meant as planning and guidance tools for an applicant.

(345) COMMENT: The pre-application review rules are inadequate, and should be rewritten. (132)

RESPONSE: The Department has not rewritten this section of the regulations. The Department has found them to work well. If the commenter has any specific comments or suggestions to improve this process, the Department would be happy to consider them.

Subchapter 4. Permit Review Procedure

N.J.A.C. 7:7-4.1 General

(346) COMMENT: Requiring that, where appropriate, a Wastewater Management Plan Amendment be obtained prior to submitting an application unnecessarily slows down the permit review process. Applicants should be allowed to apply for coastal permits even without these consistency determinations provided that any permits that are issued are conditioned upon the receipt of the applicable wastewater management plan consistency determinations, etc. The permit, not the review, should be contingent on obtaining a Plan Amendment. Permit approval should be granted based on the condition that the applicant becomes consistent with the Plan. The applicant should be entitled to proceed with both applications concurrently as the risk is all the applicant's. (17, 50, 53, 55, 73, 77, 82, 176)

(347) COMMENT: The proposed amendment at N.J.A.C. 7:7-4.1(b) can result in CAFRA permit denials based solely on conflicting review procedures within the Department. Applicants should be allowed reasonable flexibility to pursue permits and approvals in a fashion that reflects appropriate business decisions. There is no apparent technical or logistical reasons why both review processes cannot proceed simultaneously. (173)

(348) COMMENT: CAFRA approvals, and all other approvals, should be based solely on the applicable standards therein and not delayed or denied by pending decisions from other agencies. This rule, if adopted, could be improperly used to issue denials and delay projects that would otherwise receive approval. (4)

RESPONSE TO COMMENTS (346) THROUGH (348) ABOVE: The Department has not adopted this proposed amendment to N.J.A.C.7:7-4.1(b) and 4.4(a)2iii. Both review processes will continue to be allowed to proceed simultaneously.

(349) COMMENT: If Wastewater Management Plan consistency is required of development applications prior to CAFRA submission, then CAFRA's involvement with WMP amendments in the coastal area should be formalized. Either way, CAFRA reviews both the development and the provision of sewer service. WMP amendments have been denied for inconsistency with CAFRA based on undocumented CAFRA comments. Better coordination is needed between the CAFRA and Wastewater units of the Department. (18)

RESPONSE: The Department has not adopted this proposed amendment to N.J.A.C.7:7-4.1(b). The Department is unsure of what the commenter is referring to by "undocumented CAFRA comments."

(350) COMMENT: Does N.J.A.C. 7:7-4.3(b) about Wastewater Management Plans refer to sewers or just projects that use sewers? (72)

RESPONSE: The Department thinks the commenter may be referring to the provision at N.J.A.C. 7:7-4.1(b) concerning Wastewater Management Plans. As explained above, the Department has not adopted the proposed amendment to N.J.A.C.7:7-4.1(b).

(351) COMMENT: We strongly support the requirement that projects must have been determined to be consistent with applicable wastewater management plans prior to submission. Projects which have not been determined to be in conformance with these requirements should not be able to proceed. This should also minimize criticism about permit delays when applications are stalled in review because they lack other necessary approvals. (45)

RESPONSE: The Department acknowledges this comment in support of the proposal. However, as noted above, the Department has not adopted the proposed language.

(352) COMMENT: The proposed language at N.J.A.C. 7:7-4.1(b) appears to make regular consultation with the designated county-wide agency optional. The existing language which requires such periodic consultation should be retained. (110)

RESPONSE: The Department agrees with the commenter and has not adopted the proposed language.

(353) COMMENT: The proposed regulatory language should be expanded to specifically require that CAFRA applicants for solid waste and recycling projects provide proof of consistency with the applicable District Solid Waste Management Plan as part of the CAFRA application to the Department. (110)

RESPONSE: The Department has not amended the rule as suggested. The Department's Land Use Regulation Program and Division of Solid Waste coordinate on applications for solid waste and recycling projects and will continue to do so. There have been no problems with the current process.

N.J.A.C. 7:7-4.2 Application contents

(354) COMMENT: Government vouchers should specifically be listed as an accepted form of payment for declaring an application complete for review. Past assurances that Department staff would not delay project reviews for this reason have been administered inconsistently, resulting in needless and frustrating delays. (50, 55, 176)

(355) COMMENT: N.J.A.C. 7:7-4.2(a) should be revised to allow payment of fees by municipal voucher. (52)

(356) COMMENT: The requirements say that applications have to have a check or money order, but municipalities are required by the Department of Community Affairs to use a voucher system. (72)

RESPONSE TO COMMENTS (354) THROUGH (356) ABOVE: The Department already accepts payment by vouchers from public entities, and has amended the rule upon adoption as suggested by the commenters.

(357) COMMENT: The Department should eliminate the proposed additions to the application content requirements. The additional requirements will greatly increase application costs and lengthen timeframes. (109)

(358) COMMENT: The application contents and entire application procedure are extremely onerous. Such an application process is unreasonable and will place an undue financial burden on all applicants, including those residents attempting to build a single family home or develop a small business. The entire application procedure, in particular the application contents and excessive quantity of paperwork, should be dramatically streamlined. Producing and wading through a voluminous

mountain of paperwork will not add to the protection of the coastal zone; it will only worsen the already existing bureaucratic maze. (110)

(359) COMMENT: The notification process is essential to ensure that interested parties have the opportunity to review and respond to projects which may affect their properties or lifestyles. However, the notification requirement as proposed is inexplicably wasteful and expensive. It is suggested that each agency and property owner be furnished with the first page of the CP-1 form and a site vicinity map on U.S.G.S. 7.5 minute series topographic quad or local tax map. A full copy of the CP-1 form and site plans should be submitted only to the Clerk of the affected municipality. The cover letter to each agency and property owner should indicate that the full application form and plans can be reviewed at the Clerk's office. This will eliminate much of the waste and expense inherent in the Department's proposal. (60)

(360) COMMENT: Proposed N.J.A.C. 7:7-4.2(a)4 imposes an unnecessary and costly obligation upon applicants. The commenter recommends that the rule be amended so that only notices are required and that N.J.A.C. 7:7-4.2(a)5 (sample public notice) be revised to state that "a complete application including site plan(s) is also available for inspection at the municipal or county library (or similar public depository)." This will provide concerned parties with the opportunity to review the application during evenings and weekends when the municipal offices are not open and will reduce the applicant's costs of producing additional site plans and forwarding them to "uninterested" parties. (158)

(361) COMMENT: The requirement that copies of the CP-1 form and site plan be forwarded to all landowners within 200 feet of a site is a seemingly unnecessary and, in many cases, burdensome requirement. Current noticing requirements, coupled with the forwarding of complete application packages to the municipal clerk, planning board and environmental commission, are sufficient. Public notices have always been and would continue to be required, which is good and sufficient. Any interested person can arrange to inspect the complete application on file with the Department, or the municipal clerk, planning board and environmental commission, all of whom would be sent copies of a complete application package. Although the proposed rule does not necessitate the forwarding of site plans, the number of properties within 200 feet of most sites can be significant and the encountered cost of the certified/return receipt requested mailing of the CP-1 form and the site plan (the necessary sheets to "depict the proposed development in relationship to existing site conditions") can become a significant amount. In all likelihood, most property owners will either not care or not understand what they have received. The owners who do care will make an appointment with the municipal clerk to inspect the complete application, which includes the environmental reports that the public more likely understands anyhow. (58)

(362) COMMENT: The request to include a copy of the site plan and CP-1 form is redundant and unnecessary, since the notice letter and public notice will provide a detailed description of the project. (119)

(363) COMMENT: Since the clerk, planning board and environmental commission of the municipality, as well as the planning board and environmental commission of the county are required to receive complete copies of the application package, it is only repetitive to send each landowner a copy of the CP-1 form and site plan. If a homeowner is interested in the project, he or she can review the package at either the municipal or county agency office. The cost of certified packages and duplicate notification process is unnecessary and unjustified. The public notice is sufficient. (119)

(364) COMMENT: The 53 objects to the requirement that permit applicants submit a copy of the site plan and CP-1 form to all landowners within 200 feet of the property or properties on which the proposed development would occur. This requirement is excessive and unnecessary and exceeds those requirements found in the Municipal Land Use Law. (53, 73)

(365) COMMENT: The term "site plan" should be revised to indicate that the site should be plotted on a USGS map and copies of this map should be attached to the CP-1 Form. (144)

RESPONSE TO COMMENTS (357) THROUGH (365) ABOVE: The Department has amended the rule upon adoption to indicate that the site plan need only generally depict the proposed development in relation to the existing site conditions. The adopted rule indicates that this may be on an 8 1/2 by 11 piece of paper provided that it generally depicts the proposed development and the general and site specific location.

(366) COMMENT: Requiring that a copy of the site plan be sent to all property owners within 200 feet of the property on which the development would occur is particularly burdensome for larger projects, such as regional parks, where the number of such owners could exceed 100. Larger properties are not always synonymous with large development. The added convenience for property owners is not sufficient to justify the added cost to the applicant. The system of notice with plans on file at the municipal building should be adequate. (50, 55, 176)

RESPONSE: As indicated above, the Department has amended the rule upon adoption to clarify what information needs to be on the plan. In addition, the Department will consider amending the notice requirements for proposed developments occurring at parks in the future to take into consideration the distance from the proposed activity to the property.

(367) COMMENT: The requirement to notify all landowners within 200 feet of the property or properties on which the proposed development would occur is extremely burdensome for linear development projects where it is conceivable that only a small portion would be subject to these rules. We request that this section be revised to require linear development projects to notify property owners within 200 feet of an activity subject to these rules. (17)

RESPONSE: The Department agrees that it is a burdensome requirement for an applicant for a linear development to notify all landowners within 200 feet of the property or properties on which the proposed development would occur. The Department has amended the rules upon adoption to require that an applicant proposing a linear development notify those landowners within 200 feet of the proposed development. If the 200 foot area falls within the right-of-way, the applicant will notify those landowners within 200 feet of the outer edges of the right-of-way.

(368) COMMENT: The requirement for an applicant to provide proof that notification of filing of an application for a CAFRA permit was published in the DEPE Bulletin seems to be an unnecessary burden to place on applicants since the Department administers the Bulletin. (149)

(369) COMMENT: An applicant is already obligated to conduct various forms of public notification in accordance with applicable laws. Since an applicant has no control over the Department to adequately and timely publish notification in the DEPE Bulletin, this requirement at N.J.A.C. 7:7-4.2(a)6 appears redundant. (173)

RESPONSE TO COMMENTS (368) AND (369) ABOVE: The CAFRA amendments of 1993 provide the Department with the discretion to hold a 30 day public comment period on a CAFRA application instead of a public hearing. The CAFRA amendments of 1993 also give the Department 15 days after it declares an application complete for filing to determine whether it will hold a public hearing. To enable it to meet this deadline, the Department is requiring at N.J.A.C. 7:7-4.2(a)6 that CAFRA permit applicants verify that a notice of the filing of the application was published in the DEPE Bulletin, thus ensuring that interested individuals receive notice that an application is being submitted to the Department for a CAFRA permit. A copy of the DEP Bulletin is sent to every municipality and to the depository libraries in New Jersey. Depository libraries include 24 college libraries, 19 public libraries and 10 county libraries. The photocopied page with the proposed development listed will constitute proof of publication of the notice of filing. The rules at N.J.A.C. 7:7-4.5(a) provide that the date of publication of the notice of application filing in the DEP Bulletin will start the 30 day public comment period and that all requests for a public hearing be submitted to the Department within 20 days of publication of the notice of application filing in the DEP Bulletin, ensuring that the Department will receive public comments before determining whether to hold a public hearing on an application. N.J.A.C. 7:7-4.2(a)6 is changed upon adoption to require that the CAFRA application shall be submitted to the Department within two weeks of publication in the DEP Bulletin. This requirement will enable the Department to timely determine whether to hold a public hearing, in accordance with the amendments to the CAFRA statute adopted in 1993. This will also ensure that the interested public has received ample notice and opportunity to request a public hearing.

(370) COMMENT: Additional guidance is needed on filing an application in the DEPE Bulletin. (144)

RESPONSE: The Department has prepared an amended CAFRA permit application package that includes a form that the applicant can mail directly to the Department for publication in the DEP Bulletin. The "Notice of Filing" form is to be sent to the Department of

Environmental Protection, Land Use Regulation Program, CN 401, Trenton, NJ 08625, attention: Application Support Unit. A "Notice of Filing" form will be included with every copy of the application package for an individual CAFRA permit. The information required on the form will consist of the county, municipality, block and lot of the proposed development, the name of the applicant (and agent if applicable), the type of development (residential, commercial, industrial or public) and a brief description of the project. If the proposal is a residential development, the description shall include the number of dwelling units proposed, and if the proposal is a commercial development, the description shall include the number of parking spaces, or equivalent parking spaces proposed. N.J.A.C. 7:7-4.2(a)6 is changed upon adoption to require that the CAFRA application shall be submitted to the Department within two weeks of publication in the DEP Bulletin.

(371) COMMENT: Applicants should be given a choice of publishing a notice of filing of an application for a CAFRA permit in the local newspapers as opposed to the DEPE Bulletin since it sometimes can take several months to have a notice published in the DEPE Bulletin. (53)

RESPONSE: The Department does not agree with the commenter. This option was raised by the New Jersey Builders Association at the Department's Builders Advisory Group meetings, and also discussed with the Department's Environmental Advisory Group for land use issues. The Department's objective is to ensure public participation in the permitting process. This objective is best accomplished through the notification process and by soliciting information from concerned citizens on specific applications. If applicants are provided the option of where to publish a notice of filing, the public will not know where it should consistently look to find information on all applications. In addition, interested persons do not necessarily receive the local newspapers and could therefore miss publication of notices of filing. The delay in getting something published in the Bulletin is at most several weeks.

(372) COMMENT: The proposed requirement that 15 copies of development plans be submitted to the Department is excessive. The Department should substantially reduce this number of copies or state why submittal of 15 copies is essential. (53)

RESPONSE: The requirement for 15 copies is based on the need to have adequate copies for transmission to the various review agencies which comment on applications as well as a copy for the Land Use Regulation Program. These agencies may include, but are not limited to, 14 agencies, namely the Bureau of Tidelands Management, the Bureau of Shellfisheries, the Bureau of Marine Classification, the Bureau of Marine Fisheries, Endangered & Nongame Species, the Division of Fish, Game and Wildlife, Bureau of Coastal and Land Use Enforcement, Stream Encroachment, Floodplain Management, Natural Lands Management, Historic Preservation Office, Coastal Engineering, NJDOT, U.S. Fish and Wildlife Service, and U.S. Environmental Protection Agency. While there are times when not all 15 copies are needed, the Department believes the delay in having to request additional copies during the review process if not enough had been submitted would be more onerous than the current requirement.

(373) COMMENT: Requiring applicants to present the level of detail being requested at N.J.A.C. 7:7-4.2(a)8i(1)(A) will cause unnecessary requests for information and in turn economic hardship which was not addressed by the State. It is important for a reviewing officer to be focused on relevant CAFRA issues and cease their concerns about all things unrelated to the CAFRA review at hand. (4)

(374) COMMENT: The proposed requirements concerning proposed development plans appear to go beyond what is necessary (as stated by the rules) "to evaluate the effects of the proposed development on the environment of the coastal area." Since the purpose is to present information reasonable and necessary to distinguish the most preferred alternative or site location, details to exacting such as grading, lighting, etc, are not necessary to accurately assess impacts and are an unreasonable burden. N.J.A.C. 7:7-4.2(a)8i(1)(A) should be amended as follows:

[All] Existing structures, roads, utilities, topography, **limits of** vegetation, and coastal and freshwater wetlands, and any proposed **development activities which reasonably enable an accurate evaluation of the effects on the regulated environment are required. Such information should include, as applicable, proposed subdivision boundaries, the limits of clearing and grading,** [structures, filling, grading, excavation, clearing] roads, utilities, sewers [landscaping and lighting, and soil erosion and sediment control devices]. **Where an application involves the review of alternatives, the level of detail should permit the NJDEPE to reasonably compare alternatives to provide comments in the Staff Preliminary Analysis, and assure that all reasonable alternatives are considered. Additional reasonable information may be required prior to declaring an application "complete for review."** (173)

RESPONSE TO COMMENTS (373) AND (374) ABOVE: The Department does not believe that its requirements for the submittal of development plans go beyond what is necessary to evaluate the effects of the proposed development on the environment of the coastal area and therefore has not amended the rule as suggested by the commenter. Requiring this information as part of the application package will provide the Department with the necessary information to review the application to determine if it meets the regulations and avoid unnecessary delays in the review process. Requiring this information upfront will reduce the Department's requests for additional information.

(375) COMMENT: Any reference to the "checklist for administrative completeness" should be deleted since the Department can change the checklist without any public review. (173)

RESPONSE: The Department has not deleted the reference as suggested by the commenter. The Doria legislation (N.J.S.A. 13:1D-102) requires that the Department have administrative checklists for each regulatory program. The incorporation of the checklist will allow the Department to update and clarify the information needed in application packages, and reduce requests for additional information.

(376) COMMENT: Requiring that plans for any development consisting of more than one single family dwelling or duplex must be signed and sealed by a professional engineer or land surveyor is an unnecessary expense for some improvements defined as development and is inconsistent with the state laws governing the architecture, planning and landscape architecture professions. These existing statutes should govern who is qualified to prepare various plans. Many of our development plans are prepared, signed, and sealed by State Certified Landscape Architects on our staff; having to hire engineering consultants to perform these services will add to our design costs without any apparent benefit. (50, 55, 176)

RESPONSE: The Department has amended the rule as suggested by the commenters, whose developments would be on public park land, to provide that plans for activities proposed on public park lands may be prepared, signed and sealed by a State Certified Landscape Architect.

(377) COMMENT: The inconsistency between N.J.A.C. 7:7-4.2(a)8ii(4) and 4.2(c) concerning the preparation of development plans needs to be resolved. Both sections relate to the preparation of development plans for activities in an area subject to Tidelands conveyance, but one requires preparation by a professional engineer and the other requires preparation by a professional surveyor. (50, 55, 176)

RESPONSE: The Department has amended the rule at N.J.A.C. 7:7-4.2(a)8ii(4) and 4.2(c) upon adoption to allow for development plans for activities subject to a Tidelands conveyance to be prepared by a professional engineer or land surveyor.

(378) COMMENT: A different agency within the Department regulates Tidelands and therefore the requirement at N.J.A.C. 7:7-4.2(a)8ii(4) should be deleted. (173)

RESPONSE: The Department has not deleted this section as requested by the commenter. The Bureau of Tidelands Management is within the Land Use Regulation Program and is responsible for the review of tidelands applications. It is important to keep the tidelands conveyance and permit review processes closely coordinated.

(379) COMMENT: We strongly support the inclusion of a mechanism to improve the implementation by DEPE/CAFRA of the provisions of the Pinelands Comprehensive Management Plan in those areas of the National Reserve not regulated by the Pinelands Commission. The State of New Jersey is required by the Federal Pinelands Act to insure adequate implementation and protection within this area. Efforts to increase the coordination between the Department and the Pinelands Commission should be retained, and strengthened. (45)

RESPONSE: The Department acknowledges this comment in support of the proposal. However, the Department has determined that the language of the rule as currently written, including its reference to the Memorandum of Agreement (MOA) provides sufficient direction to protect the Pinelands National Preserve as required by the National Parks and Recreation Act, and has not adopted a proposed amendment to N.J.A.C. 7:7E-3.44 (see notice of adoption published elsewhere in this issue of the New Jersey Register). The MOA specifically states that the

Department will utilize the Pinelands' Comprehensive Management Plan in reviewing a project in the Pinelands National Reserve and the Department will continue to do so accordingly.

(380) COMMENT: The Pinelands Commission frequently will not issue the required certificates until the project has been completely reviewed and is ready for approval. This section should be revised to indicate proof an application to the Pinelands Commission has been submitted. (144)

(381) COMMENT: The Department lacks the authority to require applicants for CAFRA permits within the Pinelands Preservation Area or Protection Area to also apply to the Pinelands Commission since the Pinelands Commission does not retain jurisdiction for these areas. This section should be deleted. (53)

(382) COMMENT: Requiring proof of submission to the Pinelands Commission on applications on property within both the CAFRA area and Pinelands area clearly oversteps the legislative mandate. This joint jurisdiction was specifically rejected by the legislature and should be removed from the proposal. (43)

RESPONSE TO COMMENTS (380) THROUGH (382) ABOVE: The State Pinelands Protection Act and rules (N.J.A.C. 7:50) provide that no other State agency may declare an application complete for review unless the application contains a Certificate of Filing, Notice of Filing, or a Certificate of Compliance from the Pinelands Commission. The Department has amended the rule upon adoption at N.J.A.C. 7:7-4.2(a)10 to clarify that this requirement refers to those applications proposed in an area under Pinelands Commission jurisdiction. This requirement will not confer jurisdiction on the Pinelands Commission, but will reflect current practice and the provisions of the Memorandum of Agreement ("MOA") between the Department and the Commission.

(383) COMMENT: N.J.A.C. 7:7-4.2(a)11 is vague. Submission requirements should be predictable and specifically identified. (173)

(384) COMMENT: The State should insure that language such as that at N.J.A.C. 7:7-4.2(a)11 will not necessarily delay applications via an audit, or delete the proposed language. (4)

RESPONSE TO COMMENTS (383) AND (384) ABOVE: The Department believes that its application submission requirements are predictable and specifically identified. The section referenced by the commenter provides for the submission of any additional information requested to clarify already submitted on the proposed development. It does not allow the Department to request new information not already required, but rather allows clarifying information to be received.

(385) COMMENT: The proposed requirement that Waterfront Development and Wetlands permit applications include a copy of any tidelands grant, lease or license previously approved for the property in question is unnecessary. Permit applications should be accepted without this information. (53, 73)

(386) COMMENT: The Department should eliminate the requirement that a tidelands conveyance be submitted within an application. Based upon the absolute uncertainty of success and timetables involved in the permit review process, this requirement is an unnecessary hardship and makes no apparent sense. (109)

(387) COMMENT: N.J.A.C. 7:7-4.2(b), which requires a tidelands grant, lease or license prior to an application being deemed complete, and N.J.A.C. 7:7-4.4(a)2ii, which allows the Department to issue permits without a tidelands conveyance, are inconsistent and should be clarified. Previously, an application for a CAFRA or Waterfront Development Permit could be deemed complete for review without an approved Tidelands conveyance. The approval process for both applications was performed on parallel paths. A CAFRA or Waterfront Development Permit was not issued until a tidelands conveyance was authorized by the Bureau of Tidelands Management. This afforded bureaus within the Department the opportunity to review and cross check each other for accuracy and consistency. We believe that the existing procedures work well and do not require an additional amendment which adds no value to the review process. In addition, the Bureau of Tidelands Management will often not consider an application until a CAFRA or Waterfront Development Permit has been granted. (158)

RESPONSE TO COMMENTS (385) THROUGH (387) ABOVE: The regulations at N.J.A.C. 7:7-4.2(b) require verification that a tidelands instrument has been previously applied for, issued, or is unnecessary for the site. This regulation will continue the Department's existing practice which provides for coordination and consistency among the bureaus.

(388) COMMENT: If the current Coastal Wetland permit classification system is not retained, the requirement for mitigation should be waived for those projects involving the construction of residential docks or individual boat moorings, catwalks, piers, docks, landings, footbridges and observation decks, and the repair and rehabilitation of bridges, roads, highways, railroad beds and the facilities of any utility, municipality, or county. As an alternative, the exemption from mitigation requirements should include those activities listed above which require the disturbance of less than 0.1 acre of mapped coastal wetlands. (77)

(389) COMMENT: The new rules require mitigation as part of any coastal (1970) wetlands permit. Previously, mitigation was not required for catwalks, piers, docks, landings, footbridges and observation decks if the applicant could demonstrate that vehicles and equipment would not be placed on wetlands in order to construct such structures. This caveat, previously codified at N.J.A.C. 7:7-4.2(g)2, is proposed to be deleted. We do not support this deletion and believe the new rules are likely to discourage any new public access projects in coastal wetlands. Private and public entities are unlikely to provide new public access in the form of boat landings and observation decks if mitigation of coastal wetlands, in addition to financial and maintenance sureties, is required. We recommend that the existing language at N.J.A.C. 7:7-4.4(g)2 be retained or that the proposed rules be changed to exempt public access projects from providing mitigation. (158)

RESPONSE TO COMMENTS (388) AND (389) ABOVE: While the Department will no longer be using the Wetlands Type A and Type B permit application classification system, the elimination of this classification system will not change the manner in which wetland permit applications are reviewed, including when wetlands mitigation will be required. The Department has restored on adoption the language previously found at N.J.A.C. 7:7-4.2(g)2, now at N.J.A.C. 7:7-4.2(e)2, to clarify that the application of the Rules on Coastal Zone Management, N.J.A.C. 7:7E, will not be affected by the elimination of the coastal wetlands permits classification system.

(390) COMMENT: The requirement to provide the "upper and lower" wetlands boundary is confusing as these terms are not defined. (149)

RESPONSE: The Department has amended the rule at N.J.A.C. 7:7-4.2(a)5ii(1)(I) on adoption to clarify these terms. The "upper" wetland boundary refers to the upland or landward limit of wetlands, while the "lower" wetlands boundary refers to the waterward limit of wetlands.

(391) COMMENT: Requiring a cost estimate for the mitigation to be included with the application should not apply to public works contracts such as NJDOT's that are awarded based on sealed low bids. This information might prejudice the bid process. Furthermore, the actual cost of the mitigation is often difficult to identify because of several variables such as the usability of the fill, providing staging areas for construction operations, etc. We suggest that the requirement to provide cost information be omitted as it is irrelevant to whether or not the permit application should be approved. (149)

RESPONSE: The Department agrees that the requirement to provide cost information is irrelevant to the review of the permit application, and does not require that a mitigation plan or cost estimate for mitigation be included with the permit application. However, an applicant may submit a mitigation plan as part of the application if it chooses to do so. The Department does require an approved mitigation proposal as a prerequisite to engaging in a regulated activity in a wetland.

(392) COMMENT: Requiring that deed restrictions for a mitigation site be registered with the County Clerk within 60 days of approval of the mitigation proposal is unreasonable. The proposal could involve land to be purchased for this purpose if the proposal was accepted, in which case 60 days would not be adequate. Registration of deed restrictions should be a condition of the permit and should not be governed by an absolute timeframe. (50, 55, 176)

(393) COMMENT: The Department proposes to require submission of a copy of a deed restriction for wetland mitigation areas. Please clarify that the information to be submitted to the Department is the proposed but not yet filed deed restriction, which shall be reviewed by the Department. After approval, the actual deed restriction will be filed within the recommended 60-day period. (77)

RESPONSE TO COMMENTS (392) AND (393) ABOVE: The Department has clarified the rules as suggested by the commenters to indicate that the information to be submitted as part of the mitigation proposal is the proposed deed restriction. In addition, the Department has amended the rule to require proof that the deed restriction has been filed prior to the start of construction.

(394) COMMENT: The requirement to provide a secured bond to the Department as part of the application should not be necessary for NJDOT public works projects as this places an unnecessary and duplicative expense on taxpayers. NJDOT currently requires performance bonds from its contractors, and this should be sufficient guarantee to the Department that the work will be satisfactorily performed, and it is doubtful that the NJDOT will go bankrupt. (149)

(395) COMMENT: Requiring that a public agency bond for proposed mitigation plan improvements is an unnecessary expenditure of public funds. The risks associated with a private entity abandoning a project do not apply when the applicant is a subdivision of the State. This provision should not apply to public agencies. (7, 50, 55, 176)

RESPONSE TO COMMENTS (394) AND (395) ABOVE: The Department agrees and has amended the rules upon adoption so that a secured bond is not required from public agencies as part of their mitigation plan provided that both the development and mitigation are provided for in a single bid and contract.

N.J.A.C. 7:7-4.3 Availability of applications for review

N.J.A.C. 7:7-4.4 Initial review of applications

(396) COMMENT: N.J.A.C. 7:7-4.4(a) requires the Department to take action within 20 working days. What will happen to a permit application when the Department fails to take action within the prescribed time frame? (52)

RESPONSE: If the Department does not take an action within the prescribed timeframe, the application will automatically be declared administratively complete.

(397) COMMENT: While it is appreciated that the Department is imposing time limits on itself for the review of applications, there is potential for the requesting of additional information to be abused as a way of extending that time period. Careful monitoring of this will be necessary. (50, 55, 176)

RESPONSE: The Department works to ensure that requests for additional information are justified and not based on the desire to extend permit review timeframes. This is the current practice, which will continue.

(398) COMMENT: All of the newly regulated developments will be subject to the 90-Day Construction Rule, which means that the Department will take three months to make a decision from the time an application is deemed complete for review. It should be noted that the Department is permitted 20 working days to review an application for completeness and may after that review require additional information prior to deeming the application acceptable for review. This process translates to a best case scenario of at least four months for most developments. (22)

RESPONSE: The timeframes established in the law and regulations are intended to balance the need for an adequate review and the applicant's development plans. They are maximums, and the Department hopes to issue decisions in less time, particularly for smaller projects.

(399) COMMENT: Requiring that no application be declared complete for final review unless all tidelands conveyances are in place is onerous as the process for securing tidelands conveyances can easily take a year. The permit, not the review, should be contingent on having the conveyances. The applications should be allowed to proceed concurrently. (50, 55, 176)

(400) COMMENT: The requirement to obtain a tidelands conveyance prior to declaring an application complete for final review appears to be in conflict with the Tidelands Conveyance program. It is our understanding that the Bureau of Tidelands will not issue a Tidelands Conveyance without a determination that the coastal permit will be issued for the proposed project. In fact, a Tidelands Conveyance is unnecessary if the permit is denied. The need to obtain a Tidelands Conveyance should be a condition of the issued permit. (77)

(401) COMMENT: There is a catch-22 with requiring a tidelands conveyance be in place prior to the issuance of a waterfront development permit. The language at N.J.A.C. 7:7-4.4(a)2ii could actually compound the catch-22. I don't think this proposed amendment is necessary. (60)

(402) COMMENT: The requirement at N.J.A.C. 7:7-4.4(a)2iii is in direct conflict with the current Tidelands application procedure which first requires a coastal permit. This is an example of where mandating one permit before another appears inappropriate and could result in application delays. Given the broader powers to mandate permit modifications, it is impossible to obtain a Tideland conveyance without confirmation of the proposed plan. (173)

RESPONSE TO COMMENTS (399) THROUGH (402) ABOVE: The Department does not propose to change its current practice for reviewing applications which also require a tidelands conveyance. The concurrent review of applications has seemed the most effective way of ensuring that the missions of the two programs are met without undue delay or confusion to applicants. In addition, this reflects the language of the current 90 day Regulations, N.J.A.C. 7:1C.

N.J.A.C. 7:7-4.5 Public hearings and public comment periods

(403) COMMENT: The Department should automatically waive the requirement for public hearings for all activities covered by general permits, permits-by-rule and minor projects. (53)

RESPONSE: The Department will only hold a public hearing to establish a General Permit or Permit-By-Rule as part of the rule-making process in accordance with N.J.A.C. 7:7-7.1(c)3. The Department will not hold individual hearings on applications for General Permit authorization, and public hearings will not be held on Permit-By-Rule notifications. The Department has not automatically waived the public hearing requirement for "minor projects." Public hearings will be held on applications in accordance with the rules at N.J.A.C. 7:7-4.5(a)1.

(404) COMMENT: The rules should be drafted so that the standard procedure will be for a public comment period and not a public hearing. In instances where a hearing is requested, the Department should require a written summary of the arguments and a statement as to why a hearing is necessary. (53)

RESPONSE: The Department has not amended the rules as suggested. As indicated in the rules at N.J.A.C. 7:7-4.5(a)1, the Department may initiate public hearings on its own or in response to public requests identifying specific issues which the Department believes warrant a public hearing. The relatively tight timeframes of the 90 Day Act make it unreasonable to ask a person requesting a public hearing to first provide extensive documentation.

(405) COMMENT: In order to afford interested parties sufficient time to prepare and submit comments, the Department should list in the DEPE Bulletin all applications that are received as opposed to waiting for those applications to be declared complete for review. While we recognize the Department's concern in taking this approach, in that some applications may never be complete for review, we believe that this option will allow the Department to meet its time constraints required by statute. (53)

RESPONSE: As required by the regulations, applications will be published in the DEPE Bulletin prior to the application being deemed complete for review. The CAFRA amendments of 1993 provide the Department with the discretion to hold a 30 day public comment period on a CAFRA application instead of a public hearing. The CAFRA amendments of 1993 also give the Department 15 days after it declares an application complete for filing to determine whether it will hold a public hearing. To enable it to meet this deadline, the Department is requiring at N.J.A.C. 7:7-4.2(a)6 that CAFRA permit applicants verify that a notice of the filing of the application was published in the DEPE Bulletin, thus ensuring that interested individuals receive notice that an application is being submitted to the Department for a CAFRA permit. The rules at N.J.A.C. 7:7-4.5(a) provide that the date of publication of the notice of application filing in the DEPE Bulletin will start the 30 day public comment period and that all requests for a public hearing be submitted to the Department within 20 days of publication of the notice of application filing in the DEPE Bulletin, ensuring that the Department will receive public comments before determining whether to hold a public hearing on an application. This requirement will enable the Department to timely determine whether to hold a public hearing, in accordance with the amendments to the CAFRA statute adopted in 1993.

(406) COMMENT: The Department should use the ACOE's Public Hearing Rules that appeared in the Federal Register, Volume 51 #291, November 13, 1986 for those projects that require a "major" review. These rules contain provisions to specify why a hearing is needed, allow the agency to resolve the issue informally, allow the agency to dismiss the need for a hearing if issues are insubstantial or there is no valid interest to be served. (53)

RESPONSE: The Army Corp is not subject to the limitations of the 90 Day Act so they are able to take several weeks or longer to decide whether to hold a public hearing. The Department has not amended the rules as suggested. As indicated in the rules at N.J.A.C. 7:7-4.5(a)1,

the Department may initiate public hearings on its own or in response to public requests identifying specific issues which the Department believes warrant a public hearing.

(407) COMMENT: If no public hearing is held, a preliminary staff analysis is not prepared. In these cases, the Department should be required to notify the applicant within a set timeframe of any issues that have arisen or that may place conditions on the permit. If not, the Department waives the right to impose conditions on permits.

RESPONSE: The Department will not waive the right to impose conditions on permits. The process of preparing and completing the permit decision enables the Department to conclude what permit conditions, if any, are required. The placing of conditions on permits allows the Department to approve applications that it may otherwise deny. In accordance with the rules at N.J.A.C. 7:7-4.6(a), the Department shall, within 15 days after the public hearing, if one is held, or 15 days after the close of the public comment period if no hearing is held, either declare the application complete for final review or issue notification to the applicant that additional information is required.

(408) COMMENT: Consideration of comments received after the application is determined complete for final review may seriously jeopardize the time-frame in which permit decisions can be made. It is unclear how the Department will determine if the comments are relevant to the application and whether such comments could possibly force the Department to require the applicant to request extensions in the 90-day review. Additionally, adequate time for public comments is already provided under current procedures. We request "finality" in the comment period, so that the applicant and the public can know that on a specific date, the record is closed on the application. (77)

RESPONSE: The Department is obligated to consider all comments received by the close of the comment period, but it will not ignore relevant information raised later in the process. However, the Department shall not delay the permit review timeframe based on the receipt of additional comments.

(409) COMMENT: The NJBA objects to the requirement that the applicant give public notice of the public hearing in a newspaper display advertisement which is a minimum of four inches in width. This size ad is very expensive especially when a less costly legal notice could be used. This requirement should be deleted or the Department should justify why it is necessary. (53)

RESPONSE: Since this requirement is for the publication of the public hearing, the Department does not feel that it should delete the requirement. The Department's objective is to ensure adequate notice and public participation in the permitting process. This objective is best accomplished by noticing and soliciting information from concerned citizens.

(410) COMMENT: The selection of a court reporter should be based on qualifications, not membership with any particular group. This clause could be viewed as exclusionary. (144)

RESPONSE: The Department has deleted this requirement upon adoption.

N.J.A.C. 7:7-4.6 Final Review of the application

(411) COMMENT: The Department should delete the language that states "failure to submit the information by the mutually agreed date of extension will be cause for the Department to cancel the application without further notice." It is unfair for the Department to penalize an applicant when the Department is frequently guilty of the same transgression (not taking action within specified statutory time frames). (43, 53)

RESPONSE: Cancellation of applications will only occur when an applicant is unable to demonstrate good cause for the delay in completing the application by providing the requested information. If cause can be demonstrated, further extensions in which to submit information will be granted.

N.J.A.C. 7:7-4.7 Timetable for final decisions

N.J.A.C. 7:7-4.8 Publication of the final decision

(412) COMMENT: The requirement to notify anyone that commented on the application during the review process is too onerous. The section should be modified so that the permittee would have to give notice of a final decision only to those persons who specifically requested such notice. (53)

RESPONSE: The Department has not modified the rule as suggested. A permittee is only required to provide notice to every person who commented on the application during the review process when the permittee chooses not to wait for the decision to be published in the DEPE Bulletin. This ensures that every person interested in the application will be notified of the final decision.

N.J.A.C. 7:7-4.9 Withdrawal, re-submission and amendment of applications

(413) COMMENT: The Department should provide a definition for the term "amended applications" as it is used in this section. NJBA recommends that the term be defined as a change in plans which increases the scope of work, increases the environmental impact or brings into play new impacts that were not originally associated with the project. (53, 73)

RESPONSE: The Department has not provided a definition as suggested. Applicants often choose to amend the proposed development plan during the permit review period. This section is intended to provide guidelines on how such amended applications will be processed by the Department.

N.J.A.C. 7:7-4.10 Requests for modifications

(414) COMMENT: In assessing whether a significant change has been proposed, the Department has implied a finding of no significant change will be rendered only in those cases where the change will result in "less environmental impact than the original approved plan." The proposed language should be amended to read as follows: "A change that will result in no additional adverse environmental impact or less environmental impact than the original approved development will not constitute a significant change." (77)

(415) COMMENT: The new rule at N.J.A.C. 7:7-4.10 leaves the determination of whether a modification is "significant" to the Department's discretion. We would appreciate additional clarification concerning the meaning of "significant change in scale, use or impact of a project." Perhaps a significant change would be better defined as a certain increase in impervious coverage, soil disturbance, etc. (158)

(416) COMMENT: The Department should retain the distinction between major and minor permit modifications unless the Department can clarify those criteria by which it will determine whether a significant change will occur (e.g., percent increase in impervious surface, percent increase in number of units, or some other adverse impact on the resource). (53)

(417) COMMENT: The rule's language leaves discretion to the Department, provides no predictable standard and increases the Department staff's workload to review numerous requests regarding incidental matters. Department staff continuously comment on the backlog of work they can't complete because of these types of issues. The rules should allow minor changes conditioned upon submission of revised plans and correspondence detailing the changes. (173)

RESPONSE TO COMMENTS (414) THROUGH (417) ABOVE: The Department has provided additional clarification in the rule upon adoption as suggested by the commenters. Significant changes generally include, but are not limited to, increased clearing, grading, filling or impervious coverage, reduction in buffers, and change in footprint location.

(418) COMMENT: The proposed regulation giving the Department "discretion" to determine a major/minor modification will exacerbate the unpredictability and subjectiveness of interpretation. These are State regulations and as much ground for interpretation as possible should be removed from them. The question of whether or not an activity requires a new permit, a minor modification to an existing permit, or a major modification can easily be determined within the regulations once the Program decides what it is reviewing for. (109)

RESPONSE: The Department needs to review those modifications that will cause or have the potential to cause adverse environmental impacts. As indicated previously, the Department has provided additional clarification in the rule upon adoption as suggested by other commenters. Significant changes generally include, but are not limited to, increased clearing, grading, filling or impervious coverage, reduction in buffers, and change in footprint location.

(419) COMMENT: The Department should request that an applicant/permittee schedule an "application review" to determine whether a modification is applicable. A "letter of decision" should then be issued by the Department indicating whether a modification is or is not required. If required, the reasons for the modification, in addition to what types of information are to be submitted and reviewed by the Department shall be included in the letter. This "letter of decision" shall be issued within 15 days after the "application review" date. (119)

RESPONSE: The Department has not amended the rule as suggested. Rather, as indicated above, it has provided additional clarification in the rule upon adoption as suggested by other commenters. Significant changes generally include, but are not limited to, increased clearing, grading, filling or impervious coverage, reduction in buffers, and change in footprint location.

N.J.A.C. 7:7-4.11 Suspension and revocation of permit

(420) COMMENT: Among the reasons that the Department states that a permit can be suspended is that the applicant fails to correctly identify project impacts or unanticipated adverse impacts caused by the development. These reasons should be deleted since it is the Department's responsibility to make this determination, not the applicant's. (53, 73)

(421) COMMENT: This rule will substantially impact the financing of all CAFRA projects since it allows continuous "collateral" attacks on a permit long after it is issued, financial investments are made, and construction is under way. It is the Department's charge to be sure that probable impacts are properly assessed. To the extent the property owner and the agency fail to identify impacts because they are truly "unanticipated," this should not be the basis for stopping a project. (77, 82)

(422) COMMENT: A permit can be suspended for failure to identify unanticipated impacts under this section. While major impacts should trigger further review, the permit itself should not be revoked. If an impact without a compelling health or safety concern is missed by both the applicant and the Department, further steps may be required but only those which do not jeopardize the project. (43)

RESPONSE TO COMMENTS (420) THROUGH (422) ABOVE: The amendment is intended to ensure that permit applicants thoroughly address all project impacts in the application submittal and Environmental Impact Statement (or Compliance Statement), and to discourage applicants from submitting incomplete or inaccurate information that would prevent an accurate assessment of potential adverse effects. This amendment does not provide that this failure will automatically result in permit suspension, but gives the Department the discretion to suspend the permit under appropriate circumstances. It is not intended to penalize applicants for conditions that legitimately could not be anticipated by either the applicant or the Department.

N.J.A.C. 7:7-4.12 Expedited application process

(423) COMMENT: The Department is proposing to eliminate this section which provides for an expedited application process provided that adequate staff time is available. What is the rationale for elimination of this section? This section should remain intact in the event that adequate staff time is ultimately available. (53, 73)

(424) COMMENT: The removal of the expedited permit language is contrary to the stated goals of the legislation, which called for the ability to quickly move projects of minimal impact through the program. We strongly believe this process must be included. (43)

RESPONSE TO COMMENTS (423) AND (424) ABOVE: This rule was adopted at a time when the Department had more staff available with a smaller workload than is currently the case. The Department tries to accommodate all requests for expedited reviews and feels that it is not necessary to have a separate review process to handle these requests. The Department does not believe that the deletion of this section is contrary to the legislative amendments to CAFRA. The Department has provided a new subchapter providing for the issuance of General Permits and Permits-By-Rules, which are available for projects determined to have minimal impacts.

Subchapter 5. Appeals

(425) COMMENT: N.J.A.C. 7:7-5.1, which allows interested persons who consider themselves aggrieved by a final permit decision to appeal to the Commissioner, is illegal and should be deleted, given the recent passage of Assembly Bill 1561 which prohibits third parties to appeal permit decisions. (53, 73)

RESPONSE: Assembly Bill 1561 does not prohibit third party appeals, but instead prohibits an agency from adopting a regulation allowing third party appeals if the third party is not entitled to a hearing by statute or by the constitution. The Department has traditionally declined to grant third party hearing requests where there is no statutory or constitutional right to a hearing and will continue to do so.

(426) COMMENT: N.J.A.C. 7:7-5.4, which allows any interested person to comment on a proposed settlement of an appeal , should be deleted given the recent passage of Assembly Bill 1561 which prohibits third parties to appeal permit decisions. (53, 73)

RESPONSE: The rule does not grant a third party a right to administratively appeal a permit decision, but allows a third party to comment on a revised application submitted by an applicant to settle an appeal. This is consistent with statutory provisions requiring all permit applications to be subject to public notice and comment. In addition, the rule allows a third party to appeal a decision in accordance with N.J.A.C. 7:7-5.1. As stated in response to the previous comment, N.J.A.C. 7:7-5.1 does not grant third parties a right to a hearing unless a constitutional or statutory right to a hearing exists.

Subchapter 6. Information Requirements for Environmental Impact Statements and Compliance Statements

(427) COMMENT: The information provided in this subchapter is confusing. The criteria for determining whether a Compliance Statement or an Environmental Impact Statement is required appears to be open-ended and unpredictable. The Department should restructure this section so that it is required to provide the applicant with a binding determination at the pre-application conference as to whether an Environmental Impact Statement or Compliance Statement will be required. The Compliance Statement should be limited to a project description, site description including an environmental inventory, and compliance with certain minimal policies. The rationale behind this distinction is that the requirements for a compliance statement should be less onerous and should not require an applicant to demonstrate information regarding project alternatives, etc. in a Compliance Statement. As currently proposed, there is little discernible difference between the amount of information to be submitted for an EIS and a Compliance Statement. (53)

(428) COMMENT: There is little difference between an EIS and Compliance Statement. In essence this rule change will result in the requirement of a de facto environmental impact statement being prepared for each and every development requiring a coastal permit, even developments as minimal as a single residential dock. When taken into consideration with the proposed eliminations of the Type A and Type B coastal wetlands permit classification system, this requirement will prove expensive and burdensome to the small property owner who wishes to implement waterfront improvements. (60)

(429) COMMENT: Statements of Compliance have historically been sufficient for the Department to assess the impact of minor projects and have proven to be less costly to the applicant than a full environmental impact statement, which included a statement of compliance as a subsection. The existing format should be retained, with a statement of compliance only for minor projects and an environmental impact statement, including a statement of compliance, for major projects. The table of contents format featured in the existing rules should be retained (with the elimination of the three descriptive elements as proposed). That format provides clear guidance for EIS preparation. (60)

(430) COMMENT: N.J.A.C. 7:7-6.1 is confusing. It is not clear how the Department differentiates between "major" and "minor" projects. The proposed rules leave such determinations to the discretion of the Department. We suggest that the Department require an EIS for projects that were formerly defined as "facilities." (158)

(431) COMMENT: There is an inadequate definition of the terms "major" and "minor" as related to the preparation of an EIS. (144)

(432) COMMENT: The Department has difficulty in defining the basic parameters of jurisdiction and subsequent areas of concern, leaving the judgment as to whether an Environmental Impact Statement or Compliance Statement is required to be addressed on a case-by-case basis. The Department should define the purpose, clarify the intent, focus the review on environmental protection, and thereby eliminate the "discretion." (109)

(433) COMMENT: The language at N.J.A.C. 7:7-6.2 is very broad ("detailed design specifications") and may delay projects when information and details beyond what is reasonably necessary to assess regulatory compliance are sought. A suggested change could include "and proposed plans with adequate design details to reasonably enable the EIS to assess compliance with the applicable CAFRA rules." (173)

(434) COMMENT: N.J.A.C. 7:7-6.2 is too broad and will result in endless requests for additional information and be used to delay projects. (4)

(435) COMMENT: The statement "the EIS will also contain more information regarding project alternatives and mitigation measures designed to reduce the overall impacts of the proposed development

on the environment" is nebulous. The rules already require an applicant to address alternatives where specific impacts to resources are unavoidable. (173)

RESPONSE TO COMMENTS (427) THROUGH (435) ABOVE: In response to the 1993 legislative amendments to CAFRA, specifically Section 6, the Department has attempted to describe when an Environmental Impact Statement will be required, as opposed to a Compliance Statement. The primary distinction, as discussed in the rule proposal, is the level of impact of a proposed project. However, due to the wide variation in project types and site sensitivity, it is difficult to define all circumstances when an Environmental Impact Statement will be required. The Department does not agree that it should only require an EIS for projects that were formerly defined as "facilities." This distinction would allow an applicant proposing a 24 unit development on a dune to not prepare an EIS. The proposed and adopted regulations do not require an Environmental Impact Statement or a Compliance Statement for a project which qualifies for a General Permit or Permit-By-Rule.

(436) COMMENT: The current format is repetitive and needs to be streamlined. The EIS should be in the same format as CAFRA permit decisions, so that it is more easily assessed. (53)

RESPONSE: The format outlined in the regulations is intended to provide general guidance on how an EIS should be structured. The format of an EIS for a specific project may be streamlined through a pre-application review.

(437) COMMENT: The Department should develop a matrix (criteria) that will allow qualifying projects that are likely to have less environmental impact due to either their size, location or nature to merely submit an environmental assessment (EA). An environmental assessment would be a less comprehensive and less rigorous version of the EIS that would not require an alternatives analysis or compliance with as many policies, similar to the compliance statement used in the Waterfront Development Program. The NJBA refers the Department to former Governor Kean's Executive Order 215 and accompanying guidelines for the preparation of an EIS/EA which currently serves as the basis for a memorandum of understanding between DEPE and DOT. The Department should develop two levels of review (minor and major) for projects. The minor review would only require an EA and the major review would require an EIS. One possibility for assigning projects would be as follows:

Distance from Tidal Water (feet):	level of review:
0 to 150	Major
150 to 500 (<24 units)	Minor
150 to 500 (>25 units)	Major
>500 and <75 units	Minor
>500 and >75 units	Major

For commercial projects, substitute "150 parking spaces" for the reference to 75 units. (53)

RESPONSE: The development of a matrix would not always reflect the level of review necessary for a particular project. The Department provides pre-application reviews as a means to provide specific guidance on the level of detail required for permit applications.

(438) COMMENT: The proposed amendments at N.J.A.C. 7:7-6.1(b)1 and 2 refer to major projects as requiring an EIS while a Compliance Statement may be submitted for a minor project. However, the proposed amendments do not include a definition of what constitutes a major or minor project. Atlantic Electric submits that construction of new electric lines and/or substations subject to the Coastal Permit Program Rules would require the submittal of an EIS. However, the maintenance, reconstruction or repair of existing electric lines and/or substations subject to the Rules would only require the submittal of a Compliance Statement. (17)

RESPONSE: The construction of electric lines is exempt from CAFRA regulation. In addition, as stated previously, the Department has amended its rules to clarify that the repair and maintenance of electric lines and associated substations within cleared and maintained rights-of-way are also not regulated. Guidance on whether the construction of a substation would require an EIS or Compliance Statement can be obtained through a pre-application review for a specific proposal.

(439) COMMENT: Environmental Impact Statements and Compliance Statements should not be required for projects which qualify for General Permits or Permits-By-Rule. (45, 53)

RESPONSE: The Department agrees with the commenters. The proposed and adopted regulations do not require an Environmental Impact Statement or a Compliance Statement for a project which qualifies for a General Permit or Permit-By-Rule. An application for a General Permit only requires the specific information listed at N.J.A.C. 7:7-7.3, and a person qualifying for a Permit-By-Rule need only submit a letter, not an application, to the Department.

(440) COMMENT: The Department should encourage flexibility by allowing for the substitution of other EIS/EA forms used by other federal or state agencies. (53)

RESPONSE: The Department recognizes that some or all of the EIS requirements may be addressed in an EIS prepared to meet requirements of another governmental agency or body. Such an EIS may be submitted, but must be supplemented to ensure that it discusses the applicable Rules on Coastal Zone Management, N.J.A.C. 7:7E. The Department's regulations already provide for this.

Subchapter 7. General Permits and Permits-By-Rule

(441) COMMENT: The creation of General Permits and Permits-By-Rule is a good idea and should be helpful in rectifying unforeseen minor issues after the rules are adopted. (7)

(442) COMMENT: We support the principle of Coastal General Permits and Permits-By-Rule. (158)

RESPONSE TO COMMENTS (441) AND (442) ABOVE: The Department acknowledges these comments in support of the proposal.

N.J.A.C. 7:7-7.1 General standards for issuing coastal General Permits and Permits-by-Rule

(443) COMMENT: We strongly support the conditioning of the development and issuance of General Permits and Permits-By-Rule on the assessment of cumulative impacts. Section 11 of Chapter 190 clearly instructs the Commissioner to take into account the cumulative impacts in all permitting decisions, including the standards and requirements established for GPs and PBRs, as it states "**if the Commissioner finds** ..the proposed facility would materially contribute to an already serious and unacceptable level of environmental degradation...**he** may deny the permit." Clearly, the Legislature did not intend to allow or instruct the Commissioner to wait until such situations had been created by a series of his own decisions, hence the necessity to anticipate and set reasonable conditions for accounting for cumulative impacts. (45)

RESPONSE: The Department acknowledges this comment in support of the proposal.

(444) COMMENT: The NJBA objects to the conditions that are being proposed for the issuance of general permits and permits by rule. This section states that the Department shall only propose such permits if they will have "minimal cumulative adverse impacts on the environment" and "will be in conformance with the purposes of CAFRA." During the debates on CAFRA revisions the Legislature seriously considered adding language to include cumulative impacts but chose not to do so. For this reason, the Department is clearly outside its authority. The requirement that development be in conformance with the purposes of CAFRA is too subjective and should be deleted since an applicant may meet all of the objective standards in the regulations but be denied a permit for not complying with some undefined subjective criteria. (53)

RESPONSE: The 1993 legislative amendments to CAFRA provide the Department with the authority to issue a general permit in lieu of an individual permit. The statute allows the Department to adopt general permits but does not provide any standards for their adoption. This rule is therefore necessary to advise the public of what standards the Department will apply before deciding to adopt a general permit. The Legislature did retain language in CAFRA intended to address and minimize adverse cumulative impacts within the coastal area and this standard is consistent with this intent. This regulation applies to the adoption of new or reissued general permits, not to the authorization of a specific development under a general permit. The phrase "issuance of general permits" within the regulation refers to the adoption of the general permit within the Department's regulations and not to any determination that a particular project is authorized under a general permit. Thus, an individual application for a general permit will not be reviewed in accordance with the standards of N.J.A.C. 7:7-7.1 but in accordance with the standards found at N.J.A.C. 7:7-7.2, General Permit authorization, and at N.J.A.C. 7:7-7.4, Permits-By-Rule.

(445) COMMENT: The Department should delete the proposed language which would allow the Department to add special conditions before a project could qualify for a general permit. This type of provision is contrary to the concept of a general permit, which should stress predictability and simplicity. (53)

RESPONSE: The Department has not deleted this section as suggested. Retaining this language will be helpful to applicants because it may allow the Department to issue a general permit with conditions, rather than having to deny it.

N.J.A.C. 7:7-7.2 General Permit authorization

(446) COMMENT: As has been done with the Freshwater Wetlands program, the Department should maximize to the extent possible the number of activities that can qualify for either a permit-by-rule or general permit in order to reduce the administrative burdens to both the Department and the regulated community while not adversely affecting the environment. Most activities can be allowed to proceed under the permit-by-rule mechanism which would be modeled after that which exists in the Army Corps of Engineers, Wetlands Program. This allows applicants to move ahead provided that they comply with certain guidelines, and that projects meet certain pre-determined standards. (53)

RESPONSE: The Department has attempted to define those activities which should be handled through a General Permit authorization in these rules. It is likely that additional activities will be proposed as General Permits in the future, once the Department has implemented the CAFRA amendments and additional activities warranting general permit authorization are identified.

(447) COMMENT: The Department should propose additional General Permits allowing certain activities provided that certain criteria are met, such as no disturbance to dunes or beaches, stormwater must be recharged to the maximum extent possible through the use of BMPs, and the GPs would not be applicable to structures with petroleum product tanks. These categories of activities would be required to submit an application form and receive written approval from the Department, but submittal of an environmental impact statement or environmental assessment should not be required. The reconstruction of development (voluntary demolition) and construction of single-family homes are two categories that should qualify for these additional General Permits. (53)

RESPONSE: The Department has adopted a general Permit for the voluntary reconstruction of a non-damaged legally constructed, currently habitable residential or commercial development within the same footprint. The Department will be publishing a rule proposal in a future issue of the New Jersey Register that will propose additional General Permits and Permits-By-Rule.

(448) COMMENT: This section needs to be expanded to be consistent with the Statewide General Permits allowed under the Freshwater Wetland Regulations and the Nationwide Permits allowed by the Corps of Engineers. (17)

RESPONSE: The Department's coastal zone management rule for wetlands (N.J.A.C. 7:7E-3.27) provides that development in freshwater wetlands must comply with the freshwater wetlands regulations (N.J.A.C. 7:7A). Accordingly, Freshwater Wetland General Permits are applicable to development in the coastal zone proposed in freshwater wetlands.

(449) COMMENT: The Department should propose general permits or permits-by-rule for activities including but not limited to: activities in existing rights of way, recreational facilities, dune maintenance, accessory uses, etc. (53)

RESPONSE: The 1993 legislative amendments to CAFRA specifically exempt "services provided, within the existing public right-of-way, by any governmental entity." In addition, at N.J.A.C. 7:7-2.1(b)1, the Department has excluded certain activities from the definition of "public development," thereby allowing them to be conducted without a permit. These activities include the maintenance, repair or replacement of existing water, petroleum, sewage or natural gas pipelines, and associated pump stations and connection junctions, located completely within paved roadways or paved, gravel, or cleared and maintained rights-of way, provided that the replacement of sewage pipelines and associated pump stations does not result in an increase in the associated sewer service area. The Department has also adopted a General Permit for dune maintenance activities. This General Permit will authorize routine and emergency activities on beaches and dunes, including dune creation projects, sand transfers using mechanical equipment, emergency post-storm beach and dune restoration activities, fencing, and the construction of beach accessways for five years provided they meet a set of Best Management Practices contained in N.J.A.C. 7:7E. In addition, the Department is currently considering expanding the categories of activities eligible for authorization under General Permits. The Department will be publishing a rule proposal in a future issue of the New Jersey Register that will propose additional General Permits and Permits-By-Rule. It is likely that additional activities will be proposed as General Permits in the future, once the Department has implemented the CAFRA amendments and additional activities warranting general permit authorization are identified.

(450) COMMENT: We support the expanded use of General Permits and Permits-By-Rule for projects with minimal environmental impact or with public purposes, such as parks. However, we do not support delaying the adoption of the present proposal pending expansion of the activities permitted under General Permits and Permits-By-Rule. We encourage the Department to actively seek further input from the public and other levels of government about activities appropriate for inclusion over the next year. (45)

(451) COMMENT: Passive recreation facilities, owned and operated by municipal or county park authorities should be allowed to conduct many activities by General Permit or Permit-By-Rule. (45)

(452) COMMENT: There should be a general permit for minor public development activities. (144)

RESPONSE TO COMMENTS (450) THROUGH (452) ABOVE: The Department is currently considering expanding the categories of activities eligible for authorization under General Permits. It is likely that additional activities will be included as General Permits in the future, once the Department has implemented the CAFRA amendments and additional activities warranting general permit authorization are identified.

(453) COMMENT: The construction, maintenance, repair or replacement of electric lines and associated substations should be included under the categories qualifying for a General Permit. (17)

RESPONSE: The Department has not proposed a General Permit for these activities. The construction of electric lines is exempt from CAFRA regulation. In addition, as stated previously, the Department has amended its rules to clarify that the repair and maintenance of electric lines and associated substations within cleared and maintained rights-of-way are not "development" and thus are not regulated.

(454) COMMENT: The General Permits would be more reasonably handled as exemptions. Due to the language of the legislative act, this may not be possible. In that case, a provision could be made that would allow willing municipalities to administer the General Permit programs in their jurisdiction as part of the regular building permit process. (7)

RESPONSE: The commenter is correct. The language of the act does not allow for these types of activities to be exempt from regulation. The Act clearly specifies what activities are to be exempt and does not include these categories. The Act only provides for state regulation; it does not provide the Department with the authority to delegate its regulatory authority to local officials.

(455) COMMENT: General Permits should be handled and issued through local building code officials with municipalities receiving compensation from the State. (18)

RESPONSE: The Act only provides for State regulation; it does not provide the Department with the authority to delegate its regulatory authority.

(456) COMMENT: It should be clarified at N.J.A.C. 7:7-7.2 that a General Permit for a single family home or duplex on a bulkheaded lagoon lot pertains only to existing bulkheaded lots. (49)

RESPONSE: The Department has not clarified the rule as suggested by the commenter since the Department believes that this General Permit is appropriate for any legally bulkheaded lagoon lot.

(457) COMMENT: The proposed general permit only allows for the construction of a single-family home or duplex on a bulkheaded lagoon lot under certain conditions. A general permit should be made available throughout the CAFRA region for single-family homes and duplexes regardless of location (along tidal rivers, lagoons, uplands, etc) provided that these lots are shore protected or not environmentally sensitive and as long as certain conditions are met as may be found in sections 1 through x for GP#1. (53)

RESPONSE: The Department is currently in the process of proposing additional General Permits in another rule proposal.

(458) COMMENT: N.J.A.C. 7:7-7.2(a)1iii should be deleted and replaced with language as follows: "The project complies with the Freshwater Wetlands Protection Act." (53)

RESPONSE: The Department has not amended the rule as requested. This suggestion would not address the presence of and impacts to coastal or tidal wetlands which are not regulated pursuant to the Freshwater Wetlands Protection Act.

(459) COMMENT: N.J.A.C. 7:7-7.2(a)1iv should be clarified to state that if the project (lot) was under single ownership prior to July 19,

1993, it is not part of a larger development and satisfies this condition for the issuance of this general permit. (53)

RESPONSE: The Department will not make the change suggested by the commenter since lots that were under single ownership could be purchased subsequent to that date and become part of a larger development. Instead, the Department has amended the rule on adoption to provide additional clarification regarding the determination of "larger development." Specifically, the rule at N.J.A.C. 7:7-7.2(a)1iv has been amended to specify that the proposed work is not part of a larger development being conducted by the property owner.

(460) COMMENT: The Department should delete the requirement to limit landscaping on the site to "indigenous coastal species" since these plants are often difficult to grow, may not be readily available and are not preferred by the prospective homeowner. (53)

RESPONSE: The Department has deleted this requirement from the General Permit as suggested. However, the Department encourages the use of suitable plantings to the maximum extent possible in order to ensure that the plants will thrive and to avoid the need for fertilizer, pesticides and irrigation, which can affect the quality and supply of groundwater and surface water.

(461) COMMENT: N.J.A.C. 7:7-7.2(a)1x should be amended to also allow dwelling units serviced by septic systems to qualify for general permits. What is the Department's rationale for not doing this in the first place? (53)

RESPONSE: The Department has not amended the rule as suggested. The Department is concerned with the environmental impacts of septic systems in areas immediately adjacent to a waterway.

(462) COMMENT: It is a conflicting and onerous requirement to require a permit for the voluntary reconstruction of a home, even if the voluntary reconstruction entails only the replacement of an existing wall. Requiring a review by the Department and the associated expenses for such a requirement simply does not make sense. Remember, we are talking about reconstruction, not construction. (88)

RESPONSE: Repairs and basic maintenance such as painting a house, replacing an existing wall, adding or changing shutters, the elevation of structures on pilings and the replacement of a roof, windows, doors and existing stairways and decks, are not regulated by CAFRA. The General Permit for voluntary reconstruction is required when a property owner wishes to tear down the existing house and build a new one.

The Department does not believe that the application requirements for a general permit authorization are onerous. An applicant for a general permit authorization must submit an application form, site photos, a $250 review fee and other information related to the proposed activity such as a site plan, building permit or project description. In addition, the applicant must notify local governing bodies and property owners within 200 feet. There is no requirement for a public hearing or comment period, and an applicant does not have to submit an Environmental Impact Statement or Compliance Statement. The Department has 90 days from receipt of a complete application to issue a decision on the application.

(463) COMMENT: The proposed regulations regarding General Permits for reconstruction are strongly opposed. The Department is attempting to supersede the legislative intent of the CAFRA amendment. The Department proposes to allow for the reconstruction of an undamaged residential or commercial development only when a General Permit is obtained. The statute clearly provides for the renovation of any development (including public and industrial developments) without a permit if the enlargement does not result in the enlargement of the footprint of the development or an increase in the number of dwelling units within the development. This reconstruction, which is of critical importance to Cape May County, is not within the Department's authority to restrict through the CAFRA permitting process. The proposed rules should be amended to conform with the reconstruction provisions authorized by the statute. (110)

RESPONSE: The amendments to CAFRA enacted by the Legislature exempt the reconstruction of development damaged or destroyed by fire, storm, natural hazard or act of God, and do not exempt the reconstruction of undamaged development. Accordingly, the Department has proposed a General Permit to facilitate such non-exempt reconstruction. Without this General Permit, reconstruction of undamaged development would need to comply with the more detailed standards of N.J.A.C. 7:7E.

(464) COMMENT: N.J.A.C. 7:7-7.2 indicates that any increase in the number of parking spaces could not be covered by a General Permit and would trigger the requirement for a full CAFRA permit. Imposition of such a requirement would be unreasonable. (110)

RESPONSE: This requirement applies within 150 feet of the mean high water line or landward limit of a beach or dune because the Department is concerned with environmental impacts of additional impervious coverage in these sensitive areas. However, elsewhere in the coastal zone, additional parking may be added at commercial developments up to the applicable regulatory thresholds without the need for a CAFRA permit.

(465) COMMENT: The proposed General Permits and Permits-By-Rule only apply to residential, public, and commercial actions. There is nothing in the enabling legislation that precludes General Permits and Permits-By-Rule for industrial development. The Department should consider such an action and, at a minimum, extend the General Permit for Voluntary Reconstruction to include industrial developments. (158)

RESPONSE: Industrial developments generally have more significant impacts than residential, commercial and public developments. In the future, the Department may determine that certain types of industrial development should qualify for a General Permit and may propose a General Permit for such development. Specific suggestions would be welcome.

(466) COMMENT: The words "on pilings" should be deleted from the proposed General Permit for expansion of amusement piers, because many of the amusement piers which would be eligible for this general permit, especially in the Wildwoods, have waterparks, go-cart tracks or other features which have been built on concrete slabs and fill, with retaining walls. These are mostly at the oceanward, eastern ends of the piers, in the area most likely for future expansions. Constraining future expansions to construction on pilings is, we believe, an oversight, and would be overly restrictive, essentially eliminating any possibility of compliance by these piers. Further, this would be a constraint on the expansion of much needed tourist amenities and serve no significant environmental protection purpose. (46)

RESPONSE: The Department agrees with the commenter and has on adoption deleted the words "on pilings" as suggested.

(467) COMMENT: Why can an amusement pier expand its area by 25 percent, regardless of underlying beaches and dunes, by applying for a general permit when the expansion of a public beach pavilion providing public waterfront access in the same location needs permit review and approval? (176)

RESPONSE: The 1993 legislative amendments to CAFRA specifically exempted the expansion of amusement piers. However, the provision, as contained in the law does not actually apply to any amusement pier in New Jersey. In order to accomplish the intent of the Legislature, the Department has adopted the general permit. The legislation did not contain a similar exemption for park facilities, but as the Department mentioned earlier, it is willing to pursue general permits for park activities.

(468) COMMENT: The following activities should not require a CAFRA General Permit as proposed at N.J.A.C. 7:7-7.2(a)3: (1) general maintenance, such as debris cleaning, erection of snow fence, boardwalks and platforms for handicap access, necessary signage for dune preservation, etc.; (2) development associated with environmental education and research; and (3) beach nourishment/replacement activities. In order to provide cost effective and efficient daily maintenance of beach and dune areas, there must be components of beach and dune management which are controlled by the immediate municipality, community or organization associated with the beach or dune. (119)

RESPONSE: The Department agrees with the commenter that these activities should be controlled by the appropriate land organization, but also believes a General Permit is necessary to insure they are conducted in the most environmentally sensitive way possible. The Department has proposed a general permit authorization for beach and dune maintenance activities provided that the activities are being conducted in accordance with the Best Management Practices as defined in the Department's Rules on Coastal Zone Management, N.J.A.C. 7:7E. The activities that may be authorized under this general permit include the activities mentioned by the commenter.

(469) COMMENT: N.J.A.C. 7:7-7.2(b), in which the Department grants itself broad discretionary authority to require CAFRA permits for any proposed activity, is strongly opposed. The Department's attempt to surreptitiously obtain such extensive regulatory authority over any development within the coastal zone is both unwise and dangerous. The

last sentence of N.J.A.C. 7:7-7.2(b) appears to invalidate any General Permits that have been issued, or will be issued, and require all development projects to obtain an individual CAFRA permit. This entire subsection should be eliminated from this rulemaking proposal. (110)

RESPONSE: The Department has not deleted this subsection as suggested. The Department may require an application for an individual CAFRA permit instead of a general permit if the Department finds that additional permit conditions would not be sufficient, or that special circumstances make this action necessary to ensure compliance with statutory requirements. The Department retains discretionary authority to require, on a case-by-case basis, submission of an individual CAFRA permit application for any proposed activity when it is determined that such a review would be in the public interest and that the proposed activity has the potential to cause significant impacts on environmental resources. In addition, when a project in its entirety does not qualify for a general permit, then the entire project shall require an individual CAFRA permit application.

N.J.A.C. 7:7-7.3 Application procedure for a General Permit authorization

(470) COMMENT: The requirement to notify all landowners within 200 feet of the property on which the proposed activity will occur is onerous and should be deleted. (53)

RESPONSE: The Department does not agree that this is an onerous requirement. The Department's objective is to ensure public participation in the permitting process. This objective is best accomplished through the notification process and by soliciting information from concerned citizens on specific applications. The cost involved with such notice includes the cost of obtaining a list of surrounding property owners from the tax assessor and the cost associated with postage, both of which are nominal.

(471) COMMENT: Under the proposed regulation at N.J.A.C. 7:7-7.3(a), a copy of the proposed local construction permit approval is required from a person applying for a general permit. The UCC says that CAFRA permits are given priority approval. (106)

(472) COMMENT: The requirement to obtain a local construction permit approval prior to being able to receive a General Permit from the Department should be deleted since no one would spend the time and money to obtain local approval without first obtaining a determination that the development complies with the state permit programs. (53)

RESPONSE TO COMMENTS (471) AND (472) ABOVE: The Department has deleted the requirement, although some people do obtain local approvals prior to getting State approvals.

N.J.A.C. 7:7-7.4 Permits-By-Rule

(473) COMMENT: The proposed Permits-By-Rule which authorize footprint expansions should either be handled as exemptions or, if not possible due to the language of the regulatory act, a provision could be made that would allow willing municipalities to administer the Permits-By-Rule programs in their jurisdiction as part of the regular building permit process. (7)

RESPONSE: The commenter is correct. The language of the Act does not allow for these types of activities to be exempt from regulation. The Act clearly specifies what activities are to be exempt and does not include these categories. The Act also provides for State regulation; it does not provide the Department with the authority to delegate its regulatory authority to local officials. The Department has proposed to regulate certain activities through a mechanism called "permit-by-rule." This means that anyone wishing to engage in an activity covered by a permit-by-rule need only submit a letter to the Department containing the information specified in the rules. The person does not need to submit an application form or pay a fee in order to use a permit-by-rule.

(474) COMMENT: Permits-By-Rule should be handled and issued through local building code officials with municipalities receiving compensation from the state. (18)

RESPONSE: The Act also provides for State regulation; it does not provide the Department with the authority to delegate is regulatory authority. The Department has proposed to regulate certain activities through a mechanism called "permit-by-rule". This means that anyone wishing to engage in an activity covered by a permit-by-rule need only submit a letter to the Department containing the information specified in the rules. The person does not submit an application form or pay a fee in order to use a permit-by-rule.

(475) COMMENT: The limitation on the expansion of single-family homes or duplexes to a cumulative surface area of 400 square feet is overly restrictive and should be deleted in favor of compliance with local ordinances. (53)

(476) COMMENT: The Department should evaluate the limitation on single-family homes to a 400 square foot expansion for its clear impacts on the policy objectives of the statute and other coastal rules. To the extent that larger expansions do not conflict with other resource objectives, the requirement should be suspended in favor of compliance with local ordinances. (45)

RESPONSE TO COMMENTS (475) AND (476) ABOVE: The Department has not deleted the size restriction. It is proposing a General Permit to allow for additions greater than 400 square feet and will use its experience in implementing the CAFRA amendments and additional public comments to determine if a change should be considered in the future.

(477) COMMENT: Confining the expansion to the landward side of the dwelling is an unnecessary constraint on the property owner, especially if the required 15 foot setback from the bulkhead mandated at N.J.A.C. 7:7-7.4(a)2 can still be maintained. (7)

RESPONSE: N.J.A.C. 7:7-7.4(a)2 does not confine the expansion to the landward side of the dwelling. The permit-by-rule referenced by the commenter allows the expansion of a legally constructed, habitable single family or duplex dwelling on a bulkhead lagoon lot, provided that the expansion does not exceed a cumulative surface area of 400 square feet, the expansion is not proposed on a wetland, and the expansion is set back a minimum of 15 feet from the waterward face of the bulkhead.

(478) COMMENT: The Department should propose additional Permits-By-Rule which would allow an applicant to move forward on a project as long as certain conditions were met. The Permits-By-Rule would not require notification to the Department. The following activities should qualify: any activity in existing rights-of-ways (public development); passive recreational facilities such as the construction of boardwalks, trails, scenic overlooks, etc.; dune maintenance; and accessory uses such as sheds, swimming pools, etc. (53)

RESPONSE: As mentioned previously, the Department will be publishing a rule proposal in a future issue of the New Jersey Register that will propose additional General Permits and Permits-By-Rule. The Department does not agree with the commenter that Permits-By-Rule should require no notification to the Department. The Department requires that a person proposing to conduct activities in accordance with a Permit-By-Rule send the Department a letter 30 days prior to construction to ensure that the proposed construction conforms with the conditions of the Permit-By-Rule.

Comments Beyond the Scope of the Proposal

The following is a list of comments that were beyond the scope of the February 22, 1994 proposal. Most of them suggest change in existing regulations for which no change has yet been proposed or comment on legislative actions that are beyond the Department's control. As with any comments received by the Department on existing rules, the comments within the Department's purview will be evaluated and considered during future rule amendment proposals.

(479) COMMENT: The NJBA strongly requests that the Department adopt a rule requiring that any comment submitted by interested parties during the public comment period automatically be sent to the permit applicant, especially those comments that may affect a decision by the Department. (53)

(480) COMMENT: For clarity, I suggest more indenting of numbers and letters so that it is easier to keep track of headings and sub-headings. (10)

(481) COMMENT: The New Jersey Builders Association recommends that the Department structure proposals so that more than one option is proposed for potentially controversial issues. By laying out alternative ways to adopt the rules if controversy arises, the Department will be able to save a considerable amount of time by not having to re-propose prior to adoption. (53)

(482) COMMENT: My primary objective is to cause the legislation to be repealed and the regulations scrapped. (153)

(483) COMMENT: While the original intent of the framers of these environmental concepts may be well intended, they lack responsibility and accountability to the property owners affected. The legislation makes no provision for payment for the land being confiscated and/or restricted, nor does it appropriate monies for legal and other professional expenses that property owners will incur. These legislative changes are radical and smack of the work of an authoritarian government. Institutional and/

or economic changes without gradual periods of time for implementation and gradual development of the innovative concepts usually result in economic chaos. (153)

(484) COMMENT: The July 19, 1994 effective date of CAFRA should be moved back to an indefinite time until further consideration and discussion may be occur. (174)

(485) COMMENT: One commenter asked that CAFRA be reconsidered and that restricted laws that affect small businesses not be passed. (42)

(486) COMMENT: The legislation should be delayed until at least July 19, 1995. (155)

(487) COMMENT: The 1993 amendments to CAFRA come close to violating shore front homeowners' constitutional rights. The amendments should be reconsidered as they are not in the best interest of those who live in close proximity to the ocean. (88)

(488) COMMENT: The CAFRA law should be repealed. (97)

(489) COMMENT: The CAFRA law should be scrapped. (126)

(490) COMMENT: Our vacation islands will become deserted, economic chaos will be fostered by unemployment of trades people, tax structures—school, municipal, county and eventually state—will be severely eroded, all because of an ill thought out CAFRA legislative law. (170)

(491) COMMENT: A number of commenters wrote expressing their support for proposed legislation, S-908 and A-1604, which would delay the effective date of CAFRA. (19, 56, 92, 170)

(492) COMMENT: The Legislature should be authorized to utilize its authority to veto oppressive bureaucratic rules and regulations that are unfair and unjust to the citizens and taxpayers of New Jersey. (63, 161)

(493) COMMENT: The Department should not be given increased workload without correcting the current serious staff and management problems. (132)

(494) COMMENT: The Cape May Chamber of Commerce requests that in order to restore public confidence and aid in the economic recovery of the coastal area, the administration halt this potentially devastating regulatory scheme until adequate information, time and an honest public participation process is provided. (132)

(495) COMMENT: There is merit in S-908, now in the Senate Natural Resources Committee, which would delay implementation of CAFRA regulations for at least one year, and give legislators a greater opportunity to review all aspects and impacts of the regulations. (164)

(496) COMMENT: The Legislature should appoint a joint committee of the Senate and Assembly to meet with the drafters of the regulations to discuss with them the problems raised by the public at the public hearings. (81)

(497) COMMENT: Please accept this letter as recognition and support for numerous legislators, including Senator Connors, who are attempting to delay for clarification purposes the implementation of CAFRA II. The confusion which surrounds and embodies this body of law causes great concern to elected officials and taxpayers of Southern Ocean County. (96)

(498) COMMENT: If you wish to save jobs and increase the economical cash throughout the State, you need to at least curb and muzzle the bureaucrats that have no consideration for the individual residents of all ages not only in but all along our coast. (136)

(499) COMMENT: One commenter wrote to Governor Whitman stating that he did not know how her goals for the state would be accomplished as long as DEPE exists, and that he would prefer to deal with the KVG rather than the DEPE. (105)

(500) COMMENT: The Department is a disgrace. Governor Whitman should close the DEPE and discharge the bureaucrats. A new organization should be set up with common sense people that would be truly dedicated to protecting the citizens and the environment. (105)

(501) COMMENT: If it is difficult for the State to acquire money to protect environmentally sensitive pieces of ground that are very important to the future of our State, why not try to get and implement ecology bonds, which would be like savings bonds, war bonds or educational bonds? (104)

(502) COMMENT: The building industry is as important as the tourist industry in Cape May County. This legislation could not have come at a worse time.

(503) COMMENT: I am totally against CAFRA II and all the restrictions that it will create for all the property owners in Cape May County. (134)

(504) COMMENT: One commenter explained his previous experiences with the Department during the Upland Waterfront Development jurisdiction and concluded that the law is just another reason to have a bureaucracy in Trenton. (93)

(505) COMMENT: How does this Act effect or conflict with the Permit Extension Act? (106)

Summary of Agency-Initiated Changes:

Under Reorganization Plan No. 001-1994 (see 26 N.J.R. 2171), the Department is reorganized and redesignated the "Department of Environmental Protection." Consequently, the Department has, throughout the chapter, modified "Department of Environmental Protection and Energy" and "DEPE" to the "Department of Environmental Protection" and "DEP."

The following changes have been made upon adoption for clarification:

1. The Department has amended N.J.A.C. 7:7-1.4 to provide that water quality certificate applications and federal consistency applications in the coastal zone will also be reviewed on the basis of N.J.A.C. 7:7E and that water quality certificates will also be reviewed on the basis of other applicable State laws, including State water quality standards. This change expresses current practice and conforms with the Department's Rules on Coastal Zone Management. (See N.J.A.C. 7:7E-1.3)

2. N.J.A.C. 7:7-1.5(b)13 has been amended by replacing "pursuant to this chapter" with "pursuant to N.J.A.C. 7:7-4.10" in order to cross-reference the specific section of the rules dealing with permit modifications.

3. In N.J.A.C. 7:7-1.5(d)1, the Department has deleted the word "then" where it appears for the second time in order to be grammatically correct.

4. The Department has added a paragraph at N.J.A.C. 7:7-1.5(d)4 to state that all water quality certificates and federal consistency determinations issued in conjunction with a State permit will be in effect for the lifetime of the associated State permit. The Department has added these time limits upon adoption in order to specify in the regulations, the validity of water quality certificates and Federal consistency determinations. This change expresses current practice and is not imposing new or different timeframes on permittees.

5. The Department has added a paragraph at N.J.A.C. 7:7-1.5(d)5 to state that a water quality certificate not issued in conjunction with other State permits, shall be effective for five years or for the original duration of the underlying Federal permit (without renewals), whichever is shorter. The Department has added these time limits upon adoption in order to specify, in the regulations, the validity of water quality certificates and federal consistency determinations. This change expresses current practice and is not imposing new or different timeframes on permittees.

Please incorporate the above explanations into items 4 and 5 on p. 269.

6. At N.J.A.C. 7:7-1.10, the Department has replaced "their application" with "the application of any of the procedures contained in this chapter" and added "and if consistent with statutory requirements" after "its discretion".

7. At N.J.A.C. 7:7-2.1(c)3iv, the Department is correcting a typographical error and changing "(d) below" to "(e)2 below" in order to reference the correct section of the rule.

8. At N.J.A.C. 7:7-2.2(a)9, the Department is changing "approprative" to "appropriative" to correct a misspelling.

9. The Department is amending N.J.A.C. 7:7-4.2(a)3 to specify that the green card is required as verification that complete copy of the application package has been submitted to the clerk of the municipality in which the proposed development will occur, and to the planning board and environmental commission of the municipality in which the proposed development would occur. This will verify that the clerk, the planning board and environmental commission of the municipality in which the proposed development would occur have received the application package prior to the Department declaring the application complete for review. This will ensure that interested persons will be able to review the application at the municipal clerk's office.

10. At N.J.A.C. 7:7-4.2(a)8ii(3), the Department is correcting a typographical error and changing "propsed" to "proposed."

11. At N.J.A.C. 7:7-4.2(e)2vi, the Department is correcting a typographical error and changing "seal" to "sea."

12. At N.J.A.C. 7:7-4.2(e)2xvi, the Department has deleted "In accordance with N.J.A.C. 7:7A-14.1," in order to clarify that this requirement applies to any mitigation plan.

13. The Department has clarified N.J.A.C. 7:7-4.4(e) by adding "whichever occurs later" in order to impose one specific date. In addition, the language has been added to clarify that it is the substantive rules, N.J.A.C. 7:7E, and any other substantive rules, that will be used to review applications.

14. The Department has amended N.J.A.C. 7:7-4.7, Timetable for final decisions, to state that the Department shall act on CAFRA applications within 60 days of the public hearing, or within 60 days of the date the application was declared complete for final review if no hearing is held, unless additional information was required, in which case the Department shall act on the application within 90 days of the date it was declared complete for final review. The proposed rule said that the Department would act on an application within 60 days of the close of the comment period if no hearing was held. Due to the fact that the public comment period starts when the application is first published in the DEP Bulletin, which is prior to the Department's receipt of the application, the proposal would have started the final review clock in some cases at a point in time where the application was not yet declared complete for final review. In order to ensure that the final review clock does not start until the application is complete for final review and the Department has received the necessary additional information from the applicant when additional information is necessary, the Department has amended this section upon adoption.

15. In order to be consistent with the rest of the proposal, the Department has added "or equivalent parking area" after "parking spaces" in N.J.A.C. 7:7-7.2(a)4ii.

16. The Department has amended N.J.A.C. 7:7-7.3(a)3 to specify that the green card is required as verification that complete copy of the application package has been submitted to the clerk of the municipality in which the proposed development will occur. This will verify that the municipal clerk would have received the application package prior to the Department declaring the application complete for review, thus ensuring that interested persons will be able to review the application at the municipal clerk's office.

17. The Department has amended N.J.A.C. 7:7-7.3(f) to clarify the review timeframes used to review applications for General Permit authorizations to specify that they will be reviewed in accordance with N.J.A.C. 7:7-4.4, 4.7 through 4.11. The Department is amending this section in order to specify the specific rules that will apply for the review of applications for General Permit authorizations.

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

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

SUBCHAPTER 1. GENERAL PROVISIONS

7:7-1.1 Purpose and scope

(a) This chapter establishes the procedures by which the Department of Environmental Protection *[and Energy]* will review permit applications and appeals from permit decisions under the Coastal Area Facility Review Act (CAFRA, N.J.S.A. 13:19-1 et seq.), the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) and the Waterfront Development Law (N.J.S.A. 12:5-3). These procedures also govern the reviews of Federal Consistency Determinations issued pursuant to the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq., and Water Quality Certificates issued pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. 1251 et seq., when the approvals are sought in conjunction with any of the foregoing permit applications.

(b) The following types of activities are regulated under each of these laws:

1. CAFRA: The construction of any development defined in Section 3 of the Act (N.J.S.A. 13:19-3) or in N.J.A.C. 7:7-2.1, within the coastal area described in Section 4 of the Act (N.J.S.A. 13:19-4).

2. Wetlands Act of 1970: The draining, dredging, excavation, or deposition of material, and the erection of any structure, driving of pilings or placing of obstructions in any coastal wetlands which have been mapped or delineated pursuant to the Wetlands Act of 1970. A list of these maps and a full list of regulated activities appears in N.J.A.C. 7:7-2.2.

3. Waterfront Development Law: The filling or dredging of, or placement or construction of structures, pilings or other obstructions in any tidal waterway, or in certain upland areas adjacent to tidal waterways outside the area regulated under CAFRA. These requirements are fully explained in N.J.A.C. 7:7-2.3.

7:7-1.3 Definitions

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

"Beach" means a gently sloping area of sand or other unconsolidated material found on tidal shorelines, including ocean, inlet, bay and river shorelines, that extends landward from the mean high water line to either: the vegetation line; a man-made feature generally parallel to the ocean, inlet, bay or river waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except that sandy areas that extend fully under and landward of an elevated boardwalk are considered to be beach areas; or the seaward or bayward foot of dunes, whichever is closest to the ocean, inlet, bay or river water.

"CAFRA" means the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.).

"City of the fourth class" means a city as defined at N.J.S.A. 40A:6-4d which borders on the Atlantic Ocean and which is a seaside or summer resort.

"Coastal Permit" means a CAFRA, Wetlands or Waterfront Development Permit.

"Commissioner" means the Commissioner of the Department of Environmental Protection *[and Energy]* or designated representative.

"Commercial development" means a development designed, constructed or intended to accommodate commercial or office uses. "Commercial development" shall include, but need not be limited to, any establishment used for the wholesale or retail sale of food, beverage or other merchandise, or any establishment used for providing professional, financial, or other commercial services.

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

"Development" means any activity for which a Wetlands Act of 1970 or Waterfront Development permit is required, including site preparation and clearing. Development, for an application under the Coastal Area Facility Review Act, means the construction, relocation, or enlargement of any building or structure and all site preparation *[therefore]* ***therefor***, the grading, excavation or filling on beaches and dunes, and shall include residential development, commercial development, industrial development, and public development. ***Development does not include repairs or maintenance such as replacing siding, windows or roofs, unless such repairs or maintenance are associated with expansions.***

"Dune" means a wind- or wave-deposited or man-made formation of sand that lies generally parallel to and landward of the beach, and between the upland limit of the beach and the foot of the most inland slope of the dune. Dune includes the foredune, secondary and tertiary dune ridges, as well as man-made dunes, where they exist. A small mound of loose, windblown sand found in a street or on part of a structure as a result of storm activity is not considered to be a dune.

"Dwelling unit" means a house, townhouse, apartment, cooperative, condominium, cabana, hotel or motel room, a patient/client room in a hospital, nursing home or other residential institution, mobile home, campsite for a tent or recreational vehicle, floating home, or any other habitable structure of similar size and potential environmental impact, except that dwelling unit shall not mean a vessel as defined in section 2 of P.L. 1962, c.73 (N.J.S.A. 12:7-34.37).

"Educational facility" means an elementary or secondary school.

"Excavation" means the extraction of sand, gravel, earth or any other material.

"Filling" means the depositing of sand, gravel, earth or any other material.

"Floating home" means any waterborne structure designed and intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, which will remain stationary for more than 10 days.

"Footprint of development" means the vertical projection to the horizontal plane of the exterior of all exterior walls of a structure.

"Governmental agency" means the Government of the United States, the State of New Jersey, or any other state, or a political subdivision, authority, agency or instrumentality thereof, and shall include any interstate agency or authority.

"Habitable structure" means a structure that is able to receive a certificate of occupancy from the municipal construction code official, or is demonstrated to have been legally occupied as a dwelling unit for the most recent five year period.

"Industrial development" means a development that involves a manufacturing or industrial process, and shall include, but is not limited to, electric power production, food and food by-product processing, paper production, agri-chemical production, chemical processes, storage facilities, metallurgical processes, mining and excavation processes, and processes using mineral products.

"Intervening development" means a development with an above-ground structure, excluding any shore protection structure or sand fencing, and includes houses, garages, commercial, industrial or public buildings that are either completed or under active construction as of July 19, 1994 and that have received all necessary Federal, State, and local approvals prior to July 19, 1994. "Intervening development" does not include seawalls, bulkheads, retaining walls, revetments, fences, boardwalks, promenades, patios, decks, carports, prefabricated sheds, docks, piers, lifeguard stands, bath houses, gazebos, swimming pools, utility lines, culverts, railroads, ***roadways,*** sewage pump stations, or cabanas. An "intervening development" will be determined by looking at the vertical plane of the exterior walls of the structure extended landward and perpendicular to the mean high water line or landward limit of a beach or dune.

"Mean high water" (MHW) is a tidal datum that is the arithmetic mean of the high water heights observed over a specific 19-year Metonic cycle (the National Tidal Datum Epoch). For the New Jersey shore, the two high waters of each tidal day are included in the mean. This datum is available from the Department's Bureau of Tidelands.

"Mean high water line" (MHWL) is the intersection of the land with the water surface at the elevation of mean high water. The elevation of mean high water varies along the ocean front and the tidal bays and streams in the coastal zone.

(Note: For the above two definitions, for practical purposes, the mean high water line is often referred to as the "ordinary" high water line, which is typically identified in the field as the limit of wet sand or the debris line on a beach, or by a stain line on a bulkhead or piling. However, for the purpose of establishing regulatory jurisdiction pursuant to the Coastal Area Facility Review Act (CAFRA) and the Waterfront Development Act, the surveyed mean high water elevation will be utilized.

"Permit" means any legal instrument constituting permission to undertake construction pursuant to CAFRA (N.J.S.A. 13:19-1 et seq.), the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.), or the Waterfront Development Law (N.J.S.A. 12:5-3). Permits shall be issued with conditions including requirements that shall, at the discretion of the Department, be satisfied prior to commencement of construction and long term post construction requirements such as monitoring and maintenance.

"Person" means any corporation, company, association, society, firm, partnership, individual, government agency, or joint stock company.

"Pesticide" means any substance defined as a pesticide pursuant to the provisions of N.J.A.C. 7:30.

"Program" means the Land Use Regulation Program in the Department of Environmental Protection *[and Energy]*.

"Public development" means a solid waste facility, including incinerators and landfills, wastewater treatment plant, public highway, airport including single or multi-air strips, an above or underground pipeline designed to transport petroleum, natural gas, or sanitary sewage, and a public facility, and shall not mean a seasonal or temporary structure related to the tourism industry, an educational facility or power lines. "Public development" does not have to be publicly funded or operated.

"Public highway" means a "public highway" as defined in section 3 of P.L. 1984, c.73 (N.J.S.A. 27:1B-3), namely public roads, streets, expressways, freeways, parkways, motorways and boulevards, including bridges, tunnels, overpasses, underpasses, interchanges, rest areas, express bus roadways, bus pullouts and turnarounds, park-ride facilities, traffic circles, grade separations, traffic control devices, the elimination or improvement of crossings of railroads and highways, whether at grade or not at grade, and any facilities, equipment, property, rights-of-way, easements and interests therein needed for the construction, improvement and maintenance of highways.

"Qualifying municipality" means those municipalities defined in urban aid legislation, N.J.S.A. 52:27D-178, qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. The municipalities meeting this definition in 1993 are: Asbury Park, Bridgeton, Keansburg, Lakewood, Long Branch, Millville, Neptune, Pleasantville, and Salem City.

"Reconstruction" means the repair or replacement of a building, structure, or other parts of a development, provided that such repair or replacement does not increase or change the location of the footprint of the preexisting development, does not increase the area of impervious coverage associated with the development, and does not result in a change in the use of the development. Reconstruction *[or repair]* does not include *[cosmetic]* repairs ***or maintenance***, such as replacing siding, windows or roofs, *[but does include the demolition of exterior walls]* ***unless such repairs or maintenance are associated with expansions***.

"Regulated activity" or "activity" means any activity for which a permit is required under CAFRA, the Wetlands Act of 1970 or Waterfront Development Law, and shall also include the terms "project" and "development".

"Regulated wetland" means any wetland which has been mapped and the map promulgated pursuant to the Wetlands Act of 1970.

"Residential development" means a development that provides one or more dwelling units.

"Seasonal or temporary structures related to the tourism industry" means lifeguard stands and associated temporary equipment storage containers, picnic tables, benches and canopies, beach badge sheds with a footprint not exceeding 64 square feet in area, wooden walkways, stage platforms, and portable rest rooms, which remain in place only during the period from May 1 through September 30, and *[which are not placed on an existing dune]* ***provided that the placement of such structures does not involve the excavation, grading or filling of a beach or dune***.

"Site" means the land or area upon which a proposed development is to be constructed.

"Site preparation" means physical activity which is an integral part of a continuous process of land development or redevelopment for a particular development which must occur before actual construction of that development may commence. It does not include the taking of soil borings, performing percolation tests, or driving of less than three test pilings.

"Structure" means any assembly of materials above, on or below the surface of the land or water, including but not limited to buildings, fences, dams, pilings, footings, breakwaters, culverts, pipes, pipelines, piers, roads, railroads, bridges, and includes floating structures.

7:7-1.4 Standards for evaluating permit applications

All applications for coastal permits (as defined in N.J.A.C. 7:7-1.3) ***, water quality certificates, and Federal consistency determinations*** shall be approved, conditionally approved or denied pursuant to the Department's Rules on Coastal Zone Management, N.J.A.C. 7:7E. ***In addition, applications for water quality certificates will be reviewed on the basis of other applicable State laws, including the State water quality standards.***

7:7-1.5 Permits and permit conditions

(a) No person shall undertake or cause, suffer, allow or permit any regulated activity without a permit issued by the Department in accordance with this chapter.

(b) The following standard procedural conditions shall apply to all coastal permits. Failure to comply with any of the following shall constitute a violation.

1. A permittee shall notify the Department in writing, at least three working days prior to the beginning of construction on the site or site preparation.

2. A permittee shall notify the Department in writing within five working days prior to commencement of operation of a CAFRA development. At this time, the permittee shall also certify that all conditions of the permit that must be met prior to operation of the development have been met.

3.-4. (No change.)

5. No change in plans or specifications upon which a permit is issued shall be made except with the prior written permission of the Department, in accordance with N.J.A.C. 7:7-4.10.

6. The notice of authorization shall be posted prominently at the site during construction and a copy of the permit and approved plans shall be kept on the construction site and shall be exhibited upon request to any person.

7. The permittee shall immediately inform the Department of any unanticipated adverse effects on the environment not described in the application or in the conditions of the permit. The Department may, upon discovery of such unanticipated adverse effects, and upon the failure of the permittee to submit a report thereon, notify the permittee of its intent to suspend the permit, pursuant to N.J.A.C. 7:7-4.11.

8. Plans and specifications in the application and conditions imposed by a permit shall remain in full force and effect so long as the proposed development or any portion thereof is in existence, unless modified pursuant to N.J.A.C. 7:7-4.10.

9. If any condition or a permit is determined to be legally unenforceable, modifications and additional conditions may be imposed by the Department as necessary to protect the public interest.

10. (No change.)

11. The Department may issue a modified permit for good cause when circumstances warrant minor changes in the original permit which will not result in additional adverse environmental impacts.

12. If a permit condition requires the dedication of land to a political subdivision for open space and/or recreational or other uses, the permittee shall, within 45 days of the political subdivision's decision whether or not to accept the land, furnish proof to the Department of the political subdivision's decision with respect to such dedication, or the permit may be revoked as provided in N.J.A.C. 7:7-4.11.

13. In the event of rental, lease, sale or other conveyance of the site by the permittee, the permit shall be continued in force and shall apply to the new tenant, lessee, owner or assignee so long as there is no change in the site, proposed construction or proposed use of the development, as described in the original application. No such change shall be implemented unless an application for a permit modification is filed pursuant to *[this chapter]* ***N.J.A.C. 7:7-4.10***.

14. If a permit contains a condition that must be satisfied prior to the commencement of construction, the permittee must comply with such condition(s) within the time required by the permit or, if no time specific requirement is imposed, then within six months of the effective date of the permit, or provide evidence satisfactory to the Department that such condition(s) cannot be satisfied.

15. (No change.)

(c) The following standard substantive conditions shall apply to all coastal permits, where appropriate:

1. (No change.)

2. Development which requires soil disturbance, the creation of drainage structures, or changes in natural contours shall conduct operations in accordance with the latest revised version of "Standards for Soil Erosion Sediment Control in New Jersey," promulgated by the New Jersey State Soil Conservation Committee, pursuant to the Soil Erosion and Sediment Control Act of 1975, N.J.S.A. 4:24-42 et seq. and N.J.A.C. 2:90-1.3 through 1.14. These standards are hereby incorporated by reference.

(d) A permit shall be valid authority to commence construction of a development for a period of five years from its date of issuance. Where construction has commenced within this five year period, the permit, with the exception of permits issued for activities located below the mean high water line, shall upon written authorization of the Department be valid, as long as construction continues, until the project is completed subject to the provisions of (d)1 and 2 below.

1. If construction continues beyond the five year period, and then, prior to completion of the project, stops for a cumulative period of one year or longer *[then]* the permit shall expire*[.]***, except for projects of unusual size or scope or for projects for which are delayed due to circumstances beyond the permittee's control (such as a delay in the financing of a public works project), in which case, upon the request of the applicant prior to the expiration of the original permit, the permit may be extended for a total of 10 years from the original effective date.***

2. All requests for authorization to continue construction beyond the expiration of a permit shall be submitted to the Department no later than 20 business days prior to the expiration date of the permit.

3. All permits issued for activities occurring below the mean high water line shall be effective for a fixed term not to exceed five years.

***4. All water quality certificates and Federal consistency determinations issued in conjunction with a State permit will be in effect for the lifetime of the associated State permit.**

5. A water quality certificate not issued in conjunction with other State permits shall be effective for five years or for the original duration of the underlying Federal permit (without renewals), whichever is shorter.*

(e) The Department may, after public notice, issue a general permit for activities which are substantially similar in nature and cause only minimal individual and cumulative environmental impacts. The process for issuance of General Permits and the process for authorizing various activities under the issued General Permits is detailed at N.J.A.C. 7:7-7.

7:7-1.6 Provisional permits

(a) The Department may issue a provisional permit if it finds that the beginning of construction prior to the completion of the full permit review process is necessary to meet the regulatory or funding requirements of a Federal or State agency.

(b) (No change.)

7:7-1.7 Emergency permit authorization

(a) The Department may issue an emergency permit authorization if it determines that there is an imminent threat to lives or property if regulated construction activities are not immediately commenced. Potential for severe environmental degradation will also constitute a basis for issuing an emergency permit authorization. The procedure for obtaining an emergency permit authorization is as follows:

1. The requesting party shall notify the Department's Bureau of Coastal and Land Use Enforcement by telephone of any situation which may constitute an imminent threat to lives, property or the environment. In response to this notification, the Bureau of Coastal and Land Use Enforcement will inspect the subject site whenever feasible to determine the condition of the property, and the extent of the imminent threat. The determination of imminent threat will be made solely by the Department, based on the condition of the property at the time of inspection. The findings of the inspection will be provided to the Land Use Regulation Program, together with a recommendation regarding the request for emergency permit authorization.

2. The requesting party shall notify the Administrator of the Land Use Regulation Program, in writing, of the imminent threat, including details of the condition of existing structures, the vulnerability of people and/or property, or the imminent threat to the environment, and the proposed construction activities for which the emergency permit authorization is being sought. This written notification shall concurrently be provided to the Department's Bureau of Coastal and Land Use Enforcement.

3. The Land Use Regulation Program will make the final determination on the issuance of an emergency permit authorization. The emergency permit authorization may be oral or in writing. If oral authorization is given, the Department shall issue a subsequent written authorization within five working days. In the event that the construction activities deviate from those which have been approved by the oral or written emergency permit authorization, prior authorization of those deviations must be obtained from the Land Use Regulation Program. Any unauthorized deviation in construction from that which has been authorized will constitute a violation of this section, and may be cause for suspension and revocation of the authorization, and/or other enforcement actions.

4. Within 10 working days of the issuance of an emergency permit authorization, the property owner shall submit a complete coastal permit application to the Land Use Regulation Program. This application must include the standard application (CP-1) form, appropriate permit fee, construction plans, compliance statement, and public notice, pursuant to N.J.A.C. 7:7-4.2. Upon receipt and review of the permit application ***in accordance with these rules and the Rules on Coastal Zone Management, N.J.A.C. 7:7E,*** the Land Use Regulation Program shall issue a coastal permit, or permits, for the activities covered by the emergency permit authorization. This permit may contain conditions which must be satisfied by the permittee in accordance with the time frames established in the permit.

7:7-1.8 Procedure where more than one permit is required

(a) When a proposed development or project requires more than one coastal permit, the Department will require only one application, but that application must comply with the requirements of each applicable permit program. This does not preclude an applicant from submitting separate applications if the timing or magnitude of a project requires it.

(b) The Department shall assess a single permit fee for a project which requires more than one of the following permits, if the permit applications are submitted and processed simultaneously: CAFRA permits; waterfront development permits; coastal wetlands permits; stream encroachment permits; or freshwater wetlands permits (including individuals permits, general permits, and transition area waivers) issued under N.J.A.C. 7:7A. The permit fee for the project shall be calculated in accordance with N.J.A.C. 7:1C-1.5(c).

7:7-1.9 Permit fees

Permit fees are established by the Department pursuant to the 90 Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.) and are published at N.J.A.C. 7:1C-1.5. The Department will maintain a printed fee schedule for public use.

7:7-1.10 Construction

This chapter shall be liberally constructed to effectuate the purpose of the Acts under which it was adopted. The Department may, in its discretion ***and if consistent with statutory requirements****, relax *[their application]* ***the application of any of the procedures contained in this chapter**** when necessary and in the public interest.

7:7-1.11 (No change in text.)

SUBCHAPTER 2. ACTIVITIES FOR WHICH A PERMIT IS REQUIRED

7:7-2.1 CAFRA

(a) A CAFRA permit shall be required for:

1. Any development located on a beach or dune;

2. A development located in the CAFRA area between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result either solely or in conjunction with a previous development, in:

i. A development if there is no intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters;

ii. A residential development having three or more dwelling units if there is an intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters;

iii. A commercial development having five or more parking spaces or equivalent parking area if there is an intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters; or

iv. A public development or industrial development;

3. A development located in the CAFRA area between a point greater than 150 feet landward of the mean high water line or any tidal waters or the landward limit of a beach or dune, whichever is most landward, and a point 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, which is located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L. 1978, c.14 (N.J.S.A. 52:27D-178), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census, that would result, either solely or in conjunction with a previous development, in:

i. A residential development having 25 or more dwelling units;

ii. A commercial development having 50 or more parking spaces or equivalent parking area; or

iii. A public development or industrial development;

4. A development located in the CAFRA area beyond 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, and which is located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L. 1978, c.14 (N.J.S.A. 52:27D-178), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census, that would result, either solely or in conjunction with a previous development, in:

i. A residential development having 75 or more dwelling units;

ii. A commercial development having 150 or more parking spaces or equivalent parking area; or

iii. A public development or industrial development; and

5. Except as otherwise provided above, a development in the CAFRA area at a point 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result, either solely or in conjunction with a previous development in:

i. A residential development having 25 or more dwelling units;

ii. A commercial development having 50 or more parking spaces or equivalent parking area; or

iii. A public development or industrial development.

(b) The Department interprets its obligation and responsibility to regulate development as defined by CAFRA to include review of the potential impacts of any development, if at least part of that development is located within the area in which a CAFRA permit is required. Therefore, if any development requires a CAFRA permit, the Department will review all of the components of the development, not just those that triggered the regulatory thresholds of CAFRA. In addition, the Department will review all the components of a development that spans the zones in (a) above if the total development exceeds a regulatory threshold. The Department interprets the statutory intent as excluding developments with relatively minor impacts. To that end, the following statutory terms are interpreted to mean the following, for the purposes of this section.

1. Public development, for the purposes of (a)3, 4, and 5 above only, does not include:

i. The construction of a new road, sanitary sewer pipeline, storm sewer system, petroleum pipeline or natural gas pipeline of less than 1,200 feet in length or the extension of a road, sanitary sewer pipeline, storm sewer system, petroleum pipeline or natural gas pipeline of less than 1,200 feet in length, not to exceed a cumulative

total of 1,200 feet in any one municipality at any one site, unless the construction is located within a development requiring a CAFRA permit in which case it shall be considered part of the development for which a permit is required;

ii. The maintenance, repair or replacement of existing water, petroleum, sewage or natural gas pipelines, and associated pump stations and connection junctions, ***and electrical substations,*** located completely within paved roadways or paved, gravel, or cleared and maintained rights-of-way, provided that the replacement of sewage pipelines and associated pump stations does not result in an increase in the associated sewer service area;

iii. The repair, modification, or replacement of sanitary system components, including upgrading of systems from primary to secondary treatment, provided that an increase in design effluent flow will not result; *[or]*

iv. The construction, maintenance, repair or replacement of water lines, telecomunication lines and cable television lines*[.]**; or

v. The maintenance, repair or replacement of existing and functional railroads and related structures located completely within cleared and maintained rights-of-way.

2. Public development, for the purposes of (a)2 above, does not include:

i. The maintenance, repair or replacement of existing water, petroleum, sewage or natural gas pipelines, and associated pump stations and connection junctions, and electrical substations, located completely within paved roadways or paved, gravel, or cleared and maintained rights-of-way, provided that the replacement of sewage pipelines and associated pump stations does not result in an increase in the associated sewer service area;

ii. The repair, modification, or replacement of sanitary system components, including upgrading of systems from primary to secondary treatment, provided that an increase in design effluent flow will not result;

iii. The maintenance, repair, replacement, or connection of telecommunication lines and cable television lines; or

iv. The maintenance, repair or replacement of existing and functional railroads and related structures located completely within cleared and maintained rights-of-way.*

*[2.]****3.*** For the purposes of (a)2, 3, 4, and 5 above, facilities which provide government services and are not specifically included in the definition of public development at N.J.A.C. 7:7-1.3 or provide recreational areas will be regulated in accordance with the thresholds for commercial developments.

*[3.]****4.*** Equivalent parking areas will be calculated at 270 square feet per parking space, including one half of the associated aisle area, excluding access drives.

*[4.]****5.*** For the purposes of (a)2 through 5 above, development or expansion of existing developments "either solely or in conjunction with a previous developments" means:

i. The construction of any residential or commercial development on contiguous parcels of property, regardless of present ownership, where there is a proposed sharing of infrastructure constructed to serve those parcels including, but not limited to, roads, utility lines, drainage systems, open spaces or septic drain fields;

ii. The construction of any residential or commercial development on contiguous parcels of property which were under common ownership on or after September 1, 1973 (the effective date of CAFRA), regardless of present ownership, or any subdivision or resubdivision of a parcel of land which occurred after September 19, 1973;

iii. The construction of any residential or commercial development on contiguous parcels of land where there is some shared pecuniary, possessory, or other substantial common interest by one or more individuals in the units;

iv. The mooring of 25 or more floating homes in a marina. For the purposes of this subparagraph, a floating home is defined as a waterborne structure designed and intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, and which will remain stationary for more than 10 consecutive days;

v. The addition of one or more ***parking spaces or*** dwelling units or equivalent to any existing dwelling units ***or parking spaces or equivalent parking area*** for which construction had commenced subsequent to September 19, 1973 where such addition, when combined with the existing dwelling units or parking area, results in a total exceeding the regulatory threshold. Any dwelling units or parking areas in existence on or before September 19, 1973 which have been determined by the Department to be exempt from the requirements of this subchapter due to on-site construction on or before September 19, 1973 will not be counted when determining if a new or expanded development exceeds the regulatory threshold.

vi. The total number of dwelling units or parking spaces in a new or expanded development need not be restricted to any single municipal tax block nor to any one period in time in order to require a permit;

vii. The construction of a development below the regulatory threshold as defined in this section, where such construction is part of a larger planned development in which the total development will exceed the regulatory threshold.

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

(c) This subchapter shall not apply to developments which meet one of the following criteria specified at N.J.S.A. 13:19-5:

1. A development which has received preliminary site plan approval pursuant to the "Municipal Land Use Law," P.L. 1975, c.291 (N.J.S.A. 40:55D-1 et seq.) or a final municipal building or construction permit on or before July 19, 1994, provided that construction begins by July 19, 1997, and continues to completion with no *[cumulative]* lapses in construction activity of more than one year;

i. An exemption under this section is granted only for the specific project depicted on the approved site plan or described in the building or construction permit.

ii. Any development that required a permit pursuant to P.L. 1973, c.185 (N.J.S.A. 13:19-1 et seq.) prior to July 19, 1994 shall continue to require a CAFRA permit and shall not be exempted under this section.

iii. For purposes of this subsection, "construction" means having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine if construction of a development or part of a development has begun by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.

iv. In the event that the final municipal building or construction permit expires and the permit is renewed or a new permit is obtained for the same project, the development will remain exempt provided construction begins by July 19, 1997. In cases where the municipal approval expires and is renewed or a new permit is issued, the Department will require documentation that the new permit authorizes exactly the same construction as the original permit.

2. A residential development which has received preliminary subdivision approval or minor subdivision approval pursuant to the "Municipal Land Use Law," P.L. 1975, c.291 (N.J.S.A. 40:55D-1 et seq.) on or before July 19, 1994 where no subsequent site plan approval is required, provided that construction begins by July 19, 1997, and continues to completion with no *[cumulative]* lapses in construction activity of more than one year;

i. An exemption under this section is granted only for the specific project depicted on approved plans or described in the approving resolution or construction permit.

ii. Any development that required a permit pursuant to P.L. 1973, c.185 (N.J.S.A. 13:19-1 et seq.) prior to July 19, 1994 shall continue to require a CAFRA permit and shall not be exempted under this section.

iii. For purposes of this subsection, "construction" means having completed the foundations for buildings or structures, the subsurface

improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine if construction of a development or part of a development has begun by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.

3. The reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law; and further provided that such reconstruction does not result in:

i. The enlargement or relocation of the footprint of the development; or

ii. An increase in the number of dwelling units or parking spaces within the development.

iii. A relocation landward ***or laterally*** may be exempt from (c)3i above if the Department determines, in writing, that such a relocation would result in less environmental impact than the damaged or destroyed development.

iv. Any person requesting a determination concerning relocation landward shall follow the procedures for an exemption determination at *[(d)]* ***(e)2*** below*[)]*.

4. The enlargement of any development provided that such enlargement does not result in:

i. The enlargement of the footprint of the development; or

ii. An increase in the number of dwelling units or parking spaces within the development.

5. The construction of a patio, deck or similar structure at a residential development*[, provided that such construction does not include the placement of pilings or placement of a structure on a beach or dune]*.

i. For the purposes of this subsection, "similar structure" includes*[:]* ***porches, balconies and verandas. The exemption for the construction of a patio, deck, porch, balcony or veranda only remains in effect as long as the patio, deck, porch, balcony or veranda remains unused for the purpose that it was originally constructed. The conversion of such a structure into a new room or additional dwelling unit will require Department review.**

ii. For the purposes of this subsection, the following shall also be allowed at a residential development, provided that such construction does not include the placement of pilings or placement of a structure on a beach or dune,* open fences, open carports, flower boxes, gardens, gazebos, satellite dishes and antennas, sheds, wooden boardwalks and gravel or brick/paver block walkways, showers/spa/hot tubs which do not discharge to surface waters or wetlands*[, and]***.

iii. The construction of* timber dune walker structures constructed in accordance with Department specifications found at N.J.A.C. 7E, Rules on Coastal Zone Management ***shall also be allowed at a residential development*.**

*[ii.]***iv.*** For the purposes of this subsection, "similar structure" does not include*[:]* the construction of swimming pools, garages, retaining walls, bulkheads, revetments, driveways and associated parking areas, paved yard areas, or outbuildings.

6. Services provided, within the existing public right-of-way, by any governmental entity which involve:

i. The routine reconstruction, substantially similar functional replacement, or maintenance or repair of public highways. The paving of an existing ***unpaved*** roadway is not considered to be a substantially similar functional replacement;

ii. Public highway lane widening, intersection and shoulder improvement projects which do not increase the number of travel lanes; *[or]*

iii. Public highway signing, lighting, guide rail and other nonintrusive safety projects, including traffic control devices*[.]***; or***

iv. Re-striping of public highways and the addition of toll booths provided that these activities do not result in any increase in impervious coverage.

7. Any development that has an existing, valid CAFRA permit provided that construction begins prior to the expiration date of the permit and continues with no cumulative lapses in construction activity of more than one year.

i. "Construction" means having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine if a development or part of a development has begun construction by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.

8. The expansion of an existing, functional amusement pier, provided such expansion does not exceed the footprint of the existing, functional amusement pier by more than 25 percent, and provided such expansion is located in the area beyond 150 feet landward of the mean high water line, beach or dune, whichever is most landward.

(d) Any exemption based upon on-site construction on or before September 19, 1973 shall expire on July 19, 1997.

(e) Development that is exempt from CAFRA requires no certification or approval from the Department, except as may be required by other programs administered by the Department. Any person who wishes may request from the Department a written determination of a development's exemption from the requirements of this subchapter.

1. For an exemption pursuant to (c)1 and 2 above, the following shall be submitted:

i. A folded copy of the preliminary local approval of the site plan or subdivision, including a copy of the approved site plan or subdivision itself, a copy of the resolution approving the site plan or subdivision, or a copy of the building permit with approved plan and soil conservation district approval where required; *[and]*

ii. In the event that the final municipal building or construction permit expires and the permit is renewed or a new permit is obtained for the same project, the development will remain exempt provided construction begins by July 19, 1997. To make such a determination, the Department will require documentation that the new permit authorizes exactly the same construction as the original permit, such as a copy of the original building permit with approved plan and soil conservation district approval where required and a copy of the new building permit with approved plan depicting the exact development as the original; and

*[ii.]***iii.*** The fee specified at N.J.A.C. 7:1C-1.5(a)3v.

2. For an exemption pursuant to (c)3, 4 and 5, above the following shall be submitted:

i. Plans showing the existing structures and site conditions with locations and dimensions, and all proposed structures, filling, grading, excavation and clearing;

ii. Photographs of the site; and

iii. The fee specified at N.J.A.C. 7:1C-1.5(a)3v.

3. For an exemption pursuant to (c)8 above, the following shall be submitted:

i. A description of the location of the amusement pier including county, municipality, lot(s) and block(s);

ii. A copy of a site plan showing the location of the existing, functional amusement pier and the proposed location of the expansion;

iii. Documentation concerning the size of the footprint of the existing functional amusement pier and the size of the proposed expansion;

iv. Photographs of the site; and

v. The fee specified at N.J.A.C. 7:1C-1.5(a)3v.

7:7-2.2 Wetlands

(a) Wetlands permits are required for all activities in coastal wetlands delineated and mapped pursuant to the Wetlands Act of 1970 including, but not limited to:

1. The cultivation and harvesting of naturally occurring agricultural or horticultural products. This provision shall not apply to the continued production of commercial salt hay or other agricultural crops on lands utilized for these purposes on or before April 13, 1972;

2. The excavation of an individual mooring slip;

3. The maintenance or repair of bridges, roads, highways, railroad beds or the facilities of any utility or municipality. This provision shall not apply to emergency repairs necessitated by a natural disaster or a sudden and unexpected mechanical, electrical or structural failure. Written notification of such repairs shall be provided to the Division within seven days after their initiation;

4. The construction of catwalks, piers, docks, landings, footbridges and observation decks;

5. The installation of utilities;

6. Excavation of boat channels and mooring basins;

7. The construction of impoundments;

8. The construction of sea walls;

9. The diversion or *[appropriative]* ***appropriative*** use of water;

10. The use of pesticides, except those applied to the skin or clothing for personal use;

11. Driving or causing to pass over or upon wetlands, any mechanical conveyance which may alter or impair the natural contour of the wetlands or the natural vegetation; and

12. Filling, excavation or the construction of any structure.

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

7:7-2.3 Waterfront development

(a) The waterfront area regulated under this subchapter is divided into three sections, and will vary in width in accordance with the following rules:

1. Within any part of the Hackensack Meadowland Development District delineated at N.J.S.A. 13:17-4.1, the area regulated by this section shall include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line.

2. Within the "coastal area" defined by section 4 of CAFRA (N.J.S.A. 13:9-4), the regulated waterfront area shall include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line.

3. In all other areas of the State (that is in those areas outside of the "coastal area" defined by CAFRA and outside of the Hackensack Meadowlands Development District), the regulated waterfront area shall include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line, and an adjacent upland area extending landward from the mean high water line to the first paved public road, railroad or surveyable property line existing on September 26, 1980 generally parallel to the waterway, provided that the landward boundary of the upland area shall be no less than 100 feet and no more than 500 feet from the mean high water line.

(b) (No change.)

(c) The following development activities will require a permit in that portion of the waterfront area at or below the mean high waterline:

1. The removal or deposition of sub-aqueous materials (for example, excavation, dredging or filling).

2. The construction or alteration of a dock (fixed or floating), wharf, pier, bulkhead, breakwater, groin, jetty, seawall, bridge, piling, mooring dolphin, pipeline, cable, or other similar structure.

3. The mooring of a floating home for more than 10 consecutive days. Floating homes in use within the waters of this state prior to June 1, 1984 shall not require a permit (See N.J.A.C. 7:7-2.1(b) for definition of floating home.)

4. The installation of temporary aids to navigation by any person, if they remain in place for more than 10 consecutive days.

(d) A permit shall be required in the waterfront area for the construction, reconstruction, alteration, expansion or enlargement of any structure, or for the excavation or filling of any area with the exceptions listed below:

1.-2. (No change.)

3. In the waterfront area defined in (a)3 above, minor additions to or changes in existing structures or manufacturing operations that do not increase the amount of impervious cover, where such changes or additions do not result in a change in the present land use of the site;

4. The repair, replacement or renovation of any legally existing dock, wharf, pier, bulkhead or building provided that the repair, replacement or renovation will not have any additional permanent adverse effects on any natural resources on-site, including, but not limited to, wetlands, shallow water habitat, submerged vegetation, and natural shoreline configuration, and provided the repair, replacement or renovation does not increase the size of the structure and the structure is used solely for residential purposes or the docking or servicing of pleasure vessels;

5. The repair, replacement or renovation of any legally existing floating dock, mooring raft or similar temporary or seasonal improvement or structure provided that the repair, replacement or renovation will not have any additional permanent adverse effects on any natural resources on-site, including, but not limited to, wetlands, shallow water habitat, submerged vegetation, and natural shoreline configuration, and provided the improvement or structure does not exceed in length the waterfront frontage of the parcel of real property to which it is attached and is used solely for the docking or servicing of pleasure vessels.

(e) Any person proposing to undertake or cause to be undertaken any development or activity in or near the waterfront area may request in writing a determination that the proposal is not subject to the requirements of this subchapter on the basis that the proposed development site is located outside the waterfront area, or that the proposed development does not require a permit under (d) above.

1. The requesting party shall provide the Department with two copies of a map depicting the project site in a scale of not less than 1:2,400 (one inch equals 200 feet) and depicting the mean high water line, and with a project description. When the applicability determination request is based on a proposed facility's location in accordance with (a)3 above, the map shall also depict that property line as it is depicted on the official local tax map as of September 26, 1980, and shall graphically depict the proposed project.

(f) A Waterfront Development permit is required for the filling of any lands formerly flowed by the tide, if any filling took place after 1914 without the issuance of a tidelands grant, lease or license by the Department of Environmental Protection *[and Energy]* and Tideland Resource Council or their predecessor agencies, even where such lands extend beyond the landward boundary of the upland area defined in (a)3 above, or up to and including the mean high water line in the areas defined in (a)1 and 2 above.

1. A Waterfront Development permit application submitted under this subsection must be submitted in conjunction with an application for a Tidelands grant, lease or license.

(g) A Waterfront Development permit shall not be required for any development or activity in the upland area defined in (a)3 above and in manmade waterways and lagoons for which on-site construction, excluding site preparation, was in progress on or prior to September 26, 1980. For the purpose of this section, "construction, excluding site preparation" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction or structures. For the purposes of this section, "construction, excluding site preparation" does encompass improvements which include, but are not limited to, paved roads, curbs, and storm drains.

1. Any person who believes that a proposed development is exempt from the requirements of this subchapter due to on-site con-

struction may request in writing a determination of exemption from the Department in accordance with (g)2 below.

2. Exemptions shall be applied for and considered upon submission of information sufficient for the Department to determine that the physical work specified in (g)1 above necessary to begin the construction of the proposed development, was actually performed prior to September 26, 1980 in the area defined in (a)3 above.

i. Any *[interruption in the process of construction and completion of the development]* ***lapse in construction activity of more than one year*** may be cause for denial of an exemption request, or where previously exempted, it may be cause for revocation of such exemption, by the Department.

ii. A finding that a proposed development is exempt from the requirements of this subchapter shall apply only to the development as conceived and designed prior to September 26, 1980. Any modification which expands or substantially changes the exempted development shall require a permit.

SUBCHAPTER 3. PRE-APPLICATION REVIEW

7:7-3.1 Purpose

A pre-application review is an optional service especially recommended for major development. At this review the Department will discuss apparent strengths and weaknesses of the proposed development, as well as the procedures and policies that would apply to the particular development. The review is intended to provide guidance and does not constitute a commitment to approve or deny a permit application for the development.

7:7-3.2 Request for a pre-application review

(a) Potential applicants for major projects are encouraged to request a pre-application review with the Department at the earliest opportunity. A request for a pre-application review shall be made in writing and shall include a conceptual proposal for the proposed development.

1. The conceptual proposal shall include:

i. A written description of the site and the proposed development including the dimensions, number, and uses of proposed structures;

ii. Maps indicating the site's location and rough internal plan of development; and

iii. A tax lot and block designation of the site and a United States Geological Survey quadrangle map or county road map showing the site.

(b) The Department shall, within 10 days of receipt of such request, schedule a pre-application conference *[if one is warranted]*. Alternatively, the Department may suggest a telephone conversation if only a small number of relatively straightforward issues need discussion. A pre-application review will not be considered a declaration of intent to submit an application to the Department as defined in N.J.A.C. 7:1C-1.3 of the 90-Day Construction Permit rules.

7:7-3.3 Discussion of information requirements

(a) The Department shall discuss the information, including the level of detail and areas of emphasis, which must be included in a permit application for the proposed development to allow the Department to review the application if one is submitted. This does not preclude the Department from requesting additional information based upon review of the formal application submittal.

(b) The Department shall also make available to the potential applicant current information on nearby projects in the Department's files. This information may be incorporated, by reference, in the applicant's EIS if agreed to by the Department.

7:7-3.4 Memorandum of record

(a) After the pre-application review, the Department shall, upon request, prepare a written memorandum of record or policy compliance checklist summarizing the discussion of the proposed development, the apparent sensitivity of the land and water features of its site, and the level of detail and the areas of emphasis necessary in the information that would be required as part of an application.

(b) The memorandum of record shall be mailed to the potential applicant within 20 days of the pre-application review. If an application is submitted, a copy of the memorandum of record or policy compliance checklist shall be included.

(c) The memorandum of record shall not be construed as a decision of the Department and shall not have any binding effect on the final decision of the Department on any permit application.

SUBCHAPTER 4. PERMIT REVIEW PROCEDURE

7:7-4.1 General

(a) The provisions of CAFRA, the Wetlands Act of 1970, and the Waterfront Development Law are supplemental to other laws, including the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq., P.L. 1975, Chapter 291). Early consultation with the Department by a prospective applicant can avoid unnecessary duplication and delay in development review at the state and local levels for the same development, if applications for proposed developments are processed at the same time at the State and local levels.

(b) Applicants for projects which require review or approval of a county-wide or area-wide planning agency or development, transportation or improvement authority *[should]* ***shall*** consult with that agency on a regular basis to insure that the project and any changes to it are acceptable. *[Projects which are not consistent with the applicable Wastewater Management Plan should not be submitted until consistent or until a Plan Amendment is obtained because the Department's regulations under the Water Pollution Control Act require that consistency with a Wastewater Management Plan be demonstrated before any other Department approvals can be issued.]*

(c) The 90 Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.) and its implementing regulations (N.J.A.C. 7:1C) establish certain uniform permit review requirements for five types of construction permits issued by the Department, including CAFRA, Wetlands **Act of 1970** and Waterfront Development permits. This chapter incorporates and is consistent with those requirements.

7:7-4.2 Application contents

(a) Applications shall contain the following:

1. A completed *[DEPE]* ***DEP*** Standard Construction Permit (CP-1) form;

2. A check***,*** *[or]* money order***, or government voucher*** in the amount of the appropriate fee (see N.J.A.C. 7:1C-1.5);

3. Verification (*[white receipt or]* green card is *[acceptable]* ***required***) that a complete copy of the application package has been submitted to the clerk of the municipality in which the proposed development will occur, and to the planning board and environmental commission of the municipality in which the proposed development would occur. Applications for CAFRA permits within the Pinelands Preservation Area or Protection Area must also contain verification that a complete copy of the application package has been submitted to the Pinelands Commission;

4. Verification that a certified mail notice with return receipt requested (white receipt or green card is acceptable) and a copy of the siteplan and CP-1 form have been forwarded to the planning board and environmental commission of the county in which the proposed development would occur and to all landowners within 200 feet of the property or properties on which the proposed development would occur, along with a certified list of all landowners within 200 feet. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions*[;]*****. This plan may be on an 8½ by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location.***

i. An application for a linear development shall include verification that a certified mail notice with return receipt requested (white receipt or green card is acceptable) and a copy of the site plan and CP-1 form have been forwarded to the planning board and environmental commission of the county in which the proposed development would occur and to all landowners within 200 feet of the proposed development rather than to all landowners within 200 feet of the property or properties on which the proposed development

would occur. If the 200 foot area falls within the right-of-way, the applicant must notify those landowners within 200 feet of the outer edges of the right-of-way, along with a certified list of all landowners within this 200 feet. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. For the purposes of this subsection, "linear development" means land uses such as roads, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission lines and the rights-of-way therefor, which have a basic function of connecting two points. Linear development shall not mean residential, commercial, office or industrial buildings, improvements within a development such as utility lines or pipes, or internal circulation roads;*

5. A copy of a public notice shall be included in the application to the Department. The notice shall read as follows:

"This letter is to provide you with legal notification that an application will be submitted to the New Jersey Department of Environmental Protection *[and Energy]*, Land Use Regulation Program for a permit for the development shown on the enclosed plan.

The complete permit application package can be reviewed at either the municipal clerk's office or by appointment at the *[DEPE's]* ***DEP's*** Trenton office. The Department of Environmental Protection *[and Energy]* welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter. In your letter, you may request a hearing if you believe one is necessary. Requests for a public hearing should state the specific nature of the issues proposed to be raised at the hearing. Both comments and hearing requests should be sent along with a copy of this letter to:

New Jersey Department of Environmental Protection
[and Energy]
Land Use Regulation Program
CN 401
5 Station Plaza
Trenton, New Jersey 08625
Attn: (County in which the property is located)
Section Chief;

6. Proof that notification of filing of an application for a CAFRA permit was published in the *[DEPE]* ***DEP*** Bulletin*[;]***. The application shall be submitted to the Department within two weeks of publication of the notice of filing in the DEP Bulletin;***

7. Photographs showing the project site;

8. Fifteen copies of development plans. (Plans must be folded if larger than 8½ inches by 11 inches in size.)

i. For CAFRA applications, Waterfront Development applications for activities occurring above the mean high water line, and for Wetlands applications for activities other than catwalks, docks and piers:

(1) The set of plans must include, but not be limited to, the following information:

(A) All existing structures, roads, utilities, topography, vegetation, and coastal and freshwater wetlands, and any proposed structures, filling, grading, excavation, clearing, roads, utilities, sewers, landscaping and lighting, and soil erosion and sediment control devices.

(B) Any additional information specified in the "Checklist for Administrative Completeness for Waterfront Development, Tidal Wetlands, and CAFRA".

(2) Plans for any development consisting of more than one single family dwelling or duplex must be signed and sealed by a Professional Engineer or Land Surveyor. ***Plans for activities proposed on public park lands may be prepared, signed and sealed by a State Certified Landscape Architect instead of a Professional Engineer or Land Surveyor.***

ii. For Waterfront Development applications for activities occurring below the mean high water line and for Wetlands applications for catwalks, docks or piers:

(1) The set of plans must include, but not be limited to, the following information specified in the "Checklist for Administrative Completeness for Waterfront Development, Tidal Wetlands, and CAFRA":

(A) The lot;

(B) All existing waterfront structures (piers, bulkheads, pilings, etc.) on the lot and all immediately adjacent lots;

(C) Locations and dimensions of structures, lots, wetlands, mean high water line, upland property, road and utilities;

(D) The proposed work area and construction/development area clearly labelled and showing all distances and dimensions;

(E) The general site location of the development, which may be on a county or local road map or an insert from a U.S. Geological Survey topographic quadrangle map;

(F) The scale of the survey or map, and a north arrow;

(G) The name of the person who prepared the plan and the date it was prepared;

(H) The name of the applicant, lot and block number, and municipality, leaving a margin of one inch on the top and left hand sides of the plan; and

(I) The location of upper and lower wetlands boundary. ***The "upper" wetlands boundary refers to the upland or landward limit of wetlands, and the "lower" wetlands boundary refers to the waterward limit of wetlands.***

(2) Dredging plans must show the area to be dredged, existing depth, proposed depth, adjacent depths, the amount of material to be dredged, the method of dredging, the exact location of the dredge material dewatering and disposal site by municipal block and lot, and the means of containing spoils. A dredge material analysis may also be required.

(3) Dock plans must show channel location, location and orientation of *[propsed]* ***proposed*** mooring areas, mooring area depths at mean low water, including the method, time, and date of soundings, cross sections of the dock including height and width of any wetlands crossing(s).

(4) Development plans for activities in an area subject to a Tidelands conveyance (grant, lease or license) shall be prepared by a professional engineer ***or land surveyor***, and must depict the limits of the conveyance. All activities in areas except man-made lagoons are subject to this requirement. Development plans for activities in man-made lagoons do not have to be prepared by a professional engineer, unless required by N.J.S.A. 45:8-27 et seq.;

9. Copies of an Environmental Impact Statement (EIS) or Compliance Statement, prepared in accordance with N.J.A.C. 7:7-6, as follows:

i. CAFRA permit applications shall include 15 copies. The applicant may submit either 15 complete copies with all attachments and appendices or may submit five complete copies of the EIS along with 10 additional copies, one of which shall have appended thereto only an archaeological survey, if appropriate; and one of which shall have appended thereto only a traffic analysis if appropriate.

ii. Waterfront Development and Wetlands applications shall include 10 copies of a Compliance Statement with the Rules on Coastal Zone Management, N.J.A.C. 7:7E, prepared in accordance with N.J.A.C. 7:7-6. This Statement of Compliance shall address all coastal rules applicable to the proposed project;

10. Applications *[within the Pinelands Preservation Area or Protection Area]* ***for development in an area under the jurisdiction of Pinelands Commission*** must also submit either a Certificate of Filing, Notice of Filing, or a Certificate of Compliance from the Pinelands Commission along with the other required application materials; and

11. Any additional information requested by the Department to clarify or provide further information regarding information already submitted on the proposed development.

(b) Waterfront Development and Wetlands applications shall also include a copy of any Tidelands Grant, Lease or License previously approved for the property in question. Permit applications will not be accepted for filing without verification that a tidelands instrument has been previously issued, applied for, or is unnecessary for the site.

(c) Development plans for activities in an area which requires a Tidelands (Riparian) Grant, Lease or License, shall be prepared by a professional surveyor ***or professional engineer*** licensed by the State of New Jersey and shall depict the limits of the area for which the Tidelands instrument will be sought.

(d) An application for a Waterfront Development or Wetlands permit proposing the discharge of dredge or fill material shall also constitute an application for a State Water Quality Certificate under Section 401 of the Federal Clean Water Act.

(e) If the regulated activity would occur on wetlands as defined by N.J.A.C. 7:7E-3.27(a) then the applicant may submit a mitigation plan as part of the application.

1. The Department requires an approved mitigation proposal as a condition precedent to engaging in a regulated activity in a wetland.

2. The Division may, upon the request of the applicant, determine that a mitigation plan will not be required to be a part of a permit application for the construction of catwalks, piers, docks, landings, footbridges and observation decks provided that the applicant shows, to the satisfaction of the Division, that vehicles and equipment will not be placed on the wetlands in order to construct the structure and that the structure will comply with the acceptability conditions provided by N.J.A.C. 7:7E-4.2(e). The Division may, however, require mitigation notwithstanding the applicant's compliance with the terms of this paragraph, if it has determined, on an individual case basis, that mitigation is necessary.

*[2.]***3.*** Any mitigation proposal submitted pursuant to this section shall include, but shall not be limited to, the following:

i. A description of the wetland mitigation proposal, which shall include the specific goals of the mitigation proposal and a discussion of how the mitigation proposal will satisfy those goals;

ii. A description (for example, size, type, vegetation, hydrology, etc.) of the wetlands to be destroyed or disturbed;

iii. Photographs of the proposed mitigation site;

iv. The names and addresses of current and proposed owner(s) of the mitigation project site;

v. A description of the existing ecosystem of the mitigation site, including a discussion of the vegetation, soils, hydrology, wildlife and adjacent land use;

vi. A discussion of the proposed hydrology of the mitigation site. The discussion should focus on the sources of water for the mitigation project, and should provide seasonal high water table information as well as the projected elevation of final grade of the mitigation project in relation to mean *[seal]* ***sea*** level (MSL), along with slope percent;

vii. The tidal range of the mitigation site and the salinity range of adjacent inundating waters;

viii. Existing soil types with soil borings to document seasonal high water tables, and a discussion of the created substrate of the proposed mitigation site describing how the substrate of the site will be prepared, whether the pH is appropriate, and any other pertinent factors;

ix. A planting scheme of the proposed vegetative community depicted on the mitigation site plans, including spacing of all plantings, stock type (bare root, potted, seed), size, and the source of the plant material;

x. A copy of a ***proposed*** deed restriction providing that no regulated activities will occur in the wetland mitigation area or its associated transition area and that it will remain as a natural area in perpetuity. Proof that the deed restriction has been registered with the County Clerk (the Registrar of Deeds and Mortgages if applicable) is required *[within 60 days following approval of the mitigation proposal]* ***prior to the start of construction***;

xi. A metes and bounds description of the proposed mitigation site which forms the basis for the deed restriction. The metes and bounds description shall include the transition area;

xii. New Jersey Wetlands Map/Tidelands Map number(s) for the development site (and mitigation site if at a different location) as well as block and lot numbers and ownership of the mitigation site;

xiii. An actual cost estimate of the mitigation proposal. The cost estimate should include the cost of land, site preparation, engineering costs, plantings and any other items incidental to the mitigation proposal;

xiv. Five folded copies of a site plan for the mitigation project which includes:

(1) Project location within the region;

(2) The lot and block number of the mitigation project location;

(3) Existing and proposed elevations and grades of the mitigation site in one foot intervals; and

(4) Plan views and cross sectional views;

xv. A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map showing the location of the property and its general vicinity, indicating and labeling the location of the proposed mitigation and the property boundaries, and a determination of the State Plan Coordinates for the center of the mitigation site. The accuracy of these coordinates should be within 50 feet of the actual center point. For linear mitigation projects, the applicant shall provide State Plan Coordinates for the endpoints of those projects which are 1,999 feet or less, and for those projects which are 2,000 feet and longer, additional coordinates at each 1,000 foot interval; and

xvi. *[In accordance with N.J.A.C. 7:7A-14.1, a]* ***A*** mitigation plan must include a secured bond, or other financial surety acceptable to the Department including an irrevocable letter of credit or money in escrow, that shall be sufficient to hire an independent contractor to complete and maintain the proposed mitigation should the permittee default. The financial surety for the construction of the mitigation project shall be posted in an amount equal to 115 percent of the estimated cost of construction. In addition, financial surety to assure the success of the mitigation project shall be posted in an amount equal to 30 percent of the estimated cost of construction. The financial surety will be reviewed annually and shall be adjusted to reflect current economic factors. ***For a mitigation plan submitted by a public agency, the Department will not require a secured bond provided that the construction of the development and mitigation are provided for in a single bid and contract.***

(f) (No change in text.)

7:7-4.3 Availability of application for examination by the public

(a) Copies of all coastal permit applications, and subsequent submissions, will be available for public scrutiny by interested persons in the offices of the Department in Trenton by appointment and in the municipal clerk's office during normal business hours. On a case-by-case basis, the Department may make arrangements for copies of coastal permit applications and subsequent submissions to be available for public review in a municipality outside normal business hours.

(b) The status of all permit applications shall be published in the DEPE Bulletin pursuant to N.J.A.C. 7:1C-1.6, and this publication shall constitute notice to all interested persons except as provided in N.J.A.C. 7:7-4.8.

7:7-4.4 Initial review of applications

(a) Within 20 working days of receipt of the application, the Department shall take one of the following actions:

1. Declare the application complete for final review, assign an agency project number, and proceed to review on the merits.

2. Assign an agency project number and accept the application, but request in writing that the applicant submit additional information within a specific period of time to assist in its review. In such cases, the application will not be considered complete for final review or public hearing until all the additional information has been received and deemed acceptable for review.

i. In the case of all CAFRA permit applications and those other coastal permit applications or CAFRA permit modification applications for which the Department has determined that additional information is necessary to assist in its review and that this information can only be obtained by public hearing, the application shall be declared complete for public hearing.

ii. No application shall be declared complete for final review unless and until the applicant has possession of all tidelands conveyances required for the riparian land. The Department may in its discretion issue a permit decision prior to receipt of the conveyance.

[iii. No application for a development requiring sanitary sewer service shall be declared complete for final review unless and until the project is consistent with the applicable Wastewater Management Plan or until a Plan Amendment is obtained, because the Department's regulations under the Water Pollution Control Act require that consistency with a Wastewater Management Plan be demonstrated before any other Department approvals can be issued.]

3. Return the application, explaining why it is unacceptable for filing, and return the filing fee upon notification that the applicant does not intend to reapply.

(b) Within 15 days of the receipt of any additional information submitted pursuant to (a)2 above, the Department shall issue notification to the applicant regarding whether the amended application is considered complete.

1. Such notification shall either:

i. Specify which deficiencies still remain;

ii. If no public hearing is to be held, declare the application complete for final review; or

iii. If a public hearing is to be held, declare the application complete for the public hearing.

2. Copies of information submitted in response to deficiency letters shall be submitted to the municipal clerk and at the discretion of the Department, be distributed by the applicant to the same persons to whom copies of the initial application were distributed.

(c) Applications for which a public hearing will be held shall go on to the public hearing phase of the permit review process. Wetland and Waterfront Development applications which do not require a public hearing and which are complete for final review shall begin the 90 day review period established pursuant to the 90 Day Construction Permit Law on the date of receipt of the additional information which completed the application.

(d) If an application is not complete for final review or for the public hearing within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, a 90 day extension in which to submit the information will be granted.

1. All fees submitted with an application that is cancelled shall be non-refundable but will be applied toward re-submission of the application provided that such re-submission is within one year of the date of cancellation.

2. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:1C-1.5.

3. A re-submission of an application shall be required to meet the application requirements specified at N.J.A.C. 7:7-4.2.

(e) Once an application is declared complete for final review or for the public hearing, ***whichever occurs later,*** the *[rules]* ***Rules on Coastal Zone Management, N.J.A.C. 7:7E et seq.,*** in effect at that time will govern the staff review of the permit application pursuant to the 90 Day Law, N.J.S.A. 13:1D-29 et seq.

(f) Once the application for which a public hearing is required has been declared complete for public hearing, the Departmentshall prepare a preliminary analysis of the project, based upon the staff analysis and recommendations, as well as upon comments from other agencies to whom copies of the application were distributed and comments from interested persons.

1. To be assured of incorporation in the preliminary analysis, such comments must be received within 20 days after the applicant has been notified of completeness for public hearing.

2. The Department will provide copies of the preliminary analysis to the applicant and to any person requesting a copy.

7:7-4.5 Public hearings and public comment periods

(a) Public hearings shall be convened in accordance with the following:

1. The Department may, in its discretion, hold a non-adversarial public hearing for a CAFRA permit when the Department determines that additional information is necessary to assist in its review and that this information can be best obtained by providing an opportunity for a public hearing. The Department may initiate public hearings on its own or in response to public requests identifying specific issues which the Department believes warrant a public hearing.

i. The Department may issue or deny a permit without a public hearing, unless there is a significant degree of public interest in the application and the Department receives written request(s) for a hearing. Requests for a public hearing must be received within 20 days of the date of publication of the notice of filing of an application for a CAFRA permit in the *[DEPE]* ***DEP*** Bulletin.

ii. In the event that the Department does not hold a public hearing on a CAFRA permit application, the Department will provide for a 30-day public comment period which begins on the date of publication of the notice of filing of an application for a CAFRA permit in the *[DEPE]* ***DEP*** Bulletin. Public comments must be submitted within 30 days of the date of publication of the notice of filing of an application for a CAFRA permit in the *[DEPE]* ***DEP*** Bulletin.

2. The Department may, in its discretion, hold a non-adversarial public hearing for Wetlands and Waterfront Development permit applications and for coastal permit modification applications when it determines that additional information is necessary to assist it in its review and that this information can be obtained only by providing an opportunity for a public hearing. Such a determination will be made within 20 working days of the filing of the application.

(b) If a hearing is to take place, the Department shall, within 15 days of declaring the application complete for public hearing, set a date, place, and time for the public hearing and shall so notify the applicant.

1. The date for the hearing shall be not later than 60 days after the application has been declared complete for public hearing.

2. The hearing shall, if possible, be held in the municipality in which the development is proposed.

(c) The Department shall publish a notice announcing the date, place, and time of the public hearing in the DEPE Bulletin.

(d) The applicant shall give public notice of the public hearing, pursuant to Section 7.1 of the Municipal Land Use Law (N.J.S.A. 40:55D-12). The newspaper display advertisement shall be a minimum of four inches in width.

1. Such notice shall describe the proposed development, identify its agency project number, announce the date, place, and time of the public hearing on the application, and indicate that comments on the application may be made to the Land Use Regulation Program, New Jersey Department of Environmental Protection *[and Energy]*, CN 401, Trenton, New Jersey 08625 at or within 15 days after the public hearing, or until the application is declared complete for review (see N.J.A.C. 7:7-4.6), whichever occurs last.

2. If the development is a linear development such as a pipeline or road, the applicant shall give public notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper, and to owners of all real property within 200 feet of an above surface structure related to a linear development, such as a pumping station or treatment plant, rather than to owners of real property within 200 feet of the entire linear development.

3. Such notice shall also be given to the clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

4. Proof of notice shall be submitted to the Department at least three days prior to the public hearing. In cases where proof of publication is unavailable 3 days prior to the hearing, the applicant may submit a notarized affidavit stating that notice of the hearing has been published, and specifying the date and newspaper in which such notice was published.

(e) The Department shall maintain a copy of the hearing transcript and of all written comments received for public inspection in its Trenton Office.

(f) The applicant shall provide a court reporter, bear the cost of the hearing and provide the Department with the original transcript, as required by N.J.A.C. 7:1C-1.5(e). *[The court reporter must be a Contract Vendor selected from the New Jersey Department of Treasury Notice of Contract Award.]*

(g) The presiding official at the public hearing shall have broad discretion with respect to oral and written presentations by interested persons. This discretion shall be exercised to allow every person the opportunity to speak, to reasonably limit the length of individual testimony, and insure the maintenance of an orderly forum. At the conclusion of statements of interested persons, the applicant shall be afforded the opportunity to respond to the statements offered by interested persons.

(h) Any interested person may submit information and comments, in writing, concerning the application and the preliminary analysis at or within 15 days after the hearing or during the public comment period. Additional comments received after this date will also be included in the application file and may be considered by the Department in the review process if relevant to the application.

7:7-4.6 Final review of the application

(a) In the case of CAFRA applications, the Department shall, within 15 days after the public hearing, if one is held, or 15 days after the close of the public comment period if no hearing is held, either declare the application complete for final review or issue notification to the applicant that additional information is required for the complete review of the application. The request for additional information shall be made in writing, or if made at the hearing, confirmed in writing.

i. If a public hearing was held and no additional information is required, the date of the public hearing shall be the date the application was considered complete for review.

ii. If no public hearing was held, and no additional information is required, the date of the close of the public comment period shall be the date the application was considered complete for final review.

(b) The Department shall, within 15 days of the receipt of any required additional information, either declare the application complete for final review effective the date of receipt of the additional information or issue notification to the applicant that the application is still not complete for final review and specify which deficiencies remain.

(c) (No change.)

(d) If an application for which a public hearing or public comment period has been held is not complete for review within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, further extensions in which to submit the information will be granted. Failure to submit the information by the mutually agreed date of extension will be cause for the Department to cancel the application without further notice.

1. All fees submitted with an application that is cancelled shall be non-refundable but will be applied toward re-submission of the application provided that such re-submission is made within one year of the date of cancellation.

2. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:1C-1.5.

3. A re-submission of an application shall be required to meet the application requirements specified at N.J.A.C. 7:7-4.2.

7:7-4.7 Timetable for final decisions

(a) The Department shall act on CAFRA applications within 60 days of the public hearing, or within 60 days of the *[close of the public comment period]* ***date the application was declared complete for final review*** if no hearing is held, unless additional information was required, in which case the Department shall act on the application within 90 days of the date it was declared complete for final review.

(b) The Department shall act on all Wetland and Waterfront Development applications within 90 days after the application was declared complete for final review.

(c) If the Department fails to act within the prescribed time period, the application shall be deemed to have been approved, subject to the standard conditions set forth in N.J.A.C. 7:7-1.5, with the exception of any application for a permit which has not received all required riparian conveyances setting forth the person's right to use or occupy the land.

7:7-4.8 Publication of the final decision

(a) The Department shall notify the applicant of the decision by mail, shall publish notice of the decision in the DEPE Bulletin, and shall also notify all interested persons who specifically requested notice.

(b) The permittee may, if it chooses not to wait for the decision to be published in the DEPE Bulletin, publish notice of the final decision in a newspaper of regional circulation which includes the municipality in which the project site is located, and by certified mail to any person who commented on the application during the review process or requested such notice, in writing, during the application review period. The Department shall maintain a list of such newspapers. Such notice shall also be given to the clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

1. Publication of notice by the permittee by publication of a display advertisement of at least four inches in width in a newspaper of general circulation in the municipality shall begin the 10 day appeal period (see N.J.A.C. 7:7-5) if publication takes place prior to publication of notice of the final decision in the DEPE Bulletin.

2. Proof of such publication and of mailing shall be submitted the Department.

(c) The permit application review process may be extended pursuant to the provisions of N.J.A.C. 7:1C-1.8(e) or by mutual agreement.

7:7-4.9 Withdrawal, re-submission and amendment of applications

(a) An applicant may withdraw an application at any time in the application review process. All fees submitted with such applications are non-returnable following the conclusion of the initial 20 working day review period except that the fee may be credited for the same project within one year of the date of the notice of withdrawal.

(b) If an application is denied, the applicant may resubmit an application for a revised project of the same or reduced scope on the same site within one year without additional fees. The resubmitted application will be treated as a new application, although references may be made to the previously submitted application. An applicant who wishes to appeal the denial, and at the same time revise the application may do so in accordance with procedures in N.J.A.C. 7:7-5.1.

(c) Permit applications may be amended at any time as part of the permit review process. Copies of amendments and amended information shall be distributed by the applicant to the clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

(d) Amended applications submitted within 30 days of the deadline for final decision must be accompanied by a request to extend the decision date by 30 days or by a period agreed to by the applicant and the Department.

7:7-4.10 Requests for modifications

(a) A permittee may apply for a modification to an issued permit for projects which do not result in a significant change in the scale, use or impact of the project as approved. The determination as to what constitutes a significant change is within the sole discretion of the Department and will be based on a review of the original

application file and new information submitted by the applicant. A change that will result in less environmental impact than the original approved development will not constitute a significant change. ***Significant changes generally include, but are not limited to, increased clearing, grading or filling or impervious coverage, reduction in buffers, and change in footprint location.***

1. Permits may only be modified during the initial five year term of the permit or beyond this five year period if the permit is still active pursuant to N.J.A.C. 7:7-1.5(d). At the Department's discretion, a modification may be granted to a permit for which approved construction has been completed to allow additional minor construction to occur on-site.

(b) Modifications shall require an application to amend the issued permit, including a new CP-1 form, notice requirements pursuant to N.J.A.C. 7:7-4.2, a copy of the original permit, summary report, and approved plans, and any additional information necessary to review the proposed modification.

(c) A fee shall be required for any modification and shall be in accordance with the provisions of N.J.A.C. 7:1C (90 day Construction Permits).

(d) The status of an application to amend an issued permit shall be published in the DEPE Bulletin.

7:7-4.11 Suspension and revocation of permits

(a) A permit is suspendable for good cause, such as, but not limited to, violations of permit condition, significant changes in the plan for the development which occur after a permit is issued which are not explicitly authorized in writing by the Department, the applicant's failure to correctly identify project impacts, or unanticipated adverse effects caused by the development.

1. Prior to the suspension, the Department shall furnish written notice to the permittee by certified mail, providing 10 days within which to either remedy the violations, provide an explanation of why such violations cannot be remedied, offer a plan to remedy these violations, or demonstrate to the Department that good cause for suspension does not exist. Any remedial plan shall indicate the time necessary to implement the remedy.

2. If the above requirements have not been met, the permit shall be suspended. Construction may not commence, or if underway, shall then cease until the Department has lifted the suspension.

3. A permittee may appeal suspension of a permit according to the provisions of N.J.A.C. 7:7-5 only if construction has ceased.

(b) A suspended permit is revocable for good cause.

1. Prior to revocation, the Department shall provide the permittee with written notice of intent to revoke the permit by certified mail and of the permittee's right to a hearing pursuant to the provisions of N.J.A.C. 7:7-5.

2.-3. (No change.)

SUBCHAPTER 5. APPEALS

7:7-5.1 Request for review on appeal

(a) Any interested persons who consider themselves aggrieved by a final decision of the Land Use Regulation Program may, within 10 days of publication of notice of the final decision in the *[DEPE]* ***DEP*** Bulletin or within 10 days of publication of notice by the permittee pursuant to N.J.A.C. 7:7-4.8(b), whichever occurs first, appeal to the *[DEPE]* ***DEP*** Commissioner by requesting a hearing by addressing a written request to the Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Department of Environmental Protection *[and Energy]*, 401 East State Street, CN 402, Trenton, New Jersey 08625-0402 and including a completed "Administrative Hearing Request Checklist and Tracking Form for Permits" incorporated herein by reference as an Appendix.

1.-2. (No change.)

(b) (No change in text.)

(c) A hearing request may include a request that the permit be stayed.

7:7-5.2 Response to appeal request

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

(c) Any person or entity having a significant interest in the outcome of a hearing request may, in addition to filing a response, request permission to participate in the appeal process. A request to participate must be postmarked within 10 days of publication of notice of the original hearing request in the DEPE Bulletin, and must specify the requesting party's interest in the matter being appealed.

(d) (No change.)

7:7-5.3 Action on appeal request

(a) The Department shall publish notice of all appeal requests in the DEPE Bulletin.

(b) (No change.)

(c) The Commissioner may, upon request and for good cause shown, stay any or all of the conditions of the permit pending a final decision on the appeal.

(d) Requests for which a hearing is granted shall be referred to the Office of Administrative Law which shall assign an administrative law judge to conduct a hearing on the matter in the form of a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(e) Within 45 days of receipt of the administrative law judge's decision, the Commissioner shall accept, reject, or modify the decision.

(f) The Commissioner's action shall be considered final agency action for the purposes of the Administrative Procedure Act, and shall be subject only to judicial review as provided in the Rules of Court.

7:7-5.4 Review of revised application to settle appeal

(a) (No change.)

(b) Applicants will be required to submit information adequate to allow the Department to fully assess any proposed revisions to the project.

(c) Notice of a proposed settlement which is arrived at pursuant to this section shall be published in the DEPE Bulletin, and shall be provided to any interested third party who commented on the project in writing or at the public hearing (if one was held), and any interested person shall have 10 days from the date of publication in the DEPE Bulletin to comment on a proposed settlement.

(d) Any permit which is issued as a result of a settlement may be appealed by an affected party not a party to the settlement, in the manner provided for in this subchapter.

SUBCHAPTER 6. INFORMATION REQUIREMENTS FOR ENVIRONMENTAL IMPACT STATEMENTS AND COMPLIANCE STATEMENTS

7:7-6.1 When an EIS is required

(a) An Environmental Impact Statement (EIS) or Compliance Statement, which shall provide the information needed to evaluate the effects of the proposed development on the environment of the coastal area, is required for all CAFRA permit applications. The Department also requires an EIS for all major Wetlands and Waterfront Development permit applications.

(b) The purpose of the EIS or Compliance Statement is to assist the applicant and the Department in assessing the probable effects of a proposal on the natural resources and human activities at the project site and surrounding region and in determining the proposed development's compliance with the Rules on Coastal Zone Management, N.J.A.C. 7:7E.

1. Both the Environmental Impact Statement and Compliance Statement are intended to provide a discussion of a proposed project in terms of the specific rules which apply to the proposed development. An EIS is required for major projects, including those projects which, based on site conditions and/or the surrounding area, are anticipated to have greater environmental impacts. A Compliance Statement is required for minor projects.

2. A Compliance Statement is an abbreviated form of an EIS which may be submitted for minor projects. All applicable rules which apply to a proposed development or development site must be addressed in the Statement.

3. In cases where a proposed project appears to be neither major or minor scale, prospective applicants are encouraged to contact the Department's Land Use Regulation Program prior to submission of the permit application to determine what type of information is required. The goal of the Department is to have all applicable rules or policies addressed and all potential impacts clearly discussed in the permit application.

7:7-6.2 Formats and contents

(a) The applicant shall prepare and submit the EIS or Compliance Statement in the form and manner set forth in this subchapter. Failure to comply with these requirements may result in a determination that an application is not complete for public hearing or final review, depending on its status (see N.J.A.C. 7:7-4.1 and 4.4).

(b) The applicant shall include in the EIS or Compliance Statement the following:

1. Summary: A brief one or two page summary shall preface the EIS or Compliance Statement, and shall contain:

i. A description of site, including location, tax map designation, and existing conditions;

ii. A description of the size, nature and location of the proposed development;

iii. A description of the major environmental impacts associated with the proposed development, including possible areas of controversy or significant issues to be solved; and

iv. A list of any other municipal, state or federal approvals required or received, if any;

2. Project description: The project description consists of eight elements which, when taken together, describe what the applicant proposes to do, where it will be done, how it will be constructed, and how it will be operated.

i. The description shall consist of written and graphic material and development plans as specified in N.J.A.C. 7:7-4.2(a)7.

ii. The eight elements are: the development description, site plan, structure description, housing plan, transportation plan, utilities plan, public services plan, and outdoor recreation plan (as appropriate);

3. Environmental assessment and compliance with the Rules on Coastal Zone Management. This section shall include an environmental inventory assessment as described below, a detailed statement of compliance with the Rules on Coastal Zone Management (N.J.A.C. 7:7E), and a listing of adverse impacts, mitigation and alternatives; and

4. Appendices as needed.

(c) The EIS or Compliance Statement shall contain an environmental inventory and assessment which describes and documents, in narrative form, environmental conditions at the site and the surrounding region, and then assesses the probable impacts of the development on the built and natural environment.

(d) The inventory and assessment is to be made with reference to the most current Rules on Coastal Zone Management, N.J.A.C. 7:7E. It should contain sufficient detail to enable an evaluation of the development, to provide a basis for the applicant's assessment of environmental impacts, and to enable the Department to make the necessary findings for permit approval.

1. Specific requirements will vary depending on the magnitude and complexity of the project, and on the sensitivity of the land and water features of the site.

2. An EIS contains a more thorough review of a proposed development's impacts than a Compliance Statement, including such data as traffic analyses, stormwater management calculations, archaeological surveys, environmental resource inventories, habitat assessment, and detailed design specifications for the proposed construction. In most cases, an EIS will address a greater number of rules since the proposed development and associated impacts will be larger in scope. The EIS will also contain more information regarding project alternatives and mitigation measures designed to reduce the overall impact of the proposed development on the environment.

7:7-6.3 Preparation

(a) (No change.)

(b) If the applicant believes that specific elements of the EIS or Compliance Statement are not applicable to the proposed development, the applicant may indicate "not applicable" under the appropriate heading. The reason why the information is not required should be indicated.

(c) The EIS shall be bound or in loose-leaf form, on 8½ by 11 inch paper. All maps, plans and aerial photographs shall specify a north point, graphic scale, name of preparer, date of preparation (including all revisions), and source of information. All appendices shall be labelled on the cover page so that they can be identified.

(d) The EIS or Compliance Statement should be prepared using an interdisciplinary approach, and the qualifications of the persons who prepared each element shall be identified in a separate section. References to information, reports or treatises not contained in the EIS shall be cited throughout the text as appropriate, and in a consistent manner.

(e) The Department recognizes that some or all of the EIS requirements set forth below in (f) may be addressed in an EIS prepared to meet requirements of another governmental agency or body. Such an EIS may be submitted under this subchapter, but must be supplemented in order to comply with (f) below.

(f) The EIS or Compliance Statement must discuss the applicability of the Department's Rules on Coastal Zone Management, N.J.A.C. 7:7E, to the proposal. This information is to be submitted in both map form and as part of the environmental inventory and assessment.

SUBCHAPTER 7. GENERAL PERMITS AND PERMITS-BY-RULE

7:7-7.1 General standards for issuing coastal General Permits and Permits-By-Rule

(a) This section contains the procedures and substantive standards governing the issuance of new General Permits in accordance with N.J.S.A. 13:14 et seq. and contains the procedures and substantive standards for the issuance of permits-by-rule. N.J.A.C. 7:7-7.2 and 7.3 contain the procedures and substantive standards for authorizing various developments under the issued General Permits. N.J.A.C. 7:7-7.4 describes the activities authorized by Permit-by-Rule.

(b) Before reissuing a General Permit or Permit-By-Rule, or adopting a new General Permit or Permit-By-Rule, the Department will propose a draft General Permit for public comment in the form of a rule proposal pursuant to the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(c) The Department may issue General Permits or Permits-By-Rule only if all of the following conditions are met:

1. The Department determines that the regulated development will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, and is in keeping with the legislative intent to protect and preserve the coastal area from inappropriate development;

2. The Department determines that the development will be in conformance with the purposes of CAFRA; and

3. The Department has provided public notice and an opportunity for a public hearing with respect to the proposed General Permit or Permit-By-Rule. After a General Permit has been issued by the Department, the Department will not hold hearings on individual applications for a General Permit.

(d) Each General Permit or Permit-By-Rule shall contain a specific description of the type(s) of development which are authorized, including limitations for any single operation, to ensure that the requirements of (a), (b) and (c) above are satisfied. At a minimum, these limitations shall include:

1. The size and type of the development that may be undertaken; and

2. A precise description of the geographic area to which the general permit or permit-by-rule applies.

(e) The Department will include in each general permit or permit-by-rule issued pursuant to this subchapter appropriate conditions

applicable to particular types of sites or development which must be met in order for a proposed development or activity to qualify for authorization under the general permit or permit-by-rule.

1. The Department may add special conditions which must be met in order for a specific proposed development to qualify for a general permit.

(f) The Department may, by proposing and adopting regulations, rescind a category of general permits or permits-by-rule, and thereafter require individual CAFRA permits for development previously covered by the general permit or permit-by-rule, if it finds that the general permit or permit-by-rule no longer meets the purposes of N.J.S.A. 13:19-1 et seq. and of this chapter.

(g) The Department shall review each general permit and permit-by-rule a minimum of once every five years in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. This review shall include public notice and an opportunity for public hearing. Upon completion of this review, the Department shall either modify, reissue or revoke each general permit and permit-by-rule previously adopted.

(h) If a general permit or permit-by-rule is not modified or reissued within five years of initial publication in the New Jersey Register, it shall automatically expire.

7:7-7.2 General Permit authorization

(a) The following development in the CAFRA area is authorized under the following General Permits provided that the activity is in compliance with specific conditions contained in the General Permit:

1. Single Family Home or Duplex: The construction of a single family home or duplex on a bulkheaded lagoon lot, provided that the proposed project complies with all of the following:

i. The site is located on a man-made lagoon;

ii. All waterfront portions of the site are protected by a currently serviceable legal bulkhead;

iii. There are no wetlands on site upland of the bulkhead;

iv. The project consists solely of the construction of a single family home or duplex and associated improvements and is not part of a larger development ***being conducted by the property owner***;

v. The dwelling and all other permanent structures, exclusive of a deck, are set back a minimum of 15 feet from the waterward face of the bulkhead;

vi. A silt fence is erected upland of the bulkhead with a 10 foot return on each end prior to construction. This fence must remain in place until all construction and landscaping activities are completed;

vii. *[Landscaping on the site is limited to indigenous coastal species to the maximum extent practicable and does not include the planting of a lawn.]* The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners must be made of filter cloth or other permeable material;

viii. The driveway is covered with a permeable material or is pitched to drain all runoff onto permeable areas of the site;

ix. The lowest habitable floor of the proposed structure is at or above the base flood elevation for the site as established by the Federal Emergency Management Agency and designated on the Flood Insurance Rate Map; and

x. The proposed dwelling will be serviced by an existing municipal sewer system.

2. Amusement Pier Expansion: The expansion of an existing, functional amusement pier, provided that the proposed expansion complies with the following:

i. The amusement pier was existing and functional as of July 19, 1993 and contained game, ride and food concessions;

ii. The proposed expansion does not exceed the footprint of the existing, functional amusement pier by more than 25 percent;

iii. The proposed expansion is located more than 150 feet landward of the mean high water line;

iv. The proposed expansion is constructed *[on pilings]* at the same elevation as the existing, functional amusement pier;

v. The proposed expansion will not eliminate or affect existing, direct public access from the boardwalk to the beach, unless another access point is provided immediately adjacent to the expanded pier for each access point eliminated; and

vi. The proposed expansion includes a provision for public sitting and viewing at the terminal end of the expansion.

3. Beach and Dune Maintenance Activities: Beach and dune maintenance activities provided they are conducted in accordance with Best Management Practices as defined by the Department in the Rules on Coastal Zone Management, N.J.A.C. 7:7E-3A. Activities which may be authorized under this general permit include dune creation projects, sand transfers using mechanical equipment, and the construction of beach access ways.

4. Voluntary Reconstruction: The voluntary reconstruction of a non-damaged legally constructed, currently habitable residential or commercial development within the same footprint, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law and provided:

i. The reconstruction does not result in the enlargement or relocation of the footprint of the development; and

ii. The reconstruction does not result in an increase in the number of dwelling units or parking spaces ***or equivalent parking area*** within the development.

iii. A relocation landward may qualify for this general permit if the Department determines that such a relocation would result in less environmental impact than the prior development.

iv. This General Permit authorization is not required for repairs or maintenance, such as replacing siding, windows or roofs, unless such repair or maintenance is associated with an expansion.

(b) The Department may require an application for an individual CAFRA permit instead of a General Permit if the Department finds that additional permit conditions would not be sufficient, or that special circumstances make this action necessary to ensure compliance with statutory requirements. The Department retains discretionary authority to require, on a case-by-case basis, submission of an individual CAFRA permit application for any proposed activity when it is determined that such a review would be in the public interest and that the proposed activity has the potential to cause significant impacts on environmental resources. In addition, when a project in its entirety does not qualify for a general permit, then the entire project shall require an individual CAFRA permit application. The Department will require an individual CAFRA permit application for a development that has already received a General Permit.

(c) All General Permits shall be valid for a term not to exceed five years from the date of receipt from the Department. If the term of a General Permit applicable to a specific development exceeds the expiration date of the General Permit issued by rule, and the General Permit upon which the authorization was based is modified by rule to include more stringent standards or conditions, the permittee must comply with the requirements of the new regulations by applying for a new General Permit authorization unless construction is already underway. If the General Permit is not reissued, the applicant must apply for an individual CAFRA permit unless construction pursuant to the prior General Permit is already underway.

1. For the purposes of this section, "construction" means having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine if construction of a development or part of a development has begun by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.

7:7-7.3 Application procedure for a General Permit authorization

(a) A person proposing to engage in an activity covered by a General Permit shall submit the following to the Department:

1. A completed *[DEPE]* ***DEP*** Standard Construction Permit (CP-1) form;
2. Photographs of the site for which authorization is being requested;
3. Verification that *[a certified mail notice with return receipt requested and]* a complete copy of the application has been forwarded to the clerk of the municipality ***(green card is required)*** and that a certified mail notice with return receipt requested (white receipts or green cards are acceptable) has been forwarded to the environmental commission, or any public body with similar responsibilities, as well as to municipal planning board, county planning board, municipal construction official, and to all landowners within 200 feet of the property or properties on which the proposed activity will occur. The applicant shall also provide a certified list of all landowners within 200 feet as part of the application. The notice shall read as follows:

"This letter is to provide you with legal notification that an application will be submitted to the New Jersey Department of Environmental Protection *[and Energy]*, Land Use Regulation Program for a General Permit authorization for (describe the proposed development).

The complete permit application package can be reviewed at either the municipal clerk's office or by appointment at the *[DEPE's]* ***DEP*** Trenton office. The Department of Environmental Protection *[and Energy]* welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter. Your comments should be sent along with a copy of this letter to:

New Jersey Department of Environmental Protection *[and Energy]*
Land Use Regulation Program
CN 401
5 Station Plaza
Trenton, New Jersey 08625

Attn: (County in which the property is located) Section Chief

4. A fee pursuant to N.J.A.C. 7:1C-1.5(a)3iii; and
5. Any additional information as outlined in (b) through (e) below.

(b) A person applying for a General Permit to construct a single family home or duplex on a bulkheaded lagoon lot pursuant to N.J.A.C. 7:7-7.2(a)1 shall also submit*[:
1. Three]* ***three*** copies of site plans demonstrating that the proposed development complies with the criteria listed above at N.J.A.C. 7:7-7.2(a)1*[; and
2. A copy of the local construction permit approval obtained for the proposed single family home or duplex]*.

(c) A person applying for a General Permit to expand an existing, functional amusement pier pursuant to N.J.A.C. 7:7-7.2(a)2 shall also submit written documentation containing:
1. A description of the location of the activity including county, municipality, lot(s) and block(s);
2. Documentation concerning the size of the footprint of the existing functional amusement pier and the size of the proposed expansion;
3. A copy of a site plan showing the location of the existing, functional amusement pier and the proposed location of the expansion;
4. Plans showing the existing and proposed direct public access points from the boardwalk to the beach; and
5. Plans showing the proposed public sitting and viewing area at the terminal end of the expansion.

(d) A person applying for a General Permit for beach and dune maintenance activities pursuant to N.J.A.C. 7:7-7.2(a)3 shall also submit:
1. A description of the location of the proposed activities, including county, municipality, lot(s) and block(s);
2. A plan showing the specific location of all proposed activities;
3. A description of the specific activities proposed for each location;
4. A statement from the applicant which details how the proposed activities will be conducted in compliance with the standards set forth in the Department's Rules on Coastal Zone Management, N.J.A.C. 7:7E;
5. The name, title, address and phone number of the person(s) responsible for supervising the proposed activities to ensure compliance with the referenced standards; and
6. The schedule for conducting the specific activities.

(e) A person applying for a General Permit for voluntary reconstruction of an undamaged, legally constructed, serviceable structure or habitable residential or commercial development pursuant to N.J.A.C. 7:7-7.2(a)4 shall also submit:
1. Development plans clearly depicting the existing site and the proposed site, including size and location of the current and proposed footprint; and
2. Documentation that there will not be an increase in the number of dwelling units or parking spaces or equivalent parking area associated with the proposed reconstruction.
3. A person wishing to relocate landward shall also submit plans showing the existing structures and site conditions with locations and dimensions, and all proposed structures, filling, grading, excavation and clearing.

(f) Except as otherwise provided in this section, an application for a General Permit authorization will be reviewed following the procedures set forth at N.J.A.C. 7:7-4.4***, and 4.7*** through 4.11.

7:7-7.4 Permits-By-Rule

(a) This section details the activities authorized by Permit-by-Rule.
1. Single Family Home or Duplex Expansion: The expansion of a legally constructed, habitable single family or duplex dwelling on the non-waterward sides of the dwelling, provided that the expansion does not exceed a cumulative surface area of 400 square feet, and provided that such expansion is not proposed on a beach, dune, or wetland.
2. Expansion of a Single Family Home or Duplex on a bulkheaded lagoon lot: The expansion of a legally constructed, habitable single family or duplex dwelling on a bulkheaded lagoon lot, provided that the expansion does not exceed a cumulative surface area of 400 square feet, such expansion is not proposed on a wetland, and provided that such expansion is set back a minimum of 15 feet from the waterward face of the bulkhead.

(b) A person wishing to engage in an activity covered by a Permit-By-Rule shall submit notification to the Department at least 30 days prior to commencement of the proposed work. Such notification shall be sent to: Administrator, DEP—Land Use Regulation Program, CN 401, Trenton, New Jersey 08625, and shall include:
1. A description of the location of the proposed activity including county, municipality, lot(s) and block(s);
2. A description of the proposed expansion including its dimensions and location; and
3. A copy of the issued building permit for the proposed development.

APPENDIX

Administrative Hearing Request Checklist
and Tracking Form for Permits

I. Permit Being Appealed:

_____
Title and Type of Permit

_____ _____
Issuance Date of Permit Permit Number

II. Person Requesting Hearing:

_____ _____
Name/Company Name of Attorney (if applicable)

_____ _____

_____ _____
Address Address of Attorney

III. Please Incude the Following Information as Part of Your Request:

A. The date the permittee received the final permit;
B. A copy of permit, list of all permit conditions and issues contested;
C. The legal and factual questions at issue;
D. A statement as to whether or not the permittee raised each legal and factual issues during the public comment period on the permit;
E. Suggested revised or alternative permit conditions;
F. An estimate of the time required for the hearing;
G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
I. This form, completed, signed and dated with all of the information listed above, including attachments, to:

1. Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
401 East State Street
CN 402
Trenton, New Jersey 08625-0402
2. (Name and address of Assistant Director/designee)
3. All co-permittees (w/attachments)

IV. Signature: _____ Date: _____

(a)

ENVIRONMENTAL REGULATION
LAND USE REGULATION PROGRAM
Rules on Coastal Zone Management
Adopted Amendments: N.J.A.C. 7:7E
Adopted Repeals: N.J.A.C. 7:7E-2.3, 3.26, 3.29, 3.30, 4.2 through 4.10, 8.3, 8.9, 8.15 and 8.16
Adopted New Rules: N.J.A.C. 7:7E-3A, 7.3A and 8.21

Proposed: February 22, 1994 at 26 N.J.R. 943(a); see also 26 N.J.R. 1561(a), (b) and (c).
Adopted: June 24, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.
Filed: June 24, 1994 as R.1994 d.380, **with substantive and technical** changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:19-16.

DEPE Docket Number: 11-94-01/291.
Effective Date: July 18, 1994
Operative Date: July 19, 1994.
Expiration Date: July 24, 1995.

Summary of Hearing Officer Recommendations and Agency Response:

On February 22, 1994 the Department of Environmental Protection and Energy ("Department") proposed amendments, repeals and new rules to the rules on Coastal Zone Management at N.J.A.C. 7:7E. The Department held public hearings on March 11, 1994 in Trenton, March 14, 1994 in Toms River, and March 16, 1994 in Ocean City, New Jersey. In response to public comments, the public comment period was extended from statutorily required 30 days (March 24, 1994) to April 25, 1994. At the public hearings and during the public comment period, the Department also obtained public input on a related proposal (DEPE Docket Number 08-94-01/105) to amend the Coastal Permit Program rules which establish the proceudres by which the Department reviews permit applications and appeals from permit decisions under the Coastal Area Facility Review Act (CAFRA) (N.J.S.A. 13:19-1 et seq.), the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) and the Waterfront Development Law (N.J.S.A. 12:5-3). See 26 N.J.R. 918(a). The Rules on Coastal Zone Management also establish the procedures for reviews of applications for Water Quality Certificates under Section 401 of the Federal Clean Water Act where such an application is made in conjunction with an application for a coastal permit. The proposed amendments to N.J.A.C. 7:7E (constituting the Department's substantive rules for coastal development) and N.J.A.C. 7:7 (constituting the Department's procedural rules for coastal development) were largely necessitated by the adoption of P.L. 1993, c.190. This law amended CAFRA and becomes effective July 19, 1994. Generally speaking, P.L. 1993, c.190 expands the types of development required to undergo Department review particularly if the development is located within 150 of the mean high water line or within 150 feet of the landward limit of a beach or a dune.

John R. Weingart, Assistant Commissioner of Environmental Regulation in the Department, presided over the Toms River hearing. Ernest P. Hahn, Administrator of the Land Use Regulation Program, presided over the Trenton and Ocean City hearings. As a result of the public hearings, Assistant Commissioner Weingart and Administrator Hahn recommended that the Department adopt the proposed amendments with the changes discussed below in the Summary of Public Comments and Agency Responses. Commissioner Shinn has considered all comments made at the hearings, and the rules as adopted reflect that consideration.

Interested persons may inspect the public hearing record, or obtain a copy upon payment of the Department's normal copying charges, by contacting:

Janis Hoagland, Esq.
Office of Legal Affairs
Department of Environmental Protection
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses:

The Department received a variety of public comments on this rule proposal, many of which indicated that the proposed rules were vague, lengthy and difficult to understand. A number of commenters also claimed that the proposed rules were inconsistent with the intent of the 1993 CAFRA amendments and were inconsistent with other regulations.

In response to public comments, the Department has made a number of minor changes to the Rules on Coastal Zone Management (N.J.A.C. 7:7E) on adoption, many of which were made to correct inaccurate citations, to correct grammatical and typographical errors, to clarify definitions and specific language which was found to be unclear in the original rule proposal and to reflect the Department's current organizational structure. Additional language changes were made to conform with language of the 1993 CAFRA amendments and the Coastal Permit Program Rules (N.J.A.C. 7:7).

Among the language which has been clarified on adoption, the Department has revised the definition of "development," pursuant to CAFRA, to specifically exclude the reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law.

In response to public comment and discussions among staff of the Department, some of the proposed revisions to the Pinelands National Reserve and Pinelands Protection Area rule (N.J.A.C. 7:7E-3.44) have been deleted on adoption. Based on these comments and discussions, the Department believes that the original language of this rule adequately defines the role of the Department in reviewing CAFRA permit applications for sites located in the Pinelands National Reserve/CAFRA overlap area and ensures consistency with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.). The review of CAFRA permit applications in this overlap area will continue to be accomplished in accordance with a February 8, 1988 Memorandum of Agreement between the Pinelands Commission and the Department and will continue to address the provisions of the Pinelands Comprehensive Management Plan (CMP).

In response to public comment, the Department has deleted on adoption the proposed revision to the Specimen Trees rule (N.J.A.C. 7:7E-3.37) which would have redefined the "site" of specimen trees as extending from the trunk of the tree to an area three times the radius of the crown of the tree. The adopted rule defines the "site" of the specimen tree as an area necessary to avoid adverse impacts, or 50 feet from the tree, whichever is greater. This definition is consistent with

the definition currently used by the Department to define the "site" of a specimen tree. The Department believes that this definition will continue to adequately protect specimen trees in the coastal zone.

In response to discussions among staff of the Department, the proposed urban Waterfront Redevelopment Areas rule (N.J.A.C. 7:7E-3.49) has been deleted on adoption. The Department believes that this rule requires further development and refinement prior to adoption, in order to address additional concerns which have been raised since this rule was originally proposed. A revised version of this rule may be reproposed in the future as part of a separate rule proposal, in accordance with the Administrative Procedures Act, and will be subject to public review and comment at that time.

In response to public comment, the Department has deleted on adoption the proposed guidelines pertaining to the selection of a marina site (N.J.A.C. 7:7E-7.3A(a)). The Department has determined that these guidelines do not provide a realistic framework for marina siting in New Jersey, due to the high level of existing development along the coastal waterfront areas of the State. Therefore, the siting guidelines have been deleted, while the associated marina design, marina construction and marina operation guidelines have been retained on adoption.

In response to public comment and discussions among staff of the Department, the proposed Stormwater Management rule (N.J.A.C. 7:7E-8.7) has been revised on adoption in several areas. First, the originally proposed "encouraged" category of stormwater management system techniques has been deleted, with these formerly "encouraged" techniques now being assigned to a "conditionally acceptable" category of techniques. All "conditionally acceptable" techniques will now be evaluated equally on a case-by-case basis. The Department believes that the proposed "encouraged" category would have unnecessarily limited the flexibility of applicants to design stormwater management systems for specific sites, and therefore has not adopted an "encouraged" category of techniques in this rule.

Second, the Department has redefined the use of perforated pipe, for the purpose of underground infiltration of stormwater, as a "conditionally acceptable" stormwater management technique. This technique, which was originally assigned to the "discouraged" category due to concerns related to the long-term maintenance and functioning of these systems, was reevaluated in light of its successful application in Stafford Township, Ocean County. Based on this reevaluation, the use of this technique, together with the specific acceptability standards required in Stafford Township, has been reassigned to the "conditionally acceptable" category. The Department believes that the standards for design, construction and maintenance of these underground infiltration systems, as included in the adopted rule, will adequately protect groundwater resources.

Lastly, the Department has made a number of minor revisions on adoption to this rule to ensure a greater level of consistency with Soil Conservation District standards and to reflect the standards currently under development by the Department's Stormwater Permitting Program. These minor revisions relate to the use of specific types of vegetation in stormwater management system design, and relate to the design and construction of vegetated swales and detention basins.

In addition, the stormwater management provisions adopted in this rule are an interim step by the Department until such time as the revised Stormwater Management Rules (N.J.A.C. 7:8) are formally adopted. The stormwater management provisions in this rule will be replaced by references to the Stomwwater Management Rules at the time of adoption of amendments to N.J.A.C. 7:8.

In response to public comment, the Department has deleted on adoption the Buffer Matrix Table which was originally proposed as part of the Buffers and Compatibility of Uses rule (N.J.A.C. 7:7E-8.13). This table established setback distance requirements for proposed developments based on existing, adjacent land uses. The Department believes that the establishment of setback distances as originally proposed would conflict with local zoning requirements, and therefore has deleted this Buffer Matrix Table on adoption.

The Department notes that comments were received after the public comment period expired on April 25, 1994. The late-submitted comments therefore are not addressed and summarized below; however, the Department has reviewed them and taken them into consideration.

The following persons submitted written comments or made oral comments at one of the public hearings:

1. Abramovitch, Martin
2. Anderson, Leonard
3. Anonymous
4. Anuario, Nina, Toms River, Ocean County Chamber of Commerce
5. Avery, Alan, Jr., Ocean County Planning Board
6. Baker, Michael Jr., Michael Baker, Jr., Inc.
7. Barnish, William, Atlantic Coast Shellfish Council
8. Bart, E.F., Allied Signal Chemicals, Inc.
9. Becker, Katherine, The League of Women Voters of New Jersey
10. Bennett, D.W., American Littoral Society
11. Bennett, D.W., Campaign for the Coast
12. Bjornberg, Anna
13. Block, Carl, Mayor Stafford Township
14. Booth, Marilyn, Atlantic Electric
15. Borough of Stone Harbor
16. Brash, William, Mercer County Soil Conservation District
17. Brewer, Robert and Alice
18. Brewer, Robert, Atlantic County Office of Planning
19. Bronkesh, Noah, Sills Cummis Zuckerman Radin Tischman Epstein and Gross
20. Byrne, Janet, Greater Wildwood Chamber of Commerce
21. Caesar, Joel, Northeast Spa and Pool Association
22. Casaccio, Paul
23. Chasis, Sarah, Natural Resources Defense Council
24. Chomsky, Martin, The Board of Chosen Freeholders of the County of Monmouth
25. Ciesla, Andrew, New Jersey State Senator, 10th District
26. Citta, Rosanne, Midway Beach Real Estate, Inc.
27. Connors, Leonard, Jr., New Jersey State Senator, 9th District
28. Connors, Christopher, Assemblyman, 9th District
29. Conroy, Robert, Jr., Township of Lower
30. Cowan, Donald, Toms River-Ocean County Chamber of Commerce
31. Crossman, William, Atlantic Wood Industries
32. Davis, Georgeanne, Venice Park Civic Association Member
33. Deebold, Richard, Deebold Boatyard, Inc.
34. DeMunz, Carl
35. Devitt, Shirley
36. Dillingham, Tim, Sierra Club, New Jersey Chapter
37. Dorsey, John, New Jersey Natural Gas Company
38. Elder, Sherry, Venice Park Civic Association Member
39. Faraldi, Albert
40. Faraldi, Claudia
41. Farr, Helen, United States Department of Commerce
42. Farragher, Clare, Assemblywoman, 12th District
43. Fauntteroy, Jeffree, Venice Park Civic Association Member
44. Feairheller, John, Jr., Walker Previti Holmes and Associates
45. Fink, Michael, New Jersey Builders Association
46. Fletcher, Thomas, Covenant Bank
47. Flimlin Gef, Rutgers Cooperative Extension
48. Foelsch, William, New Jersey Recreation and Park Association
49. Frank, Robert
50. Fullmer, Jack, New Jersey Council of Diving Clubs
51. Geller, Michael, Gravatt Geller and Associates
52. Gormley, William, New Jersey State Senator, 2nd District
53. Gove, Joel, Habitat Management and Design, Inc.
54. Graham, James, National Timber Piling Council, Inc.
55. Greene, Burton, Dover Pools and Supplies
56. Greene, Greene, Toms River-Ocean County Chamber of Commerce
57. Griber, Penelope, Abbington Associates, Inc.
58. Gross, Michael, Giordano Halleran and Ciesla
59. Gurtcheff, David and Sharon
60. Haines, Virginia, Assemblywoman, 10th District
61. Hawco, Jim and Tammy
62. Hay, Frank
63. Helwig, A. Carl, Pureland Association
64. Henson, Brad, Attorney, Borough of Ship Bottom
65. Henderson, Keith, Henderson, Breen and Hess
66. Hirsch, Guliet, Heritage Minerals, Inc.
67. Holden, Clifford, Venice Park Civic Association Member
68. Holden, Teresa, Venice Park Civic Association Member
69. Holloway, Ronald and Angela
70. Hoy, William, Borough of Stone Harbor
71. Hruza, Anne
72. Iasillo, Barbara, Township of Dover
73. James, Anthony, Venice Park Civic Association Member
74. James, Pamela, Venice Park Civic Association Member

75. Johnston, Charles, III, Tedco, The Electrical Distributors Company
76. Jordan, Yvonne, Venice Park Civic Association Member
77. Ketchel, Richard, Sr.
78. Knoll, Albert, Township of Dennis
79. Kozlowski, Robert, Township of Little Egg Harbor
80. Krupp, Allen
81. Kyrillos, Joseph, Jr., New Jersey State Senator, 13th District
82. Laurence, Gloria
83. Lavecchia, Kathleen, Borough of Lavallette
84. Lippi, Andrea
85. Loud, Edward, Board of Recreation Commissioners, Monmouth County
86. Maher, Joseph
87. Malz, Claire
88. Marinakis, George, Cape May County Municipal Utilities Authority
89. Marinelli, Beverly and Harold
90. Martin, John, The Archaeological Society of New Jersey
91. Martin, Cortez, Venice Park Civic Association Member
92. Martindale, Eric, Jr., Hackensack River Pathways Commission
93. Maxwell, John, New Jersey Shellfishermen's Association
94. McCourt, Ellen
95. McDonough, John, Bay Beach Corporation
96. McGlynn, Edward, Robinson, St. John and Wayne
97. McGuiness, Michael, New Jersey Builders Association
98. Miller, Raymond and Ethel
99. Moore, Terrence, The Pinelands Commission
100. Moran, Jeffrey, Assemblyman, 9th District
101. Munoz, Theresa, Lynch Giuliano & Associates, P.A.
102. Murphy, C. Lawrence
103. Murphy, Lawrence, Bankers Trust Company
104. Nosker, Thomas, Rutgers The State University of New Jersey
105. O'Brien, Don
106. O'Neil, Dennis
107. Ogden, Maureen, Assemblywoman, 21st District
108. Oliver, Bessie, Venice Park Civic Association Member
109. Oschell, William
110. Paliugi, Martin, Mayor, Borough of Avalon
111. Palombo, Aldo, City of North Wildwood
112. Parker, Nathaniel, Venice Park Civic Association Member
113. Patterson, Robert, Jr., Cape May County Chamber of Commerce
114. Peraria, Scott
115. Perkins, Charles
116. Pellini, Robert
117. Plackter, Jack, Horn Goldberg Gorny Daniels Plackter and Weiss
118. Plummer, Grace, Venice Park Civic Association Member
119. Price, Sally, Pinelands Preservation Alliance
120. Prycl, Belva Ann, Association of New Jersey Environmental Commissions
121. Potter, Edward, New Jersey Wood Treating Corporation
122. Quinn, William, Dennis Township Economic Development Council
123. Race, Samuel, New Jersey Department of Agriculture
124. Robinson, Eugene, Venice Park Civic Association Member
125. Rudolph, Diane, Board of Chosen Freeholders, County of Cape May
126. Ruza, Anne
127. Sabidussi, Tony, New Jersey Department of Transportation
128. Sacks-Wilner, James
129. Salerno, Andrew, Mayor, City of Pleasantville
130. Sarion, Carole
131. Scara, John, Martin Piling and Lumber Company
132. Scardino, Anthony, Jr., Hackensack Meadowlands Development Commission
133. Schatz, Jay, Chamber of Commerce of Greater Cape May
134. Scheule, Randall, Planning Director, Township of Egg Harbor
135. Schiavo, Rita
136. Schmidt, George
137. Schusterman, Lionel, Monmouth County Mosquito Extermination Commission
138. Shissias, James, Public Service Electric and Gas Company
139. Shoemer, Kathleen
140. Simmons, Denise
141. Simmons, Daniel
142. Simpson, Arthur, Borough of Lavellette
143. Smith, Joann, Assemblywoman, 13th District
144. Smith, Ken, Coastal Advocate
145. Spangler, Lynn
146. Spencer, Lorraine, Venice Park Civic Association Member
147. Spodofora, John, Councilman, Stafford Township
148. Stevens, Eric, Stevens Real Estate, Inc.
149. Swiderski, Raymond, New Jersey Society of Professional Land Surveyors
150. Thomas, Walter and Elizabeth
151. Thomas, Thomas, T&M Associates
152. Thompson, Jeffrey and Jean
153. Todd, Charlotte, City of Cape May
154. Tombs, R. Bradley, Normandeau Associates Inc.
155. Townsend, Roberta, Christensen Management Services
156. Madsen, Clifford, Christensen Management Services
157. Truncer, James, Board of Recreation Commissioners
158. Tsonis, Sheryl, Stone Harbor
159. Turner, John, III, Enterprises, Inc.
160. Ux, Ronald and Deanne
161. Van Drew, Jefferson, Mayor Township of Dennis
162. Vasser, John, Jr., Mayor, Borough of West Cape May
163. Vaughan, Ernest, Atlantic Highlands—Highlands Regional Sewerage Authority
164. Vertucci, Dolores, T.O.M.A.S. (Taxpayers of Manahawkin & Suburbs, Inc.)
165. Vosqaneaa, Zorab
166. Vosqaneaa, Lellow
167. Wigmore, Joseph
168. Wolfe, David, Assemblyman, 10th District
169. Woodward, Jack, Jr.
170. Zozzaro, James
171. Zozzaro, Gary
172. Zozzaro, Rhen
173. Zozzaro, Madeline

A summary of the comments timely submitted and the Department's responses follows. The number(s) in parentheses after each comment corresponds to the commenter(s) listed above.

General

1. COMMENT: CAFRA II as interpreted by the DEPE goes well beyond the intended purview of the bill passed last year by the State Senate and Assembly. It is clearly an attempt by the DEPE to overstep its bounds and impose its bureaucratic will on an unsuspecting public. (95)

RESPONSE: The Department disagrees that its rules are inconsistent with CAFRA. As a result of the CAFRA amendments enacted by the Legislature, revisions to the Rules on Coastal Zone Management (N.J.A.C. 7:7E), Coastal Permit Program Rules (N.J.A.C. 7:7), and the Ninety-Day Construction Permit Rules (fees) (N.J.A.C. 7:1C-1.3 and 1.5) were required and therefore proposed. In addition, the Department also included in its proposal several suggested revisions of the rules intended to improve the implementation of CAFRA, the Waterfront Development Law and the Wetlands Act of 1970. A number of the proposed amendments represented codifications of existing policies already being used by the Department. Other proposed amendments were intended to increase program efficiency or to increase the protection of specific resources.

2. COMMENT: The proposed regulations appear to violate the intent and spirit of CAFRA, as amended, and the Association calls upon the New Jersey Legislature to exercise its oversight responsibility under Article V, Section IV, paragraph 6 of the Constitution of New Jersey to review the proposed regulations to insure that they are consistent with Legislative intent (24, 81)

RESPONSE: The Department does not believe that its regulations, as adopted are beyond the intent of the legislation. The Department notes that on May 16, 1994, the Senate Legislative Oversight Committee did adopt Senate Concurrent Resolutions Nos. 57 and 60 (combined), which enumerated a number of areas where the Department's proposed CAFRA-related regulations were apparently inconsistent with the intent of the 1993 legislative amendments to CAFRA. The resolution was never brought to a vote before the full Senate. Most of the issues raised in the resolution pertain to the Coastal Permit Program rules, N.J.A.C. 7:7, amendments to which were proposed at the same time the amendments to these rules were proposed. The changes the Department made to

N.J.A.C. 7:7 in response to comments from the public and from the Legislature are set forth and explained in the adoption notice for those rules published elsewhere in this issue of the New Jersey Register.

The Department has addressed two of the issues raised by the Senate Concurrent Resolution as released from committee that do relate specifically to provisions in N.J.A.C. 7:7E. The first issue relates to the proposed revisions to the Pinelands National Reserve and Pinelands Protection Area rule, N.J.A.C. 7:7E-3.44. As discussed in the response to comments 234 and 235, the Department has decided not to adopt the change as proposed, for the reasons set forth in that response. The second issue relates to the proposed "requirement" that indigenous coastal plants be used for all landscaping at new single family and duplex residential developments. In response to concerns expressed through this resolution, the Department has amended N.J.A.C. 7:7E-7.2(e)1vii on adoption to "encourage" the use of indigenous coastal plants wherever feasible. The resolution also states that the Coastal Permit Program rules at 7:7 link CAFRA permitting to the rules contained in this chapter in a way that effectively prohibits all residential development within the first CAFRA zone (i.e., on a beach or dune, or within 150 feet landward of the mean high water line). In fact, the linkage of the Coastal Permit Program rules with the Rules on Coastal Zone Management ensures that any proposed single family or duplex development which is not part of a larger development need only comply with the Special Area rules for Dunes, Beaches, Coastal High Hazard Areas, Erosion Hazard Areas, Wetlands, Wetlands Buffers, Coastal Bluffs, Endangered or Threatened Wildlife or Vegetation Species Habitats (See N.J.A.C. 7:7E-7.2(e)).

3. COMMENT: Several commenters requested an extension to the public comment period based on the length and scope of the proposed regulations, the difficulty in reviewing them within only 30 days and to allow full participation in the rule making process by all affected parties. In addition, several commenters requested an extension to the public comment period to give representatives of coastal communities a better opportunity to thoroughly review the proposal and make recommendations and to allow their elected representatives to support them as effectively as possible. The commenters stated that the time provided for comments was insufficient for most affected parties to study the almost 100 pages of Register text and to assemble comments for submissions. (34, 110, 113, 137, 125, 122, 123, 88, 97, 149, 162, 133, 157, 100, 144, 15, 111, 29)

RESPONSE: Based on the length and complexity of the proposal, the Department extended the comment period for an additional 30 days beyond the statutorily-required 30 day comment period. In addition, the Department provided extensive opportunities for public input before it published the proposed regulations, by holding public meetings on September 20, September 30, and October 1, 1993 in Ocean, Cumberland and Monmouth Counties, respectively and through the Department's Builders Advisory Group and the Environmental Advisory Group for Land Use. The Builder's Advisory Group is composed of members of the State Builder's Association, lawyers and consultants, while the Environmental Advisory Group is composed of representatives of various environmental groups. The Department meets with these groups on a regular basis to discuss permit actions made by the Department, current and pending legislation and other issues of concern. Generally the comments at those meeting focused on the need to facilitate the preparation and review of applications for single family homeowners. The Department attempted to respond to that need when it proposed the rules on February 22, 1994 by including General Permits and Permit-by-Rule for single family homeowners (N.J.A.C. 7:7) and by reducing the amount of sections of the Rules on Coastal Zone Management a single family homeowner must comply with for an individual CAFRA permit (N.J.A.C. 7:7E-7.2(e)). In addition, the Department will publish an information booklet by July 19, 1994 which will contain all information necessary regarding CAFRA and single family duplex homes.

4. COMMENT: The proposed amendments to the Rules on Coastal Zone Management are supposedly in response to the CAFRA amendments which were enacted in July 1993. However, many of the proposed Rules do not reflect the new CAFRA amendments enacted by our legislators, but rather the viewpont of the Land Use Regulatory Program on former policies on Shellfish and Submerged Vegetation, just to mention two examples. (137)

RESPONSE: As a result of the CAFRA amendments enacted by the Legislature revisions to the Rules on Coastal Zone Management (N.J.A.C. 7:7E), Coastal Permit Program Rules (N.J.A.C. 7:7) and the Ninety-day Construction Permits-Fees (N.J.A.C. 7:1C-1.3 and 1.5) were required. In addition, the Department also included in its proposal several suggested revisions of the rules intended to improve the implementation of the CAFRA, Waterfront Development Law and Wetlands Act of 1970. A number of these proposed amendments represent the codifications of existing policies already being used by the Department. Other proposed amendments were proposed to increase program efficiency or to increase protection of specific resources. The reason for each proposed amendment was identified in the summary of the proposal published on February 22, 1994 in the New Jersey Register.

5. COMMENT: These proposed regulations and policies will have a disproportionate impact on Cape May County, where development is already highly restricted by wetland regulations and acquisition of substantial land areas by Federal, State and county government for open space and parks. (125)

RESPONSE: When CAFRA was enacted in 1973, the Legislature included a large portion of Cape May County within its boundary, and that boundary was not changed significantly by the 1993 legislative amendments. The proposed amendments to the Rules on Coastal Zone Management, Coastal Permit Program Rules and Ninety-day Construction Permit-fees were largely drafted to implement the amendments to CAFRA passed by the legislature and signed by Governor Florio on July 19, 1993. The legislative amendments to CAFRA will result in the regulation of more properties by the Department, particularly those within 150 feet of the mean high water line, a beach or dune. These amendments are expected to provide long-term economic benefits by producing an enhanced coastal environment for the tourism and fishing industries, and a decrease in general taxpayer expenditures to repair storm damage.

6. COMMENT: Why does most of the language of the amendments serve only to punish the homeowner? (167)

7. COMMENT: I agree with protecting and preserving our ocean, rivers, bays and beach areas. However, the proposed regulations in this act are overly stringent and represent an unnecessary burden on existing homeowners in the shore area. (94)

RESPONSE: The rules are intended to implement the amendments to the Coastal Area Facility Review Act and to enhance the coastal area for all citizens, not to punish homeowners. In addition, the amendments to the rules were developed in consideration of the needs of single family/duplex homeowners. For example, the proposed amendments to the Rules on Coastal Zone Management provide that in the case of single family homes and duplexes, all structures and on-site improvements shall comply with only six of the 49 special area rules (N.J.A.C. 7:7E-7.2(e)). In addition, the Department has proposed general permits and permits-by-rule which are intended to facilitate certain activities associated with single family homes, including construction on bulkheaded lots that are sewered and expansion of existing homes (N.J.A.C. 7:7-7). This New Jersey Register also contains an adoption increasing the number of general permits and permits by rule available for single family homes or duplexes.

8. COMMENT: The CAFRA II regulations are intended to close loop holes and to protect the coastal area from inappropriate or excessive development. However, minimal land availability, existing regulations, environmentally sensitive residents and local government already manage any threats to the coastal environment. (122)

RESPONSE: When the Legislature enacted the CAFRA amendments in 1993, it decided that existing laws were in certain respects inadequate to protect coastal resources. These regulations were generally adopted to implement the legislative amendments.

9. COMMENT: The Dennis Township Economic Development Council requests simplification of the proposed document to eliminate confusing interpretations, and a longer period of public education and review. (122)

RESPONSE: The Department's proposed amendments to the Rules on Coastal Zone Management include the addition of appendices which are intended to make the rules more "user friendly" by incorporating specific design standards and specifications. The Department will provide training for local officials on using the new rules in the summer of 1994, and will publish a booklet by July 19th containing all information about CAFRA's impact on the construction of single family homes and duplexes. In addition, if after the new rules are adopted further ways to simplify them are identified, the Department will propose further regulatory amendments.

10. COMMENT: The outrageous proposals to amend CAFRA rules and regulations eliminate the right to rebuild or repair and even

confiscate private property in violation after a storm or flood without so much as a mention of payment of fair market value. (169)

RESPONSE: The CAFRA amendments adopted by the Legislature exempt the reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with the existing requirements or codes of municipal law. This exemption is specifically included in the CAFRA amendments and is contained in the Department's Coastal Permit Program rules at N.J.A.C. 7:7-2.1(c).

11. COMMENT: The amendments proposed by the DEPE will seriously jeopardize not only my future and that of my family and my office, but also the financial well-being of my five employees and anyone who lives, owns or conducts business on the Jersey Shore. I therefore respectfully request that you relax your proposed standards and seek a compromise that protects the environment without adversely impacting the entire economy on Long Beach Island. (148)

RESPONSE: In developing this regulatory proposal, the Department attempted to balance the competing interests and use of coastal resources, and considered both local needs and cumulative environmental impacts. It is expected that the standards proposed will enhance the coastal environment in the long term, thereby benefiting the coastal tourism industry and fishing industry. It is also expected that these standards will in the long term reduce the amount of taxpayer expenditures required to address storm damage, by providing additional protection for dunes and other storm protection systems.

12. COMMENT: Two commenters requested that the Department draft maps depicting the jurisdictional boundaries under the CAFRA amendments. (46,122)

RESPONSE: The issue of mapping dunes and the 150 foot boundary was discussed when the various amendments were being debated by legislative committee. However the law was passed without a requirement for maps to be promulgated. The mapping process would be very costly and time consuming. In addition, any mapping completed would only be accurate for a short time, given the dynamic nature of the beach and dune system and frequent occurrence of storm events altering the dune boundaries. The Department will provide assistance in determining jurisdictional boundaries upon request, and will provide training to municipal code enforcement officials in this area.

13. COMMENT: The League of Women Voters wishes to formally support these proposed regulations and urge that they be implemented promptly. At this time, we recognize the need for further protection of the coastal area comensurate with the impact of increased population. We are especially supportive of the provision "to close the 24 unit loophole," and the efforts to make rules more "user friendly." (9)

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

14. COMMENT: A public hearing was held in Ocean City at which time the Township was represented by the Tax Assessor and Administrator. This hearing was not conducted for the benefit of those people who thought they would learn something about the regulations. It was instead a place to comment on the record about the specifics of the proposed regulations. There was a lack of material available for the public hearing. When the Township conducts a public hearing on a Municipal Ordinance, we are required to have copies of the pending ordinance available for the public. The DEPE should have had copies of the proposed regulations available for public review at the public hearing. (78)

RESPONSE: Before publishing the rule proposals, the Department held three public meetings on September 20, September 30 and October 1, 1993 in Ocean, Cumberland and Monmouth Counties respectively to discuss the CAFRA amendments enacted by the Legislature and to solicit comments and suggestions from the public regarding the implementation of the new legislation. As part of the rule adoption process, which is governed by the Administrative Procedure Act, the Department then held three public hearings to gather public comment on the rule proposals which were published in the February 22, 1994 New Jersey Register. Copies of the Register were available at County libraries and for purchase from the Office of Administrative Law. In addition, the DEP had a limited number of copies of the proposals, available at the public hearings and the names of persons interested in obtaining copies were taken at that time for further distribution of the proposals. The proposals were later mailed to all interested parties.

15. COMMENT: Based on our review, these rules clearly reflect and implement the legislative intent of the 1993 statutory changes, and carry out the DEPE's responsibilities established under that law. (36)

RESPONSE: The Department acknowledges this comment in support of this rule adoption.

16. COMMENT: Regulations on development beyond 150 feet landward of a high water line or dune should take into consideration whether the land is at water level or considerably above when determining review requirements. (163)

RESPONSE: The regulations and review requirements are based on the existing conditions of the site and anticipated impacts of development, regardless of the site's elevation in relation to water level.

17. COMMENT: The complexity of the program rules will require municipalities and authorities to retain professional services to meet the requirements of the rules and will also delay any projects because of the application process. (163)

RESPONSE: The application process required by the Law will take some time. The Department has tried to make the rules as clear and simple as possible. However, Department staff routinely assist the public in the regulatory process and will continue to do so after the rules are in effect. In addition, the Department provides an optional service known as a pre-application review. This review includes discussions on the apparent strengths and weaknesses of a proposed development, as well as discussion of the procedures and policies that will apply to a particular development. The pre-application review is described at N.J.A.C. 7:7-3 and can be used to expedite the preparation and submission of applications.

18. COMMENT: While it is understood the new regulations are designed to close loopholes in previous regulations, the result is over-regulation to the detriment of coastal properties. (163)

RESPONSE: The jurisdiction and regulatory thresholds contained in the rules reflect the CAFRA amendments which were passed by the Legislature and signed by Governor Florio in July, 1993 (P.L. 1993, c.190). The proposed amendments to the Rules on Coastal Zone Management, Coastal Permit Program Rules and Ninety-day Construction Permits-fees implement these legislative amendments. Any suggested changes in jurisdiction or regulatory thresholds are beyond the Department's purview.

19. COMMENT: We applaud the general effort to adopt formal rules governing the design standards for waterfront walkways. (92, 107)

RESPONSE: The Department acknowledges this comment in support of the adoption of rules containing design standards for walkway construction.

20. COMMENT: We urge the DEPE to consider conducting informational meetings related to these proposals in each of New Jersey's coastal counties as part of a concerted effort to clarify any misconceptions regarding these proposals. (88)

RESPONSE: Staff of the Department are actively involved in such public information efforts, and have already attended meetings with engineering/consultant groups, tax assessor groups, construction code officials, as well as continuing education seminars. Staff will continue these efforts as requested and will provide information to local officials respecting the new rules in the summer of 1994. In addition, Department staff will meet with any individual or group requesting a meeting.

21. COMMENT: Extending the Department's control beyond waterfront properties is an unwarranted and unneeded abuse of power on the part of the State of New Jersey. There are adequate zoning and planning board regulations in place at the local township level. To impose State regulations on the property owners of this State who happen to live near the oceanfronts, bayfronts, or lakefronts of this State, but not on those fronts is wrong. I urge you to reconsider the extent to which you have amended the original coastal zone development regulations. (105)

RESPONSE: When it enacted amendments to CAFRA in 1993, the Legislature decided that existing laws were in certain respects inadequate to protect coastal resources. The CAFRA amendments adopted by the Legislature revised the Department's jurisdiction in the CAFRA zone and set new thresholds for State review. The Department's rules reflect and are consistent with the legislation.

22. COMMENT: DEPE has again become an overzealous regulator. I am an owner of a bayfront property in High Bar Harbor with an adjacent bayfront lot with wetlands on one side. My interpretation of the regulations is that they will prohibit construction. (2)

RESPONSE: The decision to approve or deny a proposed project is based on the project's compliance with the applicable rules. The presence of wetlands on or adjacent to a site does not automatically result in the denial of an application, though State laws are designed to generally protect New Jersey's wetlands.

23. COMMENT: Numerous references are made in the proposal to incorporating the FWPA standards as part of the Coastal Rules. The FWPA has not been officially incorporated as either a principal or supplemental Authority of the New Jersey Coastal Zone Management Program (NJCMP) pursuant to 15 C.F.R. 923.80. Therefore, any reference to the FWPA in regulations cannot be formally submitted to Office of Coastal and Resource Management (OCRM) as an amendment to the NJCMP until the FWPA itself is officially incorporated. OCRM and DEPE are currently discussing options regarding incorporating the FWPA. (41)

RESPONSE: After this comment was submitted, the Department and the Office of Ocean and Coastal Resource Management (OCRM) agreed that the inclusion of the Freshwater Wetlands Protection Act in the New Jersey Coastal Management Program (NJCMP) as a program authority would essentially codify existing practices under the Rules on Coastal Zone Management for freshwater wetlands. The Department will submit the Freshwater Wetlands Protection Act as a program change to the NJCMP with a full analysis of how the addition of this Act would represent routine program implementation.

24. COMMENT: The proposed regulations are onerous to property owners who have made the economic decision to purchase and live on a barrier island. The regulations make no economic sense and in many cases seem vindictive to people who have made the economic choice. In addition, these proposed regulations will have an impact on property values and hence, tax rateables as the State of New Jersey tries, appropriately, to downsize its bureaucracy and looks for other ways to balance the budget. We do not need a decrease in tax ratables. (102)

25. COMMENT: Several commenters requested the Department to provide an economic impact analysis of the proposed regulations prior to adoption, and stated that the rules as proposed would devalue properties and result in fewer municipal, county and State rateables, and in higher taxes. (125, 164, 88, 29)

26. COMMENT: The proposed regulations will undermine the sales tax base, a principal source of state revenue for the coastal zone areas. These regulations and policies will unfairly threaten Cape May County, an area of the State in which development is already highly restricted by wetlands and wetland buffer zones and by the substantial land area of Cape May County that has already been set aside for federal wildlife refuges, state parks, wildlife management areas, and county municipal parks. Fifty-two percent of Cape May County is already wetlands. These restrictions remove valuable land from the tax base and restrict tax contributions, and will also severely effect the employment base and income opportunities in Cape May County. (113)

27. COMMENT: The gravity and importance of these proposed regulations and their economic impact warrant full disclosure of any anticipated economic impact, and that should be provided by the DEPE with adequate time for us to review and comment. (113)

28. COMMENT: CAFRA II will have a negative impact on the future of Dennis Township by stalling or eliminating economic growth, creating high regulatory costs, scaring off investors and ultimately decreasing property values. Our poor community does not need that. (122)

29. COMMENT: The negative impact which such stringent restrictions would have on the New Jersey tourism industry as well as the loss of tax ratables by diminishing the value of shorefront property should be considered before such rules are implemented. (12)

30. COMMENT: The new CAFRA regulations stink. My husband and I have owned a home on a lagoon in Stafford Township since 1976 and we have had many enjoyable summers there. We now pay a total of $4,000-dollars in taxes, but are being told that we have no control over what we can and cannot do on our property. I cannot evenplant a shrub unless it is exclusive to the area. Do we live in a communist state? (80)

31. COMMENT: If we value the present income produced by the shore areas for the entire State, these provisions should be reevaluated. The provisions will create a tremendous economic downturn starting within 18 months of implementation. The first people that will be hurt will be the construction industry, landscaping businesses, surveyors, lumber yards, etc., followed by homeowners, who will experience losses in property. This will result in a loss of revenues in transfer fee taxes, as well as tax losses for long-term investments. Since property values will drop coastal towns will be unable to support the costs of any real beach maintenance, from dune replenishment to lifeguards and beach cleaners, etc. (115)

32. COMMENT: If you wish to save jobs and promote the State's economy you should curb and muzzle the bureaucrats who have no consideration for individual residents of the coast. The people put in charge of setting up these regulations have done a very poor job and have not looked at the economic future of New Jersey in any way. The present regulations should be totally thrown out. With new people and new ideas, a new draft can be proposed. (115)

33. COMMENT: If the CAFRA-II regulations are adopted as proposed, the rules will have a severe negative impact on the value of our home as well as on the economy of New Jersey. (59)

34. COMMENT: The proposed regulations will drive property values down and tax rateables down, and will take away the rights of homeowners. (102)

35. COMMENT: The State has not quantified the apparent detrimental economic impacts of these rules and has not presented evidence demonstrating a need for the regulatory changes or justifying the presumed conclusions cited in the State's Social, Environmental and Economic Impact Assessment sections. (3)

36. COMMENT: The economic impact statement does not qualify any its claims of cost reduction. The impact statement does not identify the number of properties that will be impacted by the regulations and does not present an estimate of the regulatory cost expected over the economic life of the development already in place. The impact on municipal governments is not mentioned even though public facilities will need to comply with the cost of the additional regulations while having a potentially stagnating or declining tax rate base due to this proposal and related DEPE proposal Docket No. 12-94-01 proposal. (44)

37. COMMENT: We would like to see more balance between our economic stability/growth and environmental protection. The intent of the new regulations is good but some of the provisions as we read them will so limit development or rebuilding as to make the seashore an unattractive place to live, work, and visit. (133)

RESPONSE: The economic impacts of these amendments will generally reflect the economic impacts of the 1993 CAFRA regulatory amendments are largely attributable to the legislation, which amended CAFRA in 1993 to regulate more persons and property. Through this enactment, the Legislature determined that there was a need for increased protection of natural resources within New Jersey's coastal area. The result of this legislation is that more buildings and properties will be subject to regulation by the DEPE. In developing these amendments and rules, the Department considered the concerns of the newly regulated communities, and tried to structure the amendments to provide a concise and specific regulatory framework to facilitate the preparation, submission and review of permit applications. The Department has also made an effort to reduce the burden on single family/duplex developments through specific regulatory proposals such as general permits, permits-by-rule, and revisions to the Rules on Coastal Zone Management, specifically N.J.A.C. 7:7E-3.28 Wetland Buffers; 7:7E-7.2 Housing Use; and 7:7E-8.11 Public Access to the Waterfront.

Additionally, the December 1992 Northeaster storm cost the taxpayers of New Jersey approximately $75 million in debris removal, protective measures and repairs to public buildings, roads, bridges and utilities. The CAFRA amendments will in the short term result in the regulation of more properties and some decrease in the economic value of some properties. However, the amendments should have a positive long term economic impact on the taxpayers of New Jersey as a whole by lowering the amount of money spent to recover after future storms such as the storm of December 1992 and should assure that the coastal environment remains attractive to tourists, fishermen, and other members of the public dependent on clean water and on an aesthetically pleasing coastal environment.

The Department included an economic impact statement as part of the proposal as required by the State Administrative Procedure Act. The economic impact statement is located in the February 22, 1994 New Jersey Register at 26 N.J.R. 950.

38. COMMENT: The Natural Resources Defense Council (NRDC), finds that the proposed rules faithfully implement the language and intent of the amendments and consequently we support their going into effect as soon as possible. NRDC strongly opposes any efforts to derail or delay final adoption and implementation of these rules. While there may be changes that we and other environmental groups would like to see reflected in the final rules, these changes need not delay final promulgation. (23)

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

39. COMMENT: There appears to be a direct linkage between the additional layers of development review now applicable to the coastal zone, including the coastal zone management rules, stringent FEMA

requirements, and various other State and Federal laws. Our municipality has been advised by licensed professional attorneys and engineers in the State that under the proposals virtually all of Long Beach Island and the northern Ocean County barrier island communities, and significant portions of mainland Barnegat Bay communities could be determined to be overwash zones, high hazard zones, or other similar areas. Application of the rules for these areas could trigger severe prohibitions on virtually all reconstruction and development, deny the rights of property owners through taking of property by regulation, destroy the economy of the municipality and the entire region, diminish the lifetime investments of homeowners and property owners in our coastal communities, and profoundly impact the future of the entire New Jersey shore. (59)

RESPONSE: The Department disagrees with the interpretation of the proposed amendments to the Rules on Coastal Zone Management referred to in the comment for a number of reasons. First, the identification and delineation of overwash areas will not include mainland communities along Barnegat Bay and will not include "virtually all of Long Beach Island." Second, coastal high hazard areas are defined by the Federal Emergency Management Agency (FEMA) for use in implementing the National Flood Insurance Program (NFIP). Last, the designation of an area as a high hazard area or an overwash area does not automatically preclude development of those sites. The Overwash Areas rule (N.J.A.C. 7:7E-3.17) precludes development unless there is no prudent or feasible alternative and development will not cause significant adverse long-term impacts on the beach and dune system. The High Hazard Area rule (N.J.A.C. 7:7E-3.18) conditionally allows single family and duplex infill development.

40. COMMENT: The vagueness of the pending rules will present an opportunity for future administrations and DEPE Commissioners to broadly interpret these provisions at both the State and Federal levels. This may trigger onerous prohibitions on coastal property owners including, but not limited to, a prohibition on the reconstructon of existing homes and buisnesses in the wake of coastal storms, fire or other natural hazards, the denial of single family home building permits or permits for such innocuous projects as additions, driveways, landscaping and the planting of lawns. (59)

RESPONSE: The CAFRA legislative amendments and the Coastal Permit Program Rules include specific exemptions which allow the reconstruction of any development which is destroyed by storm, fire, natural hazard or other act of God. These exemptions are contained at N.J.S.A. 13:19-5 and N.J.A.C. 7:7-2.1(c). In addition, the Rules on Coastal Zone Management include adequate provisions to allow for the construction of driveways, and additions, as decribed in the Rules.

41. COMMENT: The economic impacts of the CAFRA amendments on our community are not clear. It is the opinion of many members of our community that inadequate review and analysis may cause unwarranted hardship during a time of limited growth and development. Cape May County cannot withstand any more regulations that restrict its ability to promote its own prosperity. A delay in the adoption of all regulations should be provided until this matter has been fully addressed. (20)

RESPONSE: The Department expects the CAFRA amendments and implementing rules to have long term positive economic benefits, even though individual property owners may experience short term adverse economic impacts. In addition, the Department cannot delay adopting all of the rules because the CAFRA amendments enacted by the Legislature in 1993 have an effective date of July 19, 1994. Extensions of this date are beyond the Department's authority.

42. COMMENT: The proposed regulations will have an adverse effect on private property rights in the State of New Jersey. The regulations change the entire complexion of the original CAFRA bill. (26)

RESPONSE: Both CAFRA and the rules implementing CAFRA are intended to balance the protection of private property rights with the need to protect and enhance the unique and environmentally sensitive resources of the coastal zone. When the Legislature amended CAFRA in 1993, it determined that more development in the coastal zone should be regulated, particularly within 150 feet of the mean high water line or a beach or dune. Thus, the Department does not agree that the rules "change the entire complexion" of CAFRA.

43. COMMENT: Our Environmental Commission believes that regulations are needed for small developments close to the water, beaches and dunes. We do not think that these developments should be banned, but regulated. We understand that land use can be regulated reasonably and that banning a shorefront property owner from use of his or her land because of environmental sensitivity this may indeed require compensation. We also understand that the legislative intent of CAFRA II is to protect the long-term social, economic, esthetic and recreational interests of all of the people of the State. (153)

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

44. COMMENT: The regulations are voluminous, extremely restrictive, self contradictory, confusing, and lacking in empirical logic and create bureaucratic red-tape in a self-serving manner. Further, they do not take into account the variables of locale. Individual locations were never given an opportunity for input in the rules' preparation. You have prohibited everything except a frog sitting on a leaf. (135)

RESPONSE: The current and proposed rules represent standards for resource protection and site development, and do take into account variations in site location, environmental sensitivity and surrounding development. The rules are intended to allow for coastal development in a manner which affords adequate protection of the unique resources of this area. Before proposing the rules, the Department held a number of public hearings in the coastal area to solicit comments on the CAFRA amendments of 1993 and the best way to implement them.

45. COMMENT: The legislation evolved without public notice or hearings and with insufficient time to attend these meetings. These meetings were planned when most citizens were preoccupied with the new taxation reports due on April 15, 1994. Also, meetings were held when most landowners affected by the legislation were not in the area because they had returned to school or work at great distances from the hearing locations. In addition, the hearing announcements were made with a very short lead time so there was no opportunity to plan one's work and still attend. Notices of hearings and meetings were directed to the Realtors and Builders of South Jersey. However, there was no notice to individual private property owners, who will be heavily impacted. (135)

RESPONSE: There has been significant public input into the development of this rule proposal. The Department held several public meetings in conjunction with the County Planning Boards before preparing the rule proposal. In addition, the Department met on several occasions with the Builders Advisory Group and the Environmental Advisory Group to gain their input on the proposal.

The public hearings which were held following the publication of this rule proposal in the New Jersey Register were arranged and conducted in accordance with the requirements of the State Administrative Procedures Act (N.J.S.A. 52:14B-1 et seq.). The published proposal and public hearings resulted in the submission of many written and oral comments to the Department. The final adopted rules reflect this high level of public input. Many of the proposed rules have been modified and clarified on adoption in response to comments received.

46. COMMENT: Restrictions and prohibitions breed abuse. The local Cape May County Planning Board has already sent me three offers to purchase at 10 cents per square foot, an offer which is less than .05 percent of current market value. You have already set the racketeering into motion. There will be all sorts of schemes. (135)

RESPONSE: All land use regulations place restrictions on how properties are developed, whether the regulations are local zoning laws or State or Federal laws. The New Jersey coastal permit program and the Rules on Coastal Zone Management are structured to allow for public input and public review of all Departmental actions and files. This open public process limits the potential for abuse.

47. COMMENT: The implementation of the proposed CAFRA II regulations should be delayed and thoroughly reevaluated for their profound long-term impact on individual property owners, the economy and the long-term future of the New Jersey shore. (83)

48. COMMENT: The time for implementation of the CAFRA regulations should be extended by 12 months, in order to give sufficient time to analyze the regulations and to determine what changes should be made to make them more compatible with the needs of shore front communities. (15)

49. COMMENT: Several commenters requested a delay in the implementation of the CAFRA amendments. These commenters believed that the amendments should be reexamined and simplified and that provisions that jeopardized the future of the New Jersey shore should be eliminated pending further consideration and discussion. (155, 123, 113, 46, 12, 78, 59, 162, 29)

RESPONSE: The schedule for implementation of the CAFRA amendments has been set by the Legislature and can only be delayed

by action of the Legislature. In addition, the amendments are intended to benefit all State residents, including but not limited to coastal residents.

50. COMMENT: We feel that the new CAFRA regulations affect us in a very negative way. We have worked hard over the years to run our business and pay off our property. I ask you to reconsider and not pass these restrictive laws, as they will adversely affect a small business like ours. (33)

RESPONSE: The CAFRA amendments and the associated revisions to the Rules of Coastal Zone Management are designed to provide increased protection for the resources of the coastal zone, while maintaining flexibility to allow for continued economic growth of the area and to balance competing interests in coastal resources. The rules contain specific provisions to facilitate marina related activities, such as rules allowing new and maintenance dredging and expansions. They are therefore sensitive to the interests of the boating industry. However, it must be recognized that boating interests occasionally conflict with the interests of other groups such as shellfishermen. The rules attempt to balance these sometimes competing interests.

51. COMMENT: I object to the practice of stating that the "full text of the proposal follows" and then not providing the full text of the affected subchapter but instead noting "(no change)" for unaffected sections even when the additions refer back to the section published as "(no change)." An example of this is found in N.J.A.C. 7:7E-3.28(a) which references N.J.A.C. 7:7E-3.39 without publishing any portion of N.J.A.C. 7:7E-3.39. The published rule also does not state the source of the figures to which it refers and seeks to incorporate them into the rules. While this reader believes that the figures probably came from the "Green Edition" of N.J.A.C. 7:7E, these figures should have been published in the proposal. The argument that previously adopted figures are being referred to is invalid in light of N.J.A.C. 7:7E-3.31(a)2, which as published on 26 NJR 969 clearly shows that the figure numbers are either being changed or that the figures themselves are new. Either case warrants publication of the figures. (44)

RESPONSE: The publication of the rule proposal in the New Jersey Register was completed in accordance with the requirements of the Administrative Procedures Act (APA). All of the APA requirements were satisfied through this publication, and were approved by the Office of Administrative Law. In accordance with OAL publication standards for the New Jersey Register, only those regulatory sections proposed to be changed are included in the proposal. The figures referred to in N.J.A.C. 7:7E-3.28 and 3.31 were previously adopted. However, these rules did not previously contain any reference to the figures. Such references are now included as additional clarification.

52. COMMENT: These rules are crafted so as to make it virtually impossible for a lay person to comprehend. The DEPE should be required to make all rules clear and concise so that they can realistically be understood by the general public. If citizens are expected to obey rules and regulations, they simply must be written in a concise and understandable format. (27, 28, 100)

RESPONSE: The Department made every effort to propose rules which are clear, concise and understandable by the public. The Department also incorporated design standards and specifications in the rules to make them more "user friendly." In addition, staff of the Department have prepared informational packages and conducted public meetings and seminars for the purpose of explaining the proposed regulations. Further, in response to comments received on the proposal, a number of the rules have been revised on adoption to provide additional clarity where appropriate.

53. COMMENT: References to any other Federal or State laws, rules or regulations should include the complete text of the law. It is not reasonable or, perhaps, even conceivable that most citizens could be expected to understand even the broadest issues associated with the changes published on February 22, 1994. (27, 28, 100)

RESPONSE: Including the complete text of all applicable Federal or State laws, rules or regulations into the Department's coastal rules would make the rules excessively voluminous. However, the referenced Federal and State laws and regulations are available from the Department's Maps and Publications Office. These laws and rules are already applicable to coastal development, and are referenced in the coastal rules to provide additional notice to the public of all applicable laws and to promote intra and inter-governmental consistency.

54. COMMENT: I disagree with the unsupported generalization put forth in the Social Impact and Economic Impact statements published in the New Jersey Register 26 NJR 949-950. The Social Impact Statement speaks of guidance for development and implies that development will actually occur. Additionally, the statement that "this added protection will benefit present and future generations of New Jersey residents who will continue to visit and enjoy the Jersey Shore," implies a causal relation between protection and the ability to visit and enjoy the Jersey Shore, and fails to acknowledge the existence of the New Jersey residents who live within the regulated area. (44)

RESPONSE: The benefits of increased environmental protection will benefit both coastal residents and shore area visitors. Further, the increased protection of coastal resources is expected to enhance the coastal environment and to thereby encourage continued and future visits to the shore by nonshore residents. CAFRA is intended to regulate coastal development for the benefit of all members of the public, including residents and non-residents of the coastal area. Haphazard and uncoordinated coastal development will ultimately make the coastal area less attractive to residents and non-residents alike.

55. COMMENT: The public property of the coastal area includes all publicly held uplands and all State lands flowed by the tides, the latter commonly referred to as public trust lands. The purpose of the original CAFRA legislation and these amendments was to recognize that coastal lands and waters need special protection because they are of great public benefit. CAFRA recognizes that decisions about coastal land uses made by one community can have significant impacts on neighboring towns and on the citizens of New Jersey in general. Thus, CAFRA sets rules for coastal land use that will protect the public's interest while recognizing the rights of individuals to a reasonable use of property.

CAFRA and its amendments and the rules that flow from them are consistent with this goal. The rules currently under consideration derive from a basic principle that land development close to tidal water is most likely to impair naturally functioning coastal ecosystems. These rules provide additional guidance for the siting and design of structures close to the water by regulating "first use" development that is within 150 feet of tide-water or a beach or the backside of a sand dune. (10)

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

56. COMMENT: We wish to state on record that we believe the proposed rules fulfill the legislative intent of S. 1475 where it is stated that the Legislature "finds and declares that ... it is in the interest of the people of the State that all of the coastal area should be dedicated to those kinds of land uses which promote the public health, safety and welfare, protect public and private property, and are reasonably consistent and compatible with the natural laws governing the physical, chemical and biological environment of the coastal area." (10)

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

57. COMMENT: I oppose any further delay in the implementation of the CAFRA II Rules, and I urge you to do all in your power to support CAFRA II. CAFRA II takes both the public and the environment into consideration and its implementation should not be delayed. The New Jersey coast is one of its major attractions and attributes. It should be protected for the future of everyone. (71)

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

58. COMMENT: The proposed rules will erode the tax base for much of southern New Jersey. In Ocean County, Long Beach Island provides greater than 25 percent of the taxes yet there is only a three to four month demand for services. Mainland people enjoy lower taxes, great schools and employment from Long Beach Island homeowners and business. Can the new rules replace that? (167)

RESPONSE: The CAFRA amendments allow structures damaged by storms and other acts of God to be rebuilt so long as they are not expanded. In addition, the coastal rules generally regulate, but do not necessarily prohibit new construction. Accordingly, it is not clear how the rules will erode the existing tax base.

59. COMMENT: I wish to express my support to your agency for the CAFRA regulatory changes and to commend your staff for the fine job they have done in articulating these changes to the citizens of my area. (120)

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

60. COMMENT: The implication of these regulations in the Delaware Bay region should be considered, since it appears that the policies are more applicable to Atlantic coastal areas than to the marshes and estuarine environment in the western part of the State. In these regions,

because of the lack of development, the continuation from beachs to salt and freshwater wetlands is unbroken and may pose a need for a more stringent set of sensitivity criteria. (120)

RESPONSE: The Rules on Coastal Zone Management have been developed to address environmental concerns throughout the coastal zone, including the Delaware Bay shore. The Department believes application of the rules will provide adequate protection for the environmental resources of the Bay.

61. COMMENT: The proposed rules meet the Legislative intent of CAFRA II, which was to address the cumulative impact of unregulated small development (fewer than 25 units) near the tidal shoreline. (11)

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

62. COMMENT: The banking financial industry will severely restrict lending and will require significant costs and delays in financing that will inhibit development on the coast. (113)

RESPONSE: The Department's rules are intended to implement CAFRA II as enacted by the Legislature. Any suggested revisions to CAFRA II are beyond the Department's purview.

63. COMMENT: Is the Department required to answer and respond to all comments? Is the Department required to honor them? (10)

RESPONSE: The Department is required to respond to all comments on a rule proposal. The Department values public comment and often makes improvements in its initial proposal based on public comments. However, if recommended revisions are considered a significant change from the proposal, the Administrative Procedure Act does not allow the recommended revision to be made upon adoption. Instead, the recommended revision must be proposed for public comment before adoption.

64. COMMENT: The New Jersey Builder's Association strongly suggests that the Department only adopt those changes that are absolutely mandated by the recent CAFRA revisions. (97)

65. COMMENT: The Sierra Club opposes the "bifurcation" of the elements of the proposed rules which directly implement the changes statutory thresholds from other policy changes, as has been suggested at various public hearings. The changes to the approach of the program embodied in the statutory changes necessitate a reexamination and revision of many of the policies and rules. Any attempt to separate these elements in addition to being impractical, will delay the effective operational date of the program, now July 19, 1994. (36)

66. COMMENT: The Department should only adopt regulations required to implement CAFRA II's expanded jurisdiction and should delay adoption of all other regulations and planning policies until there is the opportunity for all impacted groups to evaluate them and make substantive comments. (29)

RESPONSE: The scope of the current rule proposal includes a wide range of issues and rules. Although certain sections of the proposal are not absolutely mandated by the CAFRA revisions, these amendments are proposed to reflect existing DEPE practice and to codify "internal policy," or to increase protection of specific resources, and to improve the way in which the Department implements CAFRA. The Department feels that inclusion of all proposed rule amendments in this proposal is a more efficient use of staff time than the use of separate proposals. It also believes that it is not appropriate to delay revision of the rules to reflect existing practice, particularly in light of previous court decisions which mandate codification of such practices by rulemaking. At the same time, the Department has reviewed the public comments and is not adopting a set of changes proposed for the Pinelands rule, and is making changes to other rules in response to other comments.

67. COMMENT: The NJDEPE staff assigned to this project have performed admirably and professionally balancing a wide variety of issues, interests and technology. They were always responsive to our concerns, welcomed our technical and procedural recommendations, and were easily accessible for information and discussion, even when our viewpoints differed. The Department's inclusion of directional drilling technology recognizes the successful application of this technology in several environmentally sensitive areas. The Department also recognizes that repair and replacement of infrastructure within existing paved areas does not constitute potential environmental degradation. (37)

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

68. COMMENT: The regulations developed in Trenton, which are not sensitive to the residents, land owners, and businesses in the coastal area will be intolerable unless a more reasonable balance between economic stability and environmental protection is provided. (113)

RESPONSE: Most of the Rules on Coastal Zone Management have not been significantly changed through these amendments but have been amended to provide additional clarity. The significant changes in coastal regulation occur as a result of the legislation which amended CAFRA in 1993 to increase regulation particularly within 150 feet of the mean high water line or a beach or dune. DEP's Rules on Coastal Zone Management were first adopted in 1980 and are intended to balance conflicting and competing interests in diverse coastal resources and in diverse uses for coastal locations. The rules and proposed amendments to the rules are intended to allow reasonable economic development while at the same time discouraging development in more environmentally sensitive areas. The Department believes this type of development benefits the tourism industry and the fishing industry, which are dependent on clean water and on the protection of unique coastal resources including wetlands, beaches and dunes. Further, this type of development should result in reduced public expenditures to address storm damage by discouraging new development in the most hazardous coastal areas.

69. COMMENT: The preliminary evaluations of these proposed regulations and proposed planning policies indicates that they will adversely affect the economic recovery of our area after an unusually long recession. (113)

RESPONSE: In 1993, the Legislature determined that additional State regulation of the coastal area, particularly within 150 feet of the mean high water line or a beach or dune was warranted and amended CAFRA accordingly (P.L. 1993, c.190). Protection of the natural resources of the coastal zone is one of the primary objectives of CAFRA and of the State Coastal Management Program. Although the increase in regulation may in the short term adversely affect individual property owners, this protection has and should continue to have long term benefits for the coastal area's tourism and fishing industries, which are dependent on clean water and aesthetically pleasing environment. Further, increased regulation is expected in the long term to reduce public expenditures to address storm damage.

70. COMMENT: The callous, unresponsive and obstructionist nature of DEPE and the Pinelands Commission on legitimate development will further intimidate investors from reasonable and appropriate development and redevelopment in the coastal zone. (113)

RESPONSE: In developing these amendments, the Department made extensive efforts to respond to concerns expressed by members of the public, including individuals, government agencies, and special interest groups. These concerns were also taken into consideration in reviewing the proposed amendments and in drafting the final rule adoption. The Department reviewed the comments submitted during the public comment period and as a result changes to the proposal were made. These changes included, but were not limited to, the deletion of the proposed text under the Pinelands section, and the deletion of the buffer matrix table in the Buffers and Compatibility of Uses section. In implementing the rules, the Department does not intend to be obstructionist but to assure that development in the coastal area is consistent with the protection of public and private natural resources and with the long term protection of the coastal area, including the tourism and fishing industries and individuals dependent on those industries.

71. COMMENT: Many affected property owners are not present in Cape May County at this time of the year. As contributors to the tax base of their municipalities and counties, they should have a right to have input into this important matter. (113)

RESPONSE: Before publishing the proposed amendments to the Rules on Coastal Zone Management on February 22, 1994, the Department held three public meetings on September 20, September 30 and October 1, 1993, in Ocean, Cumberland and Monmouth Counties, respectively to discuss the 1993 CAFRA amendments and to solicit comments and suggestions from the public regarding the implementation of the new legislation. In addition before publishing the proposal, the Department received comments on these regulations through two advisory groups, the Builder's Advisory Group and the Environmental Advisory Group; spoke to several other groups including the South Jersey Builder's Association, Cape May Chamber of Commerce, the Southern Ocean County Chamber of Commerce, the Ocean City Society of Professional Engineers and the Ocean County Chamber of Commerce; and held individual meetings with various municipal and county officials. Thus, public input regarding the proposal did not start on February 22,

1994. The State Administrative Procedure Act provides for a minimum 30 day public comment period. This period was extended an additional 30 days by the Department to April 24, 1994.

72. COMMENT: The 125 pages encompassing these rules go far beyond the spirit and intent of the enabling legislation, potentially violate the United States Constitution by taking property without just compensation, and could gravely diminish the lifetime investments of coastal property owners and jeopardize the future of the great coastal communities at the New Jersey shore. (27, 28, 100)

RESPONSE: The proposed amendments to the Rules on Coastal Zone Management regulate, but do not necessarily prohibit, development in the Coastal Zone and do not represent a "taking" of property without compensation. The rules contain standards for development in the coastal zone, and only apply CAFRA to those developments listed in the Coastal Permit Program Rules (N.J.A.C. 7:7). The Department expects the rules to enhance the coastal environment in the long term, rather than to jeopardize coastal communities.

73. COMMENT: I want to commend the Department's staff for the work they've put into these regulations. (144)

RESPONSE: The Department acknowledges this comment on the Department's effort to revise the rules.

74. COMMENT: In light of the recent cuts in staff at the State and increased pressure to further downsize government, we question how the Department staff will be able to handle the increase in permit applications as a result of the CAFRA amendments. (5)

RESPONSE: The review periods are set by the 90-Day Construction Permit Rules, and will be followed by the Department in the review of all CAFRA permit applications.

75. COMMENT: As the Mayor of a coastal community for almost 30 years, I deeply object to the arbitrary powers that are contained within the vague words of these 125 pages of proposed rules. They are, in my view, designed to be vague, designed to camouflage the motives of the DEPE, to create disincentives for owning property at the New Jersey shore, and to use the power of regulation to cause the abandonment of our barrier island communities. (27)

RESPONSE: The rules regulate "development" as defined in the amendments to CAFRA enacted in 1993, and define "development" as it is defined in the CAFRA amendments. The rules also contain exemptions for the reconstruction of storm damaged structures as well as the other exemptions contained in the CAFRA amendments. The definition of "development" has been amended on adoption to specifically address reconstruction activities which are exempt from CAFRA. The goals of the coastal management program, and the associated rules, are to protect and enhance the resources of the coastal zone while balancing the cultural, social and economic needs of the people who live and visit the coastal zone. In proposing the rules, the Department attempted to be as clear as possible. The Department has made further clarifications upon adoption, based on specific comments to specific parts of the proposal and suggestions for their improvement.

76. COMMENT: The rules are voluminous and vague and should be made as simple as possible. (64, 106)

RESPONSE: The Department has made every effort to propose rules which are clear, concise and understandable by the public. In addition, staff of the Department have prepared informational packages and conducted public meetings and seminars for the purpose of explaining the proposed regulations. Based on comments suggesting ways to improve the rules' clarity, the Department made a number of changes on adoption, and has published a booklet which contains all information about CAFRA's impact on the construction of single family homes and duplexes.

77. COMMENT: Under N.J.A.C. 7:7, the reconstruction of any development that is damaged or destroyed in whole or in part by fire, storm, natural hazard, or act of God is exempt from CAFRA provided that such reconstruction is in compliance with existing requirements or codes of municipal, State or Federal law. However, this activity has not been exempted specifically from all the rules and regulations contained in N.J.A.C. 7:7-1 and the Coastal Zone Management rules found in N.J.A.C. 7:7E. The language of the regulations is very vague and when language is vague, anything can happen. (65)

RESPONSE: All reconstruction of development which is destroyed, in whole or in part, by storms, floods, fire or act of God is exempt from CAFRA. The Department has added language in the Coastal Permit Program Rules to try to eliminate any doubt on this subject and has amended the definition of "development" to specifically exclude the reconstruction of development destroyed by storm, fire or act of God.

78. COMMENT: I strenuously object to the conclusion that amendments contained in the proposal were based on input and advice from people that attended those [Public] meetings. I never heard people talk at these meetings about the incorporation of the rules on coastal zone management, I never heard people speaking about lawns and gardens that were not indigenous to the area, as outlined in these regulations. (27)

RESPONSE: The comment refers to the public meetings the Department held before proposing the amendments to the Rules on Coastal Zone Management, to solicit ideas for implementation of the CAFRA amendments enacted by the Legislature and ideas for revisions to the Rules on Coastal Zone Management. These meetings, which were cosponsored by the County Planning Boards, were held in Monmouth, Ocean and Cumberland Counties. In addition to these public meetings, Department staff met on at least two occasions each with the Builders Advisory Group and the Environmental Advisory Group to solicit input into the rule making process. A majority of the comments received at these meetings were from single family homeowners who raised concerns regarding the permit procedure and simplified reviews for single family homeowner's. The Department has addressed these concerns by proposing and now adopting general permits and permits-by-rule for single family homes. In addition, should an individual permit be required for the construction of a single family home, N.J.A.C. 7:7E-7.2(e) of the Rules on Coastal Zone Management requires compliance with six of the forty-eight Special Area rules. There are sections of the rules necessary to implement the Law that were not specifically suggested or discussed at the preliminary public meetings.

In response to public comments, the Department will not be regulating vegetation at new, individual single family or duplex units. The Department never planned or proposed to regulate vegetation at existing homes.

79. COMMENT: The proposed rulemaking, when used in conjunction with existing coastal zone management rules, will have the impact of prohibiting within 150 feet of the mean high water line, or the landward toe of a beach or dune, whichever is farthest landward, all construction, relocation, enlargement or voluntary reconstruction of single family homes, swimming pools, garages, retaining walls, driveways, paved yard areas, outbuildings, landscaping with non-native species and lawns. Thus, taken in conjunction with the existing Coastal Zone Management rules the proposed rules will, in essense, cease all private waterfront related activity within the Borough of Surf City. (65)

RESPONSE: The proposed amendments to the Rules on Coastal Zone Management will not prohibit all construction, relocation, enlargement or voluntary reconstruction within 150 landward of the mean high water line, beach or dune. Rather, any development, defined pursuant to CAFRA, within this zone will require a permit from the Department unless that development is exempt from CAFRA in accordance with the Act and the Implementing Coastal Permit Program Rules (N.J.A.C. 7:7). The requirement of obtaining a CAFRA permit does not represent a prohibition on the construction activities listed above.

80. COMMENT: The Coastal Zone Management rules are written specifically to prohibit or discourage the construction of residential units within 150 feet of the mean high water line, as spelled out in N.J.A.C. 7:7-1.4. (65)

RESPONSE: The Rules on Coastal Zone Management represent the policies and standards used by the Department to make decisions pursuant to CAFRA, the Waterfront Development Law and the Wetlands Act of 1970. The Rules are not specifically written to prohibit or discourage the construction of residential units within 150 feet of the mean high water line. For example, the Housing Use Rule, N.J.A.C. 7:7E-7.2(e) describes the standards which apply to the construction of a single family or duplex dwelling, and the requirements for approval of such developments. This rule specifically indicates that these proposed developments must only comply with a limited number of rules, namely Beaches (N.J.A.C. 7:7E-3.22), Dunes (N.J.A.C. 7:7E-3.16), Wetlands (N.J.A.C. 7:7E-3.27), Wetland Buffer (N.J.A.C. 7:7E-3.28), Endangered or Threatened Wildlife or Vegetation Species Habitats (N.J.A.C. 7:7E-3.38), and Coastal Bluffs (N.J.A.C. 7:7E-3.31), and the acceptability conditions of the Housing Use Rule (N.J.A.C. 7:7E-7.2(e)).

Subchapter 1. Introduction

N.J.A.C. 7:7E-1.1 Purpose

81. COMMENT: New language is added specifying that the Coastal Rules will be used in reviewing permit applications under "Federal

Consistency Determinations (307(c)(1) of the Federal Coastal Zone Management Act)." We assume that the State also intends to review permits for (c)(3) activities (Federally licensed or permitted activities) and 307(d) (financial assistance), therefore, we recommend referencing section 307 in its entirety, rather than limiting the reference to 307(c)(1). (41)

RESPONSE: The Department agrees with this comment and has revised the rule on adoption to include section 307 in its entirety. This is not a change from the Department's practice since 1978.

82. COMMENT: Will the Department have to revise the Environmental Impact Statement (for the Federally approved New Jersey Coastal Management Program) that was last updated in 1978 as a result of the substantial changes that are now being proposed? If so, what is the time frame for doing so? (45)

RESPONSE: The Department does not anticipate revising the EIS which was last updated in 1980 (Final EIS) as part of this rule proposal. NOAA has determined that the proposed revisions to New Jersey's Coastal Management Program are considered routine program implementation and therefore amendment of the Final EIS is not needed.

N.J.A.C. 7:7E-1.2 Jurisdiction

83. COMMENT: N.J.A.C. 7:7E-1.2(d)2 and 4 appear to allow the Department to enforce the Coastal Zone Management Rules through other regulatory programs, even for non-CAFRA developments. The NJBA requests the Department not to follow this course as it would promote inconsistencies with the other permit programs. (45, 97)

RESPONSE: This section identifies all regulatory programs subject to the Department's review authority which relate to the use of coastal resources or affect the coastal zone. The proposal included minor revisions intended to update the description of these regulatory programs and to include all such programs. The section is intended to assure internal consistency among Department actions and specifies that decisions made in those actions will comply with N.J.A.C. 7:7E to the extent statutorily permissible. It will therefore not promote inconsistencies but will assure that, to the maximum extent possible, Departmental decisions are consistent with the State's adopted Coastal Zone Management Plan.

N.J.A.C. 7:7E-1.5(c) Definitions

84. COMMENT: N.J.A.C. 7:7E-1.5 defines "habitable structure" and fails to recognize that the vast majority of existing structures predate 1975 and the adoption of N.J.A.C. 5:23. Additional provisions must be made in the rule or the definition should be deleted and reference made to N.J.A.C. 5:23 instead. (44)

RESPONSE: The definition of habitable structure is not directly related to the Municipal Land Use Law ("MLUL"). Therefore, the fact that many structures in the coastal zone were built before 1975, when the MLUL was passed, will have no bearing on the rule's implementation. N.J.A.C. 5:23 is the Uniform Construction Code. The Department's rules are not intended to enforce the code, but to distinguish between lawfully occupied or constructed buildings and derelict buildings for purposes of determining the applicable standards for reconstruction expansion.

85. COMMENT: N.J.A.C. 7:7-2.1, which identifies activities for which a permit is required and N.J.A.C. 7:7E-1.5(c), definitions, should be amended to clarify that residential swimming pools are specifically excluded from the definition of "development" and from those activities which require a CAFRA permit. (55)

RESPONSE: The definition of development was established by the Legislature in the 1993 CAFRA amendments, and has been clarified in the Rules on Coastal Zone Management to also reflect activities that are regulated pursuant to CAFRA, the Wetlands Act of 1970 and the Waterfront Development Law, all of which are applicable in the coastal area. Residential swimming pools have not been specifically excluded from the definition of development because construction of pools, particularly in-ground pools, can have a significant impact which should be evaluated through a permit review. Such construction normally involves excavation and grading. It is likely that the Department may, in the future, develop streamlined permit procedures for certain types of regulated activities including swimming pools. However, any such proposal must be developed in accordance with the Administrative Procedures Act, and thus will be subject to public review and comment before adoption.

86. COMMENT: The Department should use the same definition of "navigable" as the Federal Section 10 Permit Program, which defines "Navigable waters of the [State]" as "those waters that are subject to the ebb and flow of the tide shoreward to the mean high water mark and/or are presently used or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. A determination of navigability once made applies laterally over the entire surface of the waterbody and is not extinguished by later actions or events which impede or destroy navigable capacity (33 CFR Part 329.4)." Navigable waters should be the same waters identified by the U.S. Army Corps of Engineers so that only one list of navigable rivers is considered within the State. The list should be published so that an applicant can easily determine the status of the water body and applicable restrictions. (66)

RESPONSE: Unlike the Federal laws, the term "navigable" as used in the Rules on Coastal Zone Management does not apply solely to uses involving interstate or foreign commerce, but rather applies to all in-State commercial and recreational boating activities and adjacent land uses. Therefore, the definition needs to be broad enough to apply to these varied uses in New Jersey's coastal zone. The Department has not assembled a comprehensive list of navigable waterways in the State because there exist many unnamed tributaries and tidal ditches in the coastal zone which would be difficult to identify in such a list.

87. COMMENT: We question the Department's ability to regulate activities that are exempt from other programs such as Freshwater Wetlands given the 1990 NAIOP decision that overturned a number of the Department's regulations including ones which provided that projects which are exempt from the [Freshwater] Wetlands [Protection] Act remain subject to wetlands requirements of other applicable programs as they existed prior to the Act's effective date (July 1, 1988). (45)

RESPONSE: CAFRA requires the Department to protect wetlands as part of the "delicately balanced ... environmental resource called the coastal area." Therefore, the Department does not believe that CAFRA is affected by the NAIOP decision. In addition, the adopted wetlands rule (N.J.A.C. 7:7E-3.27) provides for the regulation of freshwater wetlands in accordance with the Freshwater Wetlands Protection Act.

88. COMMENT: The Department should delete the requirement that in order to be considered a "habitable structure," a structure must have been legally occupied as a dwelling unit for the last five years. Such a definition will significantly limit those structures which can be rebuilt. (45)

RESPONSE: The Department has defined a "habitable structure" as a structure which is able to receive a Certificate of Occupancy or can be demonstrated to have been legally occupied as a dwelling unit for the most recent five years. This definition will not significantly limit the number of homes which can be rebuilt, but rather will instead limit the number of derelict residential structures, located **in water areas**, which can be rebuilt.

89. COMMENT: The NJBA requests that the proposed revisions to the definition of "navigable" be deleted and that the current definition be left intact. Inclusion of watercourses upstream of obstructions could easily be interpreted in a very unreasonable and excessive manner. (45)

RESPONSE: The revision to this definition is intended to clarify that the presence of obstructions does not automatically eliminate navigability upstream of the obstruction. The determination of navigability is relatively straight-forward and is based on the ability of a waterway to afford passage to watercraft, including canoes, at high tide.

90. COMMENT: The Hackensack Meadowlands Development Commission (HMDC) disagrees with the proposed amendment to N.J.A.C. 7:7E-1.5, which would delete the statement that the HMDC is the lead agency in decisions made on coastal resources in the Hackensack Meadowlands District. (132)

RESPONSE: When this deletion was proposed, the Department had anticipated proposing a revision to N.J.A.C. 7:7E-3.45 (Hackensack Meadowlands District) which would have included a description of the role of the HMDC in decisions regarding coastal resources within the Hackensack Meadowlands District (HMD). However, the anticipated revision was never formally proposed. Therefore, the Department has not adopted the proposed amendment to N.J.A.C. 7:7E-1.5 and the regulation will remain as currently written.

91. COMMENT: The HMDC has been working with the NJDEPE, Army Corps of Engineers, United States Environmental Protection Agency and the National Oceanic and Atmospheric Agency for the past six years under a Memorandum of Understanding to develop a Special Area Management Plan (SAMP) for the Meadowlands District with the

HMDC acting as the coastal zone management authority for the district. HMDC currently renders coastal zone consistency determinations for properties located within the Hackensack Meadowlands District, while the DEPE is the authority for approvals of Stream Encroachment and Waterfront Development permits, as well as Water Quality Certificates for most applications within the HMD. Discussions at the DEPE Assistant Commissioner level have indicated that upon completion of the SAMP, DEPE is intending to revise N.J.A.C. 7:7E-3.45 to allow HMDC review authority over waterfront development permits and water quality certificates. Final language to transfer these obligations to the HMDC will follow the SAMP Record of Decision which is expected from the Federal agencies involved in this process later this year. Therefore, any changes to N.J.A.C. 7:7E-1.5(a) at this time are premature. (132)

RESPONSE: This comment accurately describes the current operation of the Coastal Zone Management Program. The allocation of responsibilities described may be changed in the future. Such changes will be made through the formal rule amendment process, and the ultimate decision on any revisions to N.J.A.C. 7:7E-3.45 shall be subject to the approval of NOAA, the Federal agency charged with overseeing the New Jersey Coastal Management Program. Since the comments were submitted, discussions have been underway between the DEPE, HMDC and NOAA regarding the allocation of regulatory authority within the Hackensack Meadowlands District and the SAMP.

92. COMMENT: Some clarification of the definition of water dependent is needed. Public waterfront recreation is cited as an example of water dependent use yet parking for boaters is the only type of water dependent parking listed; parking for fishermen, swimmers and other beach and water uses should also be considered water dependent. Rack systems for boat storage is listed as water dependent, yet boat storage for boats that can be transported by trailer is not. (157, 48)

RESPONSE: The list of water dependent uses is not meant to represent every possible water dependent use, but is designed to provide some degree of guidance in determining which uses are considered water dependent uses. Parking for fishermen, swimmers and other beach users is not specifically listed. While it certainly needs to be near the water, depending on the land available at a particular site, it could be located a little further away than parking for boaters.

93. COMMENT: The NJBA objects to the inclusion of "spring tide" in the rules, since "spring tide" is not referenced in the legislation. Rather, the legislation specifies that jurisdictional areas and permit thresholds are determined with references to the "mean high water line." (45, 63, 97)

RESPONSE: Regulatory references to the "spring tide" are not included in any rules setting regulatory jurisdiction, but are included in certain regulatory standards for development activities which involve the filling of water areas, namely Subchapter 3, Special Areas, and Subchapter 4, General Water Areas, of the Rules on Coastal Zone Management. Jurisdiction under CAFRA will be based on a development's distance from the mean high water line, beaches and dunes, or a development's location in the coastal zone as specified in CAFRA, N.J.S.A. 13:19-1 et seq.

94. COMMENT: We request the Department to extend the definition of water dependent uses to include accessory uses necessary to support water dependent uses including restaurants, dry boat storage and boat sales. These accessory uses are often necessary in order for the water dependent use to be viable. (45, 63)

RESPONSE: A water dependent use is a use that cannot physically function without direct access to the body of water along which it is proposed. Uses such as restaurants and boat sales although water oriented are non-water dependent uses, as is the dry storage of boats which are small enough to be transported by car trailer (generally smaller than 24 feet in length). Boat storage for vessels larger than 24 feet long is already considered a water dependent use.

95. COMMENT: Please explain the insertion of the term "spring tide," which is a new term that has appeared as a substitute for the "mean high water line." (97)

RESPONSE: The Department has proposed to use the "spring high water line" when making decisions involving water area filling, in an effort to limit disturbance to the intertidal zone. This term will not be used to determine the limits of jurisdiction under CAFRA or other coastal permit programs, but will only be used to set development standards once jurisdiction exists.

96. COMMENT: We would like to have the definition of "development" changed to exclude reconstruction for storm damage. (65)

RESPONSE: Reconstruction of buildings destroyed or damaged by storms does not need a CAFRA permit, and this language has been clarified on adoption in the definition of "development." The definition of "development" contained in the rules replicates the definition contained in the CAFRA amendments enacted by the Legislature. Explicit exemptions from CAFRA for reconstruction of storm damaged structures are contained in the Coastal Permit Program Rules (N.J.A.C. 7:7) which define the Department's jurisdiction under CAFRA, as well as the Waterfront Development Law and Wetlands Act of 1970.

Subchapter 3 Special Areas

97. COMMENT: The Special Areas rules are a key ingredient of the Program's protection of the environment and should be left intact. However, the Location, Use and Resource sections could be greatly reduced to clarify standards, thereby avoiding needless review and comment as well as duplication of jurisdiction with other agencies. (86)

RESPONSE: The revisions to the Rules on Coastal Zone Management include specific standards wherever such standards were able to be developed. However, the many variables related to site constraints and development impacts often preclude the development of definitive standards for all rules.

N.J.A.C. 7:7E-3.1 Introduction

98. COMMENT: We are concerned with the Department's proposed revision to the definition of special water areas such that they now extend landward to the "spring high water line" as opposed to the mean high water line. The NJBA requests the Department to explain the significance of this change and to describe what type of impact it would have on development potential. (45, 63)

RESPONSE: This proposed change will result in the increased protection of areas which are flowed by spring tides, which occur twice a month (full moon and new moon). However, the effect of the revision will be limited to developments such as bulkhead construction and water area filling, where the siting of a proposed bulkhead would be affected. The difference in tidal range between mean and spring ranges from 0.1 foot for Barnegat Bay to 0.9 feet for the open ocean. Given the topography of these areas, the relative change in range from mean to spring is not likely to significantly impact upland development. This change may affect development, particularly new bulkhead construction, in cases which require filling below the spring high tide line.

N.J.A.C. 3.2 Shellfish Habitat Rule

99. COMMENT: In general, we support the proposed rules that address protection of shellfish beds and aquatic vegetation and their relationship to docks, slips, marinas and new and maintenance dredging. However, we recommend that N.J.A.C. 7:7E-3.2(a) be amended to allow for the protection of subtidal areas that may not be productive now nor have a history of productivity but could be productive in the future (because of restoration, for example). Our rationale is that bay and river bottom that appears hopeless now may be considered productive later, and it is better to protect such areas than to give up on them. (10)

RESPONSE: In an effort to balance the competing need for use of these water areas the Department has focused on areas which currently represent Special Area Habitat or have historically been classified as special areas. Extension of restrictions to other water areas is dependent upon documentation that these areas represent sensitive environmental habitat.

100. COMMENT: This section should be revised to include an exception and thereby allow some flexibility regarding shellfish habitat. It may be necessary to dredge new navigation channels as a result of bridge construction or relocations, and it may be desirable or necessary to relocate or mitigate the habitat when there is no feasible or practicable alternative. (127)

RESPONSE: While the commenter's suggestion has merit, the Department cannot make such a substantial change on adoption. The Department will take this comment under consideration if it proposes amendments to these rules in the future.

101. COMMENT: Will all waterfront development applications be prohibited in productive or historically productive shellfish beds? (158)

RESPONSE: No. Only those projects which would result in the destruction, condemnation or contamination of shellfish habitat as defined in N.J.A.C. 7:7E-3.2 would be prohibited. The rule conditionally allows for the construction of public fishing piers owned and controlled by a public agency for the sole purpose of providing access for fishing, and allows construction in waters which have been classified as "Prohibited" for the purpose of harvesting shellfish. In addition, the rule

conditionally allows new dredging in shellfish habitat when it is necessary to maintain the use of public launching facilities (ramps) with 25 or more trailer parking spaces or marina facilities with 25 or more dockage units, consisting of either dry dock storage or wet slips; new dredging for existing marinas; maintenance dredging; and new dredging adjacent to shellfish habitat and development required for national security.

102. COMMENT: What is a historically productive bed? Back to the beginning of time, or back to the implementation of the Waterfront Development Law and Rules on Coastal Zone Management? (158)

RESPONSE: A historically productive bed (habitat) is a habitat that has a history of natural recruitment for one or more of the designated species, as shown on available data on the 1963 Distribution of Shellfish Resources in Relation to New Jersey Intracoastal Waterway or recent data made available to the Department. Natural recruitment is the addition of new individuals to a population as a result of successful spawning, settlement and survival.

103. COMMENT: Can the NJDEPE impose restrictions on areas prior to the enactment of laws which regulate them? (158)

RESPONSE: In general, development which existed prior to the enactment of the Rules on Coastal Zone Management (N.J.A.C. 7:7E) is "grandfathered" and therefore can be maintained under the rules. Additionally, what is referred to as the Zane Amendments to the Waterfront Development Law (N.J.S.A. 12:5-3) permit the repair, replacement or renovation of a permanent dock, wharf, pier, bulkhead or building existing prior to January 1, 1981, provided the repair, replacement or renovation does not increase the size of the structure and the structure is used solely for residential purposes or the docking or servicing of pleasure vessels. The Zane Amendments also allow the repair, replacement or renovation of a floating dock, mooring raft or similar temporary or seasonal improvement or structure that does not exceed in length the waterfront frontage of the parcel of real property to which it is attached and is used solely for the docking or servicing of pleasure vessels.

104. COMMENT: Does the DEPE have proof that certain areas are indeed historically productive? Are these areas mapped? Are these maps readily available to the public? (158)

RESPONSE: An area is determined to have a history of natural shellfish production based on the data available to the New Jersey Bureau of Shellfisheries, or if depicted as having high or moderate commercial value in the "Distribution of Shellfish Resources in Relation to the New Jersey Intracoastal Waterway" (US Department of the Interior, 1963); "Inventory of New Jersey's estuarine Shellfish Resources" (Division of Fish , Game and Wildlife, Bureau of Shellfisheries, 1983-present); and/or the "Inventory of Delaware Bays Estuarine Shellfish Resources (Division of Fish, Game and Wildlife, Bureau of Shellfisheries, 1993). These maps are available from the Division of Fish, Game and Wildlife, Bureau of Shellfisheries.

105. COMMENT: Does the historical presence of recreational docks and piers have any bearing on the continued use of a waterbody? It appears that the NJDEPE is putting more emphasis on the historical use of an area as a shellfish bed. Is the public need for recreational boat mooring and access to the water no longer important to the State? (158)

RESPONSE: If a dock or pier existed at a site without interruption before the enactment of the regulations, and the applicant applies to "legalize" the dock, the dock is considered to be "grandfathered" and is in most cases approved; the water under such a dock will always be considered prohibited for the purpose of harvesting shellfish. The public need for recreational boat mooring is important to the State, as is preserving open space for the baymen of the state who rely on these waters for a living and not for recreational activities. In addition, the State's Shellfish-Growing Water Classification Standards (N.J.A.C. 7:12-1) provide that "the restoration of saline waters to levels which permit unrestricted shellfish harvesting is an objective of the Department," and the State's water quality antidegredation policy provides that "Existing uses shall be maintained and protected . . ." Such existing uses include the use of waters as shellfish habitat. N.J.A.C. 7:7E is intended to address conflicting uses of coastal resources, including the inherent conflict between use of waters for shellfish versus use of water for boats.

106. COMMENT: Shellfish beds are located along the filled water's edge, special water's edge areas. Does this have any bearing on whether waterfront improvements can take place in the waterbody? For example, what is the difference between a bulkheaded filled water's edge area and a natural water's edge and water body? Does the location of development or the surrounding existing structures have any bearing on the review of the application? Is the review of the application going to be done on a case-by-case basis? Will it be site specific? (158)

RESPONSE: The location of development and the surrounding existing structures do not have a direct bearing on the review of the application. However, the shellfish growing water classification (N.J.A.C. 7:12) of the waterbody may be affected by existing development. The review of applications is done on a case-by-case basis and is site specific.

107. COMMENT: Why is the use of a waterbody by a shellfisherman more important than use by a recreational boater? By limiting waterfront improvement in certain areas the State is ultimately restricting use from the public. Both interests promote economic growth in New Jersey. (158)

RESPONSE: The State does not restrict the use of waterways by recreational boaters. However, by limiting dock construction, more water area will be provided for both recreational boaters and for shellfishermen.

108. COMMENT: Tourists flock to the Jersey coast in summer months for water access. Prohibiting access in some areas will discourage the purchase of the upland portion of these restricted properties. Is this a concern of the State? The boating population is not going to decline in the state. Where are these people going to go? Does the NJDEPE have an alternative solution to meet the demands of the boating public? Public marinas are in great demand in the State as well. In fact, many marinas have a two to three year waiting list for mooring slips. All citizens have a right to safe, ample reasonable access to New Jersey coastal waters, but by imposing such harsh restrictions the NJDEPE is prohibiting access. Is this a concern of the NJDEPE? (158)

RESPONSE: The amendments to N.J.A.C. 7:7E-3.2 do not prohibit water access, but serve to limit certain development activities, including dock construction, within environmentally sensitive shellfish habitat areas. Such habitat protection efforts will ultimately improve tourism since visitors are more likely to vacation in an area with clean waters approved for shellfish harvesting. Thousands of recreational shellfishermen enjoy the benefits of the State's clean, productive estuaries each year; clamming, crabbing, fishing, swimming, boating and a multitude of other activities attract tourists to the New Jersey shore. In addition, the rule conditionally allows new dredging in shellfish habitat when it is necessary to maintain the use of public launching facilities (ramps) with 25 or more trailer parking spaces or marina facilities with 25 or more dockage units, consisting of either dry dock storage or wet slips; new dredging for existing marinas; maintenance dredging; and new dredging adjacent to shellfish habitat and development required for national security. Thus, the rule does not prohibit access for boaters but seeks to accommodate boaters, shellfishermen, and other members of the public.

109. COMMENT: Has the State evaluated which interest generates the most economic growth in the State, shellfisherman and shellfish or tourism? (158)

RESPONSE: No clear data exists to distinguish between the economic benefits of the shellfish industry and the benefits of the tourism industry. Clean waters benefit the tourism industry and also the shellfish industry through the upgrading of water quality classifications of shellfish waters. Recreational and commercial shellfishing are an important component of New Jersey's tourism industry and have contributed $15 to 18 million annually to the State's economy. With habitat protection, these benefits will continue indefinitely, but without such protection, both the shellfish industry and that component of the tourist trade that utilizes the shellfish resource for recreation will decline.

110. COMMENT: Overall the general public is concerned with shellfish as a State resource. But has the Department considered protecting the shellfish? Under the new regulations, the existence of docks and piers will prohibit shellfish harvesting below the structures. These "condemned areas" which are still productive will enhance replenishment of the surrounding waterbody. Shellfisherman have been known to deplete entire beds in short periods of time. In addition, shellfishermen have been known to harvest between and below the docks and piers and use long rakes to reach below structures. A majority of waterfront homeowners remove ramps and floats in the winter months. A majority of shellfish beds are open for harvest the same months in which structures are removed from the water. Has the NJDEPE considered conditioning waterfront development permits so the structures are removed in the off season, thus seasonally affecting the "condemnation" of waters below the structure? (158)

RESPONSE: The State has the responsibility to protect public health. State regulation prohibits shellfishermen from harvesting directly under

mooring structures, even when boats are not moored there. The seasonal removal of floating docks does not eliminate the potential threats to human health, since a variety of boating related pollutants become incorporated in the sediment around docks and will remain even if the floating docks are removed at the end of the summer boating season. The State has regulations to protect the shellfish resource and is constantly working with the Shellfisheries Councils and industry members to maintain and enhance this resource. Contrary to the commenter's statement, the removal of structures on a seasonal basis does not result in an upgrading of the shellfish growing water classification under N.J.A.C. 7:12.

111. COMMENT: If shellfishermen so commonly harvest between structures or the State feels there is a need to harvest below them, there is clearly a limited shellfish resource in the open water areas. What is the State doing to protect the resource? Are harvest yields restricted? (158)

RESPONSE: The harvesting of shellfish directly under mooring structures, even when boats are not moored there, is prohibited in accordance with State law. The shellfish habitat rule is designed to protect the shellfish resource through the regulation of certain activities within areas defined as shellfish habitat. Currently, the State protects the shellfish resource in a variety of ways including placing limits on harvesting. Individuals with recreational clamming licenses are limited to harvesting no more than 150 clams per day per individual and cannot sell the clams. Commercially licensed clammers may sell their harvest to certified dealers only. Commercial clammers are not limited to the amount of clams harvested per day, however the clams harvested must be a minimum of one and one half inches in length.

112. COMMENT: Does the NJDEPE realize the demand for recreational boating and access to New Jersey coastal waters? In addition, once the public knows where productive and historically productive shellfish beds are located, there will be a decline in waterfront development applications submitted to the State. Is this a concern? (158)

RESPONSE: The Department acknowledges that there is a demand for recreational boating and access to New Jersey's coastal waters. As a result, the shellfish habitat rule allows specified facilities which are geared to meet the needs of New Jersey's boaters.

113. COMMENT: Both uses (shellfish beds and recreational boating and docks and piers recreational) have co-existed for many years. Why can't they continue to co-exist? (158)

RESPONSE: The Department has regulated both uses for years attempting to strike a proper balance between them. The shellfish habitat rule as proposed does allow both uses to co-exist. In areas which meet the definition of shellfish habitat, the resource is protected and docks are generally prohibited; however, public fishing piers owned and controlled by a public agency for the sole purpose of providing access for fishing are allowed, and docks are allowed in waters which have been classified as "prohibited" for the purpose of shellfish harvesting. The rule also conditionally allows new dredging in shellfish habitat when it is necessary to maintain the use of public launching facilities (ramps) with 25 or more trailer parking spaces or marina facilities with 25 or more dockage units, consisting of either dry dock storage or wet slips; new dredging for existing marinas; maintenance dredging; and new dredging adjacent to shellfish habitat and development required for national security. Thus, the rule does not prohibit access for boaters but seeks to accommodate boaters, shellfishermen, and other members of the public.

114. COMMENT: Has the DEPE carefully examined the coastline and considered condemning harvesting along the perimeter of the filled waters edge or tidal marsh area? (158)

RESPONSE: The Department has not considered condemning harvesting along the perimeter of the filled water's edge or tidal marsh area. Harvesting in these areas poses no threat to public health and the Department wants to preserve the ability to harvest shellfish.

115. COMMENT: Denying the use of waterfront structures will encourage illegal boat mooring. In summer months the barrier island bayfront is lined with boats and will be used for mooring regardless of the restriction on structures in these areas. Citizens will access the upland via the bow of the boat over the bulkhead or across the marsh. Is the NJDEPE concerned about the safety of the citizens who have a right to access the water for recreational boating, watersport, fishing and crabbing? (158)

RESPONSE: The issue of illegal boat moorings is currently being pursued by the Department's Bureau of Tidelands Management. Steps are currently being taken to bring large illegal mooring fields into compliance with the rules. In addition, moorings are not inherently unsafe and are routine practice in other parts of the country.

116. COMMENT: I support the rule proposal which addresses shellfish habitat in relation to development in the Coastal Zone. The shellfish resources in the waters of New Jersey are in need of protection because of the lack of significant stock replenishment through natural processes. The unstopped pollution by vessel waste and leaching of toxic chemicals into our estuaries must end. (47)

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

117. COMMENT: The Atlantic Coast Shellfish Council, with members appointed by the Governor to advise the Commissioner on shellfish matters, supports the proposed amendments to N.J.A.C. 7:7E-3.2 as they will ultimately benefit the State's shellfish resource and industry. (7)

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

118. COMMENT: The New Jersey Shellfisherman's Association extends its support for the proposed amendments to the Shellfish Habitat Rule. We believe the proposed amendments will provide increased protection for the State's shellfish resources by more clearly defining shellfish habitat and the activities which can or cannot occur in this special areas. As such, the amended rule will benefit both the shellfishermen utilizing these resources and development interests since permit applicants will know from the outset whether or not an area proposed for development contains shellfish habitat. This should greatly reduce the number of court challenges associated with permit denials. (93)

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

119. COMMENT: We acknowledge and commend the drafting of rules which accommodate limited public docks, marina facilities, and launching facilities in shellfish habitat areas. (157, 48, 42)

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

120. COMMENT: The NJBA objects to the limitations that are placed on boaters since it will result in an unjustified adverse economic impact on builders and lot owners who will be unable to expand their docks. (45)

RESPONSE: The construction or expansion of docks within shellfish habitat is currently prohibited. Therefore, no additional impacts to builders and lot owners will occur on the basis of the amendments.

121. COMMENT: The NJBA questions the link between the use of recreational boats and contamination of the coastal waters. We are aware of more episodes of water pollution caused from agricultural and animal management practices than from recreational boating. (45)

RESPONSE: Agriculture can have a significant impact on water quality and the DEP and Department of Agriculture are working to minimize the problem through stormwater and other non-point source management efforts. At the same time, there is an inherent conflict between shellfish habitat and water quality protection and boating related activities, such as mooring and dredging, though both are important water-dependent activities in New Jersey. Mooring facilities are a source of pollution with a high potential for improper disposal of human waste. Shellfish grown in or near marinas and docks are unsafe for human consumption due to potential health threats associated with pollution generated as a result of leaching toxic chemicals from waterfront construction materials and boat-related pollutants, and human waste disposed in close proximity to these marinas and docks. Shellfish readily bioaccumulate and concentrate toxic substances and pathogenic microorganisms within their tissue which poses a human health risk. Due to the potential health threats associated with shellfish grown in polluted waters, shellfish are prohibited from being harvested for human consumption near mooring activities. Dredging activities typically disturb and degrade habitat environment.

Motor fuels can be released into the aquatic environment via the operation of boat engines, fuel spills and bilge pumping. The effects of petroleum hydrocarbons on fish and shellfish include direct lethal toxicity, sublethal disruption of physiology, behavior and bioaccumulation, and development of an unpleasant taste to edible species. Motor fuels and exhaust often contain lead, cadmium, zinc and other heavy metals. Heavy metals have been shown to cause suppression of growth or death of eggs, embryos and larvae of hard clams. In addition, such contaminants are known to cause a variety of sublethal effects,

including inhibited feeding behavior, retarded shell growth, and depression of cardiovascular function and respiration in various species of shellfish.

Boat maintenance operations can also have adverse impacts to estuarine organisms. Detergents used to wash boats can be toxic to fish and invertebrates and may contribute to elevated nutrient levels particularly phosphorous. Toxins from various antifouling paints are harmful to shellfish and other invertebrates.

122. COMMENT: The proposed changes at N.J.A.C. 7:7E-3.2(b) regarding shellfish habitat delete the term "national interest" and insert "national security." This is not consistent with the Coastal Zone Management Act of 1972, which requires that adequate consideration be given to the national interest involved in planning for, and in the siting of, facilities which are necessary to meet requirements which are other than local in nature. (41)

RESPONSE: Upon further review of this issue, the National Ocean and Atmospheric Administration has determined that the reference to "national security" contained in the amendments provides that adequate consideration will be given to the national interest involved in planning for, and in the siting of, facilities which are necessary to meet requirements which are other than local in nature.

123. COMMENT: The Department proposes to define shellfish habitat based on a density of .20 shellfish per square foot. There are several problems inherent in this definition. The rule proposal summary states that this density has been "... deemed viable for commercial harvesting." It would be helpful to know what reports or studies were utilized to make the determination, if any. Without these citations, it is impossible for the regulated community to scientifically evaluate the density requirements and the foundation for those densities. (53)

RESPONSE: N.J.A.C. 7:7E-3.2(a) defines a shellfish habitat area as an area which meets one or more of four criteria. The density classification of equal to or greater than .20 shellfish per square foot was determined through literature searches of hard clam stock assessments throughout the country and compared with the cited densities to the harvest in Northern Monmouth County under the State sanctioned hard clam relay program. Observations of commercial clammers through the Estuarine Inventory Program were also used in the density determination. The following reports and studies were used to aid in this determination: Cole, R.W., and L.W. Spense, Jr., 1979. Shellfish Survey of Rehobath Bay and Indian River Bay. Appendix B in Shellfisheries Management Plan for Indian River, Indian River Bay and Rehobath Bay. Department of Natural Resources and Environmental Control, Division of Fish and Wildlife; Fox, R.E., 1980. Investigation of the hard clam resource of Great South Bay, New York. Completion Report for the period July 15, 1976 to March 31, 1979, 47 p.; Hickey, J.M., 1983. Shellfish Technical Assistance Management Planning. Completion Report for the period of January 1, 1978 to December 31, 1981.96 p.; Kovach, K.A. and M.T. Canario, 1986. Shellfish survey Quonset Point Area. Leaflet No. 25. Rhode Island Department of Natural Resources, Division of Conservation, Marine Fisheries. 10 p.; Ropes, J.W. and C.E. Martin, 1958. The abundance and distribution of hard clams in Nantucket Sound Massachusetts, 1958. Special Scientific Report-Fisheries No. 354. U.A. Department of the Interior, Fish and Wildlife Service, 12 p.; and, Wells, H.W. 1957. Abundance of the hard clam, *Mercenaria mereanaria,* in relation to environmental factors. Ecology, Vol. 38, No. 1 pp. 123-128.

124. COMMENT: The Department does not propose a lower limit on the size of an area which would be considered shellfish habitat. Logic dictates that, in addition to density limitations, there must be some minimal size of bed below which commercial viability is restricted. The proposed density limits do not take into consideration the maturity of the shellfish sampled. Since the spawn of shellfish are waterborne, an area may have a high relative abundance of immature individuals, with few to none of those expected to reach commercially desirable size. Any density requirement proposed should specify that densities of shellfish include only those of a harvestable size. (53)

RESPONSE: The density of equal to or greater than .20 shellfish per square foot is based solely on adult sized hard clams. Commercial clammers are restricted to harvesting hard clams which are a minimum of one and one half inches in length, which protects the immature individuals from being harvested. There is no minimum size of shellfish bed below which commercial viability is restricted, because even small beds may be used by recreational clammers. Given the decrease in harvestable shellfish resource over the past decades, there is a need to protect all shellfish habitats.

N.J.A.C. 7:7E-3.5 Finfish migratory pathways

125. COMMENT: The rule concerning finfish migratory pathways (N.J.A.C. 7:7E-3.5) requires mitigation for development which would result in entrainment of fish eggs, larvae or juveniles. The rules should provide for some exemption for cooling water intakes, which are specifically regulated under Section 316(b) of the Clean Water Act. (138)

RESPONSE: The Department is concerned that the loss of fish eggs, larvae and juveniles will adversely affect the continued viability of finfish in the affected waterways. Therefore, mitigation for this loss is consistent with the goal of protecting diadromous fish and the rule has not been revised as requested. Section 316(b) of the Clean Water Act requires cooling water intakes to use the best technology available. The Department does not believe this requirement precludes it from requiring mitigation when development entrains fish eggs, larvae and juveniles.

N.J.A.C. 7:7E-3.6 Submerged vegetation

126. COMMENT: The submerged vegetation rule should be modified to allow for the limited disturbance of submerged vegetation. (45, 63)

RESPONSE: The submerged vegetation rule conditionally allows the construction of utility pipelines and submarine cables, new dredging for State and Federal navigation channels, maintenance dredging of previously authorized, existing State and Federal navigation channels, new and maintenance dredging of previously authorized operating marinas and necessary access channels and existing launching facilities with 25 or more dockage, storage or trailer parking units, maintenance dredging to regain access to existing private docks, piers, boat ramps and mooring piles, construction of single non-commercial dock or pier, and the extension of existing piers or floating docks. Therefore, the rule does allow limited disturbance of these areas.

127. COMMENT: The Department should document the benefits of submerged vegetation and state how much eelgrass New Jersey needs. (45)

RESPONSE: New Jersey's estuarine waters are relatively shallow, rich in nutrients and highly productive. The submerged vegetation of these shallow waters serve important functions as suspended sediment traps, important winter forage for migratory waterfowl, nursery areas for juvenile finfish, bay scallops and blue-claw crabs, and by nourishing fishery resources through primary biological productivity through detrital food webs in a similar manner to salt marsh emergent cord grasses. In addition, submerged vegetation absorbs wave energy and the root networks help stabilize silty bay bottoms. The value of seagrasses was dramatically illustrated during the 1930's when a disease epidemic virtually eliminated eelgrass from the eastern U.S. Atlantic ocean coastline. The number of finfish, shellfish, and waterfowl drastically decreased, threatening their survival. Therefore, protection of submerged vegetation habitat is critical to continued productivity of New Jersey's estuarine waters and to commercial and recreational fishing and shellfish industries.

128. COMMENT: The submerged vegetation policy conflicts with the policy on shellfish beds which also are located in shallow waters. The Department should allow land owners to build docks in areas with existing commercial marinas since eel grass and shellfish are not viable in these areas anyway. (45, 63)

RESPONSE: The shellfish habitat and submerged vegetation rules protect the resources where present, however, if the Department is provided with clear and convincing evidence that a part of a site lacks the physical characteristics necessary for supporting the resource, these areas would be excluded from the definition of this Special Area.

N.J.A.C. 7:7E-3.7 Navigation channel rule

129. COMMENT: The proposed changes to N.J.A.C. 7:7E-3.7(b)4 prohibiting construction in navigation channels may affect consideration of the national interest in project review. This is not consistent with the Coastal Zone Management Act of 1972, which requires that adequate consideration be given to the national interest involved in planning for, and in the siting of, facilities which are necessary to meet requirements which are other than local in nature. The Office of Ocean and Coastal Resource Management and DEPE should discuss the rationale and background for the proposed revisions, and possible implications for activities such as temporary construction or dredging in navigation channels. (41)

RESPONSE: The Department has discussed this issue with representatives of Office of Ocean and Coastal Resource Management and determined the proposed amendments at paragraph (b)1 provide

for the dredging of navigation channels. Additionally, the Department believes that the rule as adopted provides adequate flexibility to conditionally allow for temporary construction and dredging in and adjacent to navigation channels.

N.J.A.C. 7:7E-3.15 Intertidal and Subtidal Shallows

130. COMMENT: N.J.A.C. 7:7E-3.15(b)3 states that submerged infrastructure is conditionally acceptable and that directional drilling to installation of submerged infrastructure is preferred to trenching. Atlantic Electric is familiar with directional drilling and has included the evaluation of that technique in analyses of alternatives for projects involving the installation of submarine cables. However, directional drilling may not always be the preferred alternative over trenching, based on technology limitations and cost comparisons. (14)

RESPONSE: The Department has clarified the language at N.J.A.C. 7:7E-3.15(b)3iii on adoption to require directional drilling "where feasible."

N.J.A.C. 7:7E-3.16 Dunes

131. COMMENT: The possibility of the dune district becoming public property without any monetary compensation for the property is totally unacceptable. (109)

RESPONSE: There is no provision in the current or proposed rules to establish a dune district under public ownership without monetary compensation.

132. COMMENT: To be consistent with the Act, the Department should clarify that single-family homes can be reconstructed on dunes within the existing footprint. (45)

RESPONSE: The Department agrees. Requirements and jurisdictional issues associated with the reconstruction of developments are addressed in the Coastal Permit Program Rules (N.J.A.C. 7:7). Both those rules and the 1993 legislative amendments to CAFRA provide that any development, including single family homes, damaged by storms or other acts of God can be reconstructed within the existing footprint.

133. COMMENT: We are concerned with the Coastal Zone Management rules for Dunes (N.J.A.C. 7:7E-3.16), Overwash Areas (N.J.A.C. 7:7E-3.17), and Coastal High Hazard Areas (N.J.A.C. 7:7E-3.18). Depending on where the inland limit of the dune is placed, which is an unsettled issue under FEMA's definition of dunes, overwash areas, and coastal high hazard areas in the Borough of Surf City could encompass an area going from the ocean to Central Avenue. The Coastal Zone Management rules specifically prohibit residential development in those areas. Now that single-family residential construction and reconstruction has been defined as residential development, these developments are therefore now prohibited in the Borough of Surf City from Central Avenue to the ocean. (65)

RESPONSE: The rules on Dunes (N.J.A.C. 7:7E-3.16), Overwash Areas (N.J.A.C. 7:7E-3.17) and Coastal High Hazard Areas (N.J.A.C. 7:7E-3.18) do not prohibit all development in these areas. Rather, the Dunes and Overwash Areas rules prohibit development unless there is a feasible alternative and development will not cause a significant adverse long-term impact on these areas. In addition, the Coastal High Hazard Areas rule specifically allows for the construction of single family and duplex infill developments, subject to the standards of N.J.A.C. 7:7E-7.2(e). Moreover, reconstruction of development that is damaged by storm, fire or act of God is exempt from CAFRA under the CAFRA amendments enacted in 1993 and the rules implementing those amendments. Finally, except for the first structure in from the water's edge, development of less than three houses is exempt from CAFRA.

134. COMMENT: It will be difficult to have everyone agree where the primary frontal dune is based on the definition found at N.J.A.C. 7:7E-3.16. As the prosecutor of Surf City, I believe it will be impossible to definitively define that area when development occurs when you're trying to define a steep slope to a judge, particularly where a person has been charged with violating the NFIP regulations. We as a municipality are encouraged to enforce these rules, which should be more understandable. (64)

RESPONSE: The Department routinely conducts site inspections to delineate dune areas, to conduct permit reviews and to provide technical assistance to municipalities and property owners. Department experience in this area has shown that State and municipal officials usually agree on dune delineations and they do not result in major discrepancies between Department staff and property owners.

N.J.A.C. 7:7E-3.17 Overwash areas

135. COMMENT: All references to corollary State and Federal regulations within such rules as overwash zones and high hazard zones should be deleted to ensure the Constitutional rights of private property ownership are not violated. (83, 59)

RESPONSE: The Rules on Coastal Zone Management make reference to a number of State and Federal regulations which affect development in the coastal zone. These referenced regulations constitute existing laws which are designed to protect the health, safety and welfare of coastal residents, to protect the developed properties in vulnerable coastal areas and to protect the sensitive and unique environmental resources of the coastal zone. The Department believes that it is appropriate to refer to other applicable laws within the Rules on Coastal Zone Management, in order to provide additional notice of those requirements to affected persons and to promote consistency between local, State and federal governmental actions.

136. COMMENT: I protest that part of your proposed amendments to the CAFRA rules and regulations that would prevent rebuilding or even repair after a flood or storm along the developed New Jersey coast, or the "hazily" defined "overwash" area back from the shoreline. (169)

RESPONSE: Rebuilding of flood or storm damaged structures is exempt from the requirements of CAFRA under all circumstances. This exemption is included in the 1993 legislative amendments to CAFRA and in the Department's procedural rules on coastal permit application, N.J.A.C. 7:7.

137. COMMENT: There has been serious confusion over N.J.A.C. 7:7E-3.17, which concerns overwash areas. The problem arises because the determination of an overwash area is to be made through use of a "design dune." The description of a "design dune" proposed at N.J.A.C. 7:7E-3.16(a)7c could be interpreted in a way that would label all of Long Beach Island and much of the Island Beach Peninsula as an overwash area where development would be prohibited. (5)

RESPONSE: The definition of an "overwash area" has been part of DEP's rules for a number of years and is not proposed for revision through this rule amendment, with the exception of minor clarifications. The "design dune" referenced in the overwash rule will not be used to determine or define an overwash area. Rather, the reference to a "design dune" in this rule is included to indicate that if mitigation is proposed in order to develop in an overwash area, mitigation via the creation of a "design dune" may be appropriate (N.J.A.C. 7:7E-3.17(c)).

138. COMMENT: The NJBA requests that the section on Overwash Areas be deleted since its components are already addressed in other sections dealing with coastal high hazard areas and erosion hazard areas. Please explain why these overwash areas should be treated as an environmentally sensitive feature due to the developed nature of the New Jersey coast. (45)

RESPONSE: Overwash areas, coastal high hazard areas and erosion hazard areas are not identical, although each of these areas are areas in which the ocean can cause significant property damage. Therefore, the requirements for development acceptability in these areas are not the same. Specifically, overwash areas are areas which are subject to the accumulation of significant amounts of sand, landward of the beach or dune, deposited by waves. Therefore, overwash areas represent locations where the potential for storm waves, flooding and associated damages is high. Overwash, particularly at street-ends, has been documented by the Department and the Federal Emergency Management Agency (in the New Jersey Hazard Mitigation Plan) as a serious storm hazard. The overwash problem is greatest along the more highly developed portions of the coast, where storm evacuation is a critical concern to emergency management operations, because overwash can impede evacuation.

139. COMMENT: With respect to the definition of overwash area, N.J.A.C. 7:7E-3.17 states that "aerial photography may be used to identify the extent of the overwash area." Will the DEPE continue to use 1962 photos to delineate the extent of the overwash? If so, how will that affect development applications for these areas if the areas also fall within 150 feet of a dune? In the 1962 storm, the majority of all the coastal islands were overwashed. We need newer photos to rely on now, and we should be given the findings of the 1992 draft assessment for Section 3031 of the Coastal Dune Management Act. Will the DEPE policy be one of protection or restraints at the Jersey shore? (110, 144)

RESPONSE: The Department now has obtained aerial photography of the entire New Jersey oceanfront taken in the days immediately following the December 1992 coastal storm. These photographs will be used as the primary data source to determine the extent of overwash

areas. The DEPE's policy is to create and protect dunes as the cheapest and most effective form of shore protection, to fund other shore protection efforts as funds permit and to minimize the amount of new development built in hazardous locations. The Department is not aware of a "Coastal Dune Management Act."

140. COMMENT: Would each municipality have to come up with our own aerial photos? (110)

RESPONSE: The Department will allow any interested persons the opportunity to review the December 1992 post-storm aerial photography. In addition, these photos are available for purchase from Keystone Aerial Surveys, Philadelphia, PA.

141. COMMENT: The prohibition on construction of all residential or commercial development in an overwash zone raises grave questions about both property ownership and the adverse taking of property by regulation. (27)

RESPONSE: The standards for construction of single family homes and duplexes (N.J.A.C. 7:7E-7.2(e)) provide that the overwash rule does not apply to these developments. For larger developments, the current and proposed rule does not prohibit all development in these areas, but does prohibit development which has a prudent or feasible alternative and which will have a significant adverse long-term impact on the natural functioning of the beach and dune system.

142. COMMENT: Under the criteria for an overwash zone, new construction including new residential development is prohibited. Also prohibited are landscaping with nonindigenous species such as planting a lawn, installing gravel or paved driveways, or even putting on a new door or window in an existing home. The overwash zone area established by FEMA prohibits swimming pools, garages, and outbuildings, as well as site work grading, and construction of commercial properties. (27)

RESPONSE: The overwash area is neither defined nor established by FEMA. The definition of "Overwash Areas" at N.J.A.C. 7:7E-3.17 has been amended only slightly from what has been in place for years to clarify how these areas are defined, but the procedure for defining and delineating these areas has not been amended. The current and proposed rule does not prohibit all development in overwash areas, but does prohibit development which has prudent or feasible alternative and which will have a significant adverse long-term impact on the natural functioning of the beach and dune system. Also, the reconstruction of infill single family homes and duplexes is not subject to the overwash rule.

143. COMMENT: The Coastal High Hazard Area rule (N.J.A.C. 7:7E-3.18) has specific exemptions for single family/duplex homes. Why aren't the same exemptions provided under the Overwash Area rule (N.J.A.C. 7:7E-3.17)? (64)

RESPONSE: They are. The standards relevant to the construction of single family and duplex residential developments at N.J.A.C. 7:7E-7.2(e) specifically indicate that compliance with the overwash areas rule will not be required for these infill developments.

144. COMMENT: N.J.A.C. 7:7E-3.16 of the Rules on Coastal Zone Management states that in the absence of dunes that meet FEMA standards of 540 square feet above base flood elevation, this area is declared as an overwash zone. Virtually all of Long Beach Island and the barrier island community within Northern Ocean County will undoubtedly fall into that category and a subsequent regulatory nightmare is therefore possible under these rules. (27)

RESPONSE: The current and the proposed rules do not provide that an area is an overwash zone unless it has dunes which meet the FEMA standard. Rather, the proposed amendment to N.J.A.C. 7:7E-3.17, Overwash areas states that the FEMA dune standards will be applied to evaluate the overwash potential in a defined overwash area. As stated in the rule, the FEMA "design dune" will be used as a standard in cases where dune construction is proposed to mitigate overwash potential. However, the "design dune" will not be used to determine if an overwash area exists in the first place.

145. COMMENT: Under my interpretation of the overwash area rule, if an area is not a dune that complies with the NFIP standards and the FEMA requirements it could be an overwash area. There are no dunes complying with that standard on Long Beach Island; therefore we are in an overwash area and no development is permitted at all, especially single-family and multi-family homes. (64)

RESPONSE: As stated in response to the previous comments, overwash areas are not defined by FEMA in the National Flood Insurance Program (NFIP) Regulations and the definition of "overwash areas" at N.J.A.C. 7:7E-3.17 is not based on the existence or lack of existence of a FEMA "design dune." The current and proposed rule does not prohibit all development in an overwash areas, but does prohibit development which has a prudent or feasible alternative and which will have a significant adverse long-term impact on the natural functioning of the beach and dune system. Moreover, the rule containing standards for construction of single family homes and duplexes (N.J.A.C. 7:7E-7.2(e)) provides that such infill development is not subject to the overwash rule.

N.J.A.C. 7:7E-3.18 Coastal High Hazard Areas

146. COMMENT: The Department should allow development to proceed in a V-zone provided it is consistent with FEMA standards and the BOCA code. (45)

RESPONSE: The current Coastal High Hazard Areas rule includes a provision to allow limited developed in these areas, specifically single family and duplex infill developments and beach use related commercial development, subject to certain conditions. FEMA and BOCA establish standards for construction in the flood hazard area, while the Rules on Coastal Zone Management establish land use standards as well.

147. COMMENT: The Coastal High Hazard Area maps or FIRM maps are not dimensionally accurate. Therefore, if property is regulated based on the boundaries shown on that map, a land surveyor will be needed to tell someone where that line is relative to his or her property. (65)

RESPONSE: The Flood Insurance Rate Maps (FIRMs) prepared by the Federal Emergency Management Agency (FEMA) include the delineation of flood hazard areas for each municipality which are used to establish insurance rates for National Flood Insurance. These maps are not used and are not proposed to be used by the Department to determine regulatory boundaries within a specific property. The maps are referenced under the Coastal High Hazard Areas rule (N.J.A.C. 7:7E-3.18) as the data source which will be used to determine the limits of the coastal high hazard areas. The Department will evaluate FIRM to determine whether a proposed development site is located within a coastal high hazard area. In certain cases an environmental consultant or engineer may be required to plot the line on the site plan to be submitted to the Department.

148. COMMENT: Why isn't a town which is behind a 10-foot sea wall in a V zone? It seems that those towns should be V zone towns and that in some instances the Department is making life tougher on people who have worked hard to maintain natural dunes and easier on people who have ignored the dune system and built a sea wall instead. (10)

RESPONSE: The definition of V-zone and the delineation of these areas are based on the National Flood Insurance Program (NFIP) Regulations. The Coastal High Hazard Area Rule is intended to prevent residential development in areas most subject to storm damage, and thus the V-zone designation is used as an indicator of that hazard. The V-zone includes all areas defined as such on the Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency or the inland limit of the primary frontal dune, as well as a 25 foot wide wave runup area located immediately adjacent to and landward of oceanfront shore protection structures.

149. COMMENT: The definition of erosion hazard areas states that these areas extend inland from the edge of a stabilized upland area to the area likely to be eroded in 30 years for one to four unit dwelling structures and likely to be eroded in 60 years for all other structures. Please explain this distinction. (144, 45)

RESPONSE: The rule amendment defining the limits of the erosion hazard area is intended to reflect the difference between the size of existing structures and the greater ability to relocate smaller structures as opposed to larger ones. The distinction noted by the commenter is based on and consistent with the provisions of the National Flood Insurance Program, Upton-Jones Amendment, which provides relocation assistance to insured structures depending on the location and size of structure.

150. COMMENT: N.J.A.C. 7:7E-3.16(c) of the Rules on Coastal Zone Management references the NFIP regulations established by FEMA, which define what constitutes an adequate dune in the face of a major coastal storm. Engineers have indicated to me that there are no dunes in the entire State of New Jersey that meet this FEMA definition. If we do not meet the definition of a dune then what constitutes an overwash area is very unclear. If the dune is not large enough to meet the NFIP's standards for an acceptable barrier to a coastal storm, then, in fact, would it be an overwash area? (64)

RESPONSE: There are many areas along the New Jersey oceanfront where dunes of this size do, in fact, exist including but not limited to

sites in Manatoloking, Brick Township, Lavallette, Seaside Park, Barnegat Light, Ocean City and Avalon. The proposed amendment to the dunes rule (N.J.A.C. 7:7E-3.16) includes a reference to a "design dune" volume which has been determined to provide minimum protection from the 100-year storm surge and associated wave action. This design dune volume will be used to evaluate mitigation proposals in cases where mitigation is proposed to reduce overwash potential. The "design dune" will not to define the limits of an overwash area.

151. COMMENT: I am concerned with N.J.A.C. 7:7E-3.18, Coastal High Hazard Area. After having reviewed the legislation and this proposed revision, it appears that in these areas there will be a 25-foot setback requirement for structures located immediately adjacent to and landward of ocean front shore protection structures located in V zones. The legislation does not contain this setback requirement. However, it is proposed to be adopted in these rules. (64)

RESPONSE: The rule that has been in effect for at least seven years includes in the definition of a coastal high hazard area "areas subject to wave run-up and overtopping of shore protection structures parallel to the shoreline." In an effort to more clearly define and clarify the limits of this hazard area, the Department has reviewed data contained in the Coastal Storm Vulnerability Analysis, a report prepared in 1985 by the Department in conjunction with the State Police, Division of Emergency Management. This report documents the effects of wave run-up and overtopping of oceanfront shore protection structures and establishes a zone of 25 feet immediately landward of the structure as an area likely to affected by breaking waves during coastal storm events. The Department adopted the setback requirement discussed by the commenter based on this report.

152. COMMENT: The Department refers to the FIRM map or the Flood Insurance Rate Map. However that map was drawn on a one inch to 400 feet scale. The pencil line that delineates the V zone on that map in approximately 30 feet wide. If someone is alleged to have violated or not complied with these rules it will be almost impossible to sustain any kind of conviction, or make any kind of charge, or actually engage in any kind of enforcement on the municipality. In my opinion, this will lead to a number of lawsuits brought by applicants who are denied the right to build or are issued summonses for violating the law. (64)

RESPONSE: The Flood Insurance Rate Maps (FIRMs) prepared by the Federal Emergency Management Agency (FEMA) include the delineation of flood hazard areas for each municipality. These maps are not used, and are not proposed to be used, by the Department to determine regulatory boundaries. Rather the maps are referenced under the Coastal High Hazards Areas rule (N.J.A.C. 7:7E-3.18) as the data source which will be used to determine the limits of the coastal high hazard areas (V-zones), as defined by FEMA. Questions regarding the accuracy of the delineation for specific sites will be resolved by the Department in conjunction with the municipal building officials.

153. COMMENT: The proposed regulations set forth criteria for development and incorporate the Federal FEMA dune and V zone requirements into New Jersey DEP Coastal Zone Management rules. This linkage will result in arbitrary imposition and enforcement of the conditions based upon changing administrations and changing social economic climates. (27)

RESPONSE: The rules currently contain reference to FEMA definitions as they relate to flood hazard areas. The proposed amendments refer to FEMA's definition of a Coastal High Hazard Area because this definition was revised by FEMA and this revised definition had not yet been incorporated into the Rules on Coastal Zone Management.

154. COMMENT: The elimination of development within the V-zones is an attempt to remove the hazard from the development, instead of removing the development from the hazard. (144)

RESPONSE: The power of coastal storms and erosion is such that it is more realistic to remove a development from a hazard than to remove a hazard from a development.

N.J.A.C. 7:7E-3.19 Erosion Hazard Areas

155. COMMENT: N.J.A.C. 7:7E-3.19(a)2 of the Erosion Hazard Areas rule refers to "(NGVD)" contour line, does not reference which National Geodetic Vertical Datum is referenced to and deletes from the text what NGVD means. (44)

RESPONSE: The reference to NGVD has been changed on adoption to reflect the current datum, North American Datum (NAD), 1983.

156. COMMENT: The Erosion Hazard Area rule states that the Department will use a computer program entitled, "metric mapping analysis of New Jersey's Historical Shoreline Date." The ability of such a model to make accurate predictions for specific sites is questioned and the supporting documentation is requested. (44)

RESPONSE: The referenced computer program provides a basis for calculating long-term shoreline change rates that is based on a review of large amounts of verifable historical shoreline data. The computer program itself does not predict future rates of shoreline change. The shoreline change rate information generated by the computer program, namely long-term change rates, is used by the Department to project future trends in shoreline movement, based on historical trends. This methodology has been certified and approved by the Federal Emergency Management Agency (FEMA) as an acceptable method for defining erosion hazard areas, and has been used in New Jersey in the implementation of the Upton-Jones provisions of the National Flood Insurance Program since 1990.

157. COMMENT: The NJBA strongly objects to the prohibition on development in erosion hazard areas (N.J.A.C. 7:7E-3.19). (45)

RESPONSE: The Erosion Hazard Areas rule (N.J.A.C. 7:7E-3.19) does not prohibit all development in these areas. Rather, the rule conditionally allows for linear developments, shore protection activities, beach/tourism related commercial development, single family and duplex infill developments, and dune walkover structures.

158. COMMENT: We believe the Department's efforts to prohibit development in erosion hazard areas along the shore makes little sense given the fact that New Jersey already has a developed coast especially on the barrier islands. (45)

RESPONSE: There are areas along the coast which have a history of landward shoreline migration, which is well documented through historical shoreline data and other historical information. These areas usually have a history of storm damage and associated shore protection expenditures, both emergency and non-emergency. The identification and management of these hazard areas, which as noted above will not prohibit all developments, is consistent with the goal of CAFRA to protect the health, safety and welfare of coastal residents.

159. COMMENT: It is unlikely that coastal residents will allow their properties to erode to the levels that are found in this rule. (45)

RESPONSE: There are numerous sites along the oceanfront which would be classified as erosion hazard areas, based on the history of shoreline migration and beach erosion. The high cost of shore protection has precluded adequate maintenance of beaches and dunes, and therefore properties do, in fact, erode to the levels found in this rule.

160. COMMENT: Without the benefit of seeing Appendix Figures 7 and 8, it is unclear whether the determination of the area likely to be eroded within 50 years is incorporated in the Appendix or is the responsibility of the applicant. (157, 48, 42)

RESPONSE: The Department has the ability to calculate historical erosion rates and will provide this information for specific site as part of a pre-application review or through the formal permit application review. These erosion rates are not contained in the Appendix. The Department will also allow an applicant to utilize other sources of erosion rate information, provided these sources are accurate and verifiable.

N.J.A.C. 7:7E-3.21 Bay Islands

161. COMMENT: CAFRA's proposed amendment to N.J.A.C. 7:7E-3.21 is a tacit admission by CAFRA that its March 17, 1992 determination regarding the Rum Point development was contrary to the explicit terms of N.J.A.C. 7:7E-3.21 as it currently exists. The "rationale" for the proposed amendment is arbitrary and should not be adopted. (19)

RESPONSE: The amendment to the Bay Islands rule reflects existing policy and the sensitive conditions of these islands, and addresses concerns regarding storm vulnerability, storm evacuation of the barrier island communities, and wildlife habitat protection. These concerns are the basis for the rule, as described in the rationale. The Department disagrees that the concerns are arbitrary or irrational. In addition, the determination of March 17, 1992 referred to by the commenter is currently the subject of a pending administrative proceeding. The Department will abide by the results of that litigation when applying its rules to the development to which the commenter is referring.

162. COMMENT: The proposed amendment to N.J.A.C. 7:7E-3.21 is arbitrary and should not be adopted. The proposed amendment to this rule cynically attempts to contort a definition and arbitrarily makes Rum Point into a Bay Island when it clearly is not. The rationale for the proposed amendment is mere sophistry which attempts to bootstrap CAFRA's improper expansion of its Bay Island definition to ensnare Rum Point. (19)

RESPONSE: The proposed amendment to this rule includes a provision that bay islands "may be connected to the mainland or barrier island by elevated or fill supported roads." This proposed revision reflects existing policy and will assure adequate protection of these sensitive areas, even in cases where a bay island may have been connected to the barrier island or mainland. Such a connection does not eliminate the vulnerability or the environmental sensitivity of these areas.

163. COMMENT: DEPE's rationale for the amendment to this regulation refers to isolation from human activity and wildlife habitats. Rum Point is not isolated from human activity, but is located on an improved State highway. In addition, the upland portion is no different from the other developed areas of Brigantine Blvd. which adjoin the site. Furthermore, Rum Point is no different than the areas conveniently exempted from the Bay Island designation in paragraph (a)2 of the proposed rule. (19)

164. COMMENT: DEPE attempts to justify its attempted amendment by referring to "added storm evacuation problems." There is no traffic study to support such a conclusion with respect to Rum Point. Traffic from the rest of Brigantine Island, including both developed lands and lands that could be developed, far exceeds anything that has been proposed for the Rum Point site. Furthermore, on the foot of the Atlantic City side of the Brigantine Bridge, there are two existing hotel-casinos that generate thousands of car and bus movements a day. There are also several casino sites adjoining Trump's Castle and Harah's properties that are available for development. DEPE cannot justify its Bay Island amendment on traffic evacuation grounds unless it ignores the other side of the Brigantine Bridge. (19)

RESPONSE: These comments address an existing determination that is the current subject of a pending administrative proceeding. The Department will abide by the results of that litigation when imposing its rules on the Rum Point development.

165. COMMENT: We object to the attempted addition of language indicating that bay islands "may be connected to the mainland or barrier island by elevated or fill supported roads." The proposed amendment is an attempt to further expand those areas which will be classified as Bay Islands. A former Bay Island which is now connected to the mainland or a barrier island should not be considered a bay island, because over time this land area has become a part of either the mainland or a barrier island. Moreover, Figure 3 of the Coastal Rules clearly shows a Bay Island as being situated in the Back Bay, in an area between the mainland and the barrier islands surrounded by tidal waters and physically connected to either the mainland or the Barrier Island Corridor. (117)

RESPONSE: The purpose of this proposed amendment is to reflect existing policy and to assure protection of bay islands which have historically been isolated from the mainland and/or barrier islands and which, although now connected to the mainland or a barrier island, have the same development constraints and sensitivity as non-connected bay islands. Furthermore, the rule excludes bay islands if the level of development and infrastructure on the islands has reached a point where the environmental sensitivity and value of the bay island has been significantly reduced.

166. COMMENT: The proposed change by the Land Use Regulation Program, which would make land areas which are physically connected to the mainland or Barrier Island Corridor "bay islands" and thereby extend the Rule's geographic area, is inconsistent with the rationale of the Bay Island Policy. These areas are physically connected to the mainland or a Barrier Island Corridor, and thus are not isolated from human activity. Moreover, the areas are not valuable wildlife habitats and do not have the potential to become habitats. Further, because the areas are physically part of the mainland or a Barrier Island Corridor, they pose no increased storm evacuation problems and are not distant from public services. Therefore, the sites are suitable for development. (117)

RESPONSE: The Department disagrees with the conclusions reached by this commenter. Many of these now connected bay islands do provide valuable habitat for wildlife, particularly shore birds. Moreover, many bay islands are adjacent to the only evacuation route off of the barrier islands and many are located in areas which do not presently contain adequate infrastructure to serve large-scale development. Thus, development of these islands may overcrowd storm evacuation routes and require excessive additional infrastructure.

167. COMMENT: The List of Bay Islands to which the rule does not apply does not include "West 17th Street," Ocean City. The Department should determine if other omissions have occurred. (44)

RESPONSE: West 17th Street has the same physical characteristics as the other islands listed as excluded from the Bay Island rule. That is, it is heavily developed, no longer provides valuable wildlife habitat, and further development would not pose a significant threat to environmental resources nor would it adversely affect storm evacuation from the island. The omission of West 17th Street in the City of Ocean City, Cape May County, was an unintentional oversight and has been clarified upon adoption through inclusion of this island on the list of bay islands to which the rule does not apply.

168. COMMENT: The City of Pleasantville has serious concerns about the proposed amendments, particularly the proposed changes to N.J.A.C. 7:7E-3.21, Bay Islands. Specifically, we suggest that in addition to the areas identified as not requiring compliance with the Bay Islands Rule, you add the Gateway site in Pleasantville, New Jersey. (129)

RESPONSE: The proposed amendment to N.J.A.C. 7:7E-3.21 includes a list of bay islands which will not be required to comply with the Bay Islands rule due to the physical conditions of these islands, including environmental sensitivity, accessibility, and level of existing development and infrastructure. The proposed exclusion list is based on the existing condition of bay islands, not future conditions. Accordingly, the Gateway site was not listed as an excluded site because it has not yet been developed and therefore differs from those bay islands specifically listed in the proposed amendment. However, the Department is considering excluding sites such as the Gateway site which have received development approvals in a future rule amendment.

N.J.A.C. 7:7E-3.23 Filled Water's Edge

169. COMMENT: I object to the provision in the proposed rules formalizing the policy that walkways "will not typically be required" at single family or duplex developments. (92, 107)

RESPONSE: As indicated in the comment, this proposal will formalize the current practice of the Department to not typically require public access at single family or duplex developments, provided that these developments are not part of a larger development. In the past, the Department has not normally required public access as a condition of permit approval for such developments, based on the owners' legitimate concerns with security and privacy and on the limited waterfront area and public benefit provided at these sites. This position is consistent with the actions of the Tidelands Resource Council, which is charged with administration of State owned tidelands.

170. COMMENT: The NJBA commends the Department for providing an exemption to the public access requirement for single family or duplex residential lots along the waterfront. (45)

RESPONSE: The Department acknowledges this comment in support of the proposed rule amendment.

171. COMMENT: The definitions of filled water's edge at N.J.A.C. 7:7E-3.23 and flood hazard areas at N.J.A.C. 7:7E-3.25 will in essence prohibit the construction or reconstruction of single-family homes within 150 feet of the mean high water line. (65)

RESPONSE: The rules for filled water's edge (N.J.A.C. 7:7E-3.23) and flood hazard areas (N.J.A.C. 7:7E-3.25) do not prohibit all development in these areas. Rather these rules prohibit development unless there is no feasible alternative and development will not cause significant adverse long-term impact on these areas. In addition, all reconstruction from storm damage is exempt from CAFRA as is the construction of single family homes inland of the first house at the water's edge.

N.J.A.C. 7:7E-3.25 Flood Hazard Areas

172. COMMENT: The Flood Hazard Areas rule (N.J.A.C. 7:7E-3.25) is unnecessary and should be removed since it is inconsistent with and more stringent than the Department's existing flood hazard area (stream encroachment) legislation and regulations. (45)

RESPONSE: The Department has not applied the Flood Hazard Area Control Act (stream encroachment) because jurisdiction under the Act is very limited in tidal areas. This rule also relates to other land use issues associated with preservation of undeveloped areas along waterways and therefore includes specifications on density and water dependency, recognizing the value of stream corridors for water quality, flood storage and habitat.

173. COMMENT: Structures that are built to the Flood Proofing Code under the BOCA/Uniform Construction Code should not be prohibited. (45)

RESPONSE: Under the existing and the proposed Flood Hazard Area rule, development is not prohibited. Rather, in undeveloped flood hazard areas, water dependent uses or low intensity uses are allowed within 100

feet of the navigable water body. Elsewhere in the undeveloped portions of the flood hazard area, development is conditionally acceptable. As stated previously, BOCA establishes construction standards while the Rules on Coastal Zone Management establish land use standards as well.

174. COMMENT: The definition of "undeveloped flood hazard area" must be modified to exclude farmland as an undisturbed, and, therefore, undeveloped area, because this policy triggers the need for both a 100 foot setback from the mean high water line and a requirement for substantial reduction in site coverage. (45)

RESPONSE: Because this rule addresses flood-related concerns, for the purpose of this rule "undisturbed" includes sites which do not contain structures or impermeable surfaces. Therefore, the inclusion of farmland as "undeveloped" is appropriate, since these areas do not contain impermeable surfaces as other developed areas do.

175. COMMENT: The Flood Hazard Area rule is unnecessary because it duplicates the existing flood hazard area regulations which address flood plain construction. Any structures that are built to the flood-proofing code under BOCA or the Uniform Construction Code should not be prohibited. (97)

RESPONSE: The requirements of the Flood Hazard Area rule do not duplicate other flood hazard area regulations, because they address impacts of development in these areas specifically related to development intensity, use and siting.

N.J.A.C. 7:7E-3.27 Wetlands

176. COMMENT: It appears that through the proposed wetlands buffer rule NJDEPE is proposing to exert jurisdiction over those wetland areas that are not subject to regulation under either of the two existing wetlands statutes. The establishment of buffers up to 300 feet for "... all other wetlands (that is wetlands not defined and regulated under the Freshwater Wetlands Protection act), including wetlands regulated under the Coastal Wetland Act of 1970 ..." (emphasis added) is clearly meant to address the non-jurisdictional areas described above. We suggest that the language in the Coastal Zone Management Rules at N.J.A.C. 7:7E-3.28(a)1 and 2 be retained in its original form. (66)

RESPONSE: Jurisdiction over wetland areas not regulated pursuant to the Wetlands Act of 1970 or the Freshwater Wetlands Protection Act is appropriate under CAFRA. All wetlands are Special Areas and are required to be addressed by the Federal Coastal Zone Management Rules, which set standards for State coastal zone management programs. The requirement for wetland buffers applies to all wetlands regulated pursuant to the Waterfront Development Law, Wetlands Act of 1970, Freshwater Wetlands Protection Act and CAFRA. In the case of freshwater wetlands, buffers will be based on the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.

177. COMMENT: N.J.A.C. 7:7E-3.27(a)i of the Wetlands rule refers to the National Wetlands Inventory Maps as showing the location of wetlands. The portion of the existing rule that is being deleted states that these maps provide only the generalized location of wetlands. As the accuracy of these maps has not changed this rule change is unwarranted and arbitrary. (44)

RESPONSE: The language of this rule has been revised on adoption to include a statement regarding the accuracy of the National Wetlands Inventory maps.

178. COMMENT: N.J.A.C. 7:7E-3.27(a)1iii of the Wetlands rule adopts the Freshwater Wetlands Maps prepared by the DEPE at a scale of 1:12,000. These maps are based on 1986 photography by Markhurd and directly conflict with the State Tidelands Maps produced and adopted by the Department at a scale of 1:2,400. (44)

179. COMMENT: When Freshwater Wetlands Map Numbers 177-1 and 177-2 are aligned with the State Tidelands Maps using State coordinates, land features show a displacement of approximately 70 feet in the North-South direction. Additionally, The wetlands line located by Wetlands determination 0512-90-0004.1 differs by as much as 260 feet from the location of the wetlands lines shown on the Freshwater Wetlands Map No. 177-1. Inspection of Freshwater Wetlands Map No. 178-1, which includes Maxwell Field in Wildwood, New Jersey, shows that the baseball outfield and football fields are classified as wetlands on the map. The Freshwater Wetlands Maps should not be made part of this rule without acknowledgment of these inaccuracies. (44)

RESPONSE: The language of this rule has been revised on adoption to include a statement regarding the accuracy of the NJDEPE Freshwater Wetlands maps.

180. COMMENT: N.J.A.C. 7:7E-3.27(a)4 of the Wetlands rule states that wetlands shall be identified by the three parameter approach. Additional language should be included to identify the classification of lands that a) exhibit two of three or one of three parameters and b) at one time exhibited all of the parameters but currently exhibit two, one, or none of the parameters. Examples of the latter case would be tidelands claim areas coincident with the filled waters edge and coincident with development within developed areas. (44)

RESPONSE: The "three parameter approach" referenced in this rule repeats the wetlands definition contained in the Freshwater Wetlands Protection Act Rules (specifically, N.J.A.C. 7:7A-1.4). The reference to the three parameter approach within the Rules on Coastal Zone Management is intended to provide guidance to permit applicants regarding the process for defining wetland areas in the coastal zone. The USEPA three parameter approach includes provisions for identifying wetlands on disturbed sites where one or more parameters are absent.

181. COMMENT: I am the owner of a bayfront home with an adjacent bayfront lot with wetlands bordering on one side. My understanding of this legislation is that it could stop any construction of that vacant piece of property. (2)

RESPONSE: The presence of wetlands on the adjacent property could affect how the property is developed, depending on the area of wetlands, the area of uplands, and the scope of the proposed development.

182. COMMENT: The deletion of the longstanding exemption of mosquito control commission activities from coastal wetland policies will severely impede these important activities. (157, 48, 42)

RESPONSE: The proposed deletion of this entire subsection (e) was inadvertent. The Department has replaced this section on adoption with the specific exemption language from the Wetlands Act of 1970, as it relates to the mosquito control activities set forth at N.J.S.A. 13:9A-7.

183. COMMENT: The rule that requires off-site mitigation, except for publicly funded projects, to be carried out on private property is similar to a provision in the freshwater wetland rules that has been inconsistently interpreted by DEPE staff. Language should be added to clarify that mitigation for a public project may be carried out on the site of that project. (157, 48, 42)

RESPONSE: Both the proposed rules and the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, provide that mitigation for publicly funded projects may occur on public lands only if those lands were purchased by a public agency for the purpose of performing mitigation. The purpose of this rule is to ensure that lands already in public use remain in public use and that public areas are not reduced as a result of wetland mitigation.

184. COMMENT: The Department should clarify that the Wetlands rule (N.J.A.C. 7:7E-3.27) only applies to tidal wetlands and projects that are exempt from the Freshwater Wetlands Protection Act of 1987 (FWPA). (45, 63)

RESPONSE: The rule states that development in wetlands defined under the FWPA is prohibited unless the development is found to be acceptable under the FWPA Rules (N.J.A.C. 7:7A). In addition, the rule states that development in all other wetlands not defined under the FWPA is prohibited, unless the conditions outlined in the rule are satisfied. Thus the wetlands rule provides that the Freshwater Wetlands Protection Act will apply to freshwater wetlands and that other wetlands will be subject to the specific conditions included in the rule.

185. COMMENT: N.J.A.C. 7:7E-3.27(g)6ii should be expanded to allow a "copy of the recorded document" as an alternate to a receipt showing that the restriction has been registered at the County Clerk's office. (44, 63)

RESPONSE: Based on this comment, this rule has been revised on adoption to also allow for the submission of a copy of the recorded document.

186. COMMENT: We request the Department to explain what is meant by "Creation shall not be permitted on a site that retains wetlands characteristics." (44, 63)

RESPONSE: The term "creation" refers to actions performed to establish wetland characteristics, habitat and functions on a non-wetland site. If a site retains wetland characteristics and therefore meets the definition of a degraded wetland pursuant to N.J.A.C. 7:7A-1.4, it is already a wetland and is not eligible for "wetland creation" activities. Enhancement refers to actions performed to improve the characteristics, habitat and functions of an existing degraded wetland so that the enhanced wetland will have resource values and functions similar to an undisturbed wetland.

187. COMMENT: The Freshwater Wetland Maps should not be used. These are 1000 foot to the inch maps and are inconsistent with the

tidelands maps in some areas by as much as 90 feet. National mapping standards would allow an error of about five feet on a map of that scale. (44)

RESPONSE: The Freshwater Wetlands maps are not used by the Department to determine regulated areas or jurisdiction. These maps are used solely as a planning tool to describe the general location of freshwater wetland areas. Many local governments, permit applicants and citizen groups have indicated that they have been very useful to them.

188. COMMENT: What are wetlands? There seems to be a discrepancy as far as how wetlands are determined. (162)

RESPONSE: Wetlands are areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophitic vegetation. For regulatory purposes wetlands are generally defined as either tidal or freshwater. Tidal or coastal wetlands are regulated by the Department pursuant to the Wetlands Act of 1970. Wetlands regulated under the Act are depicted on maps which were prepared and promulgated by the Department and are available to the public at several locations. Freshwater wetlands are regulated by the Department pursuant to the Freshwater Wetlands Protection Act, and are delineated in accordance with the 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands. Generalized locations of freshwater wetlands are shown on maps prepared by the Department, which are available to the public through the DEPE Maps and Publications Office. These maps are used as planning tools and are not to determine the freshwater wetlands line on specific properties.

N.J.A.C. 7:7E-3.28 Wetlands Buffers

189. COMMENT: The type of mitigation required for wetland buffers in tidal areas should be discussed in the regulations. We suggest that provisions be included to exempt linear projects such as public roads from the buffer requirement in a manner similar to that provided in the Freshwater Wetlands Protection Act (FWPA) rules. The basis for regulating a 300 foot area adjacent to wetlands should also be clarified and/or updated to be consistent with the FWPA program. (127)

RESPONSE: The type of mitigation required must be determined on a case-by-case basis, depending on the conditions of the site, the type of wetlands and the proposed level of disturbance to the wetland buffer area. Due to the wide variation in site conditions and development impacts, set standards for the type of mitigation have not been established in this rule. In addition, linear projects will still be required to address the acceptability conditions of this rule, since these projects may cause adverse impacts to the wetlands buffer area.

190. COMMENT: The Sierra Club strongly supports the proposals regarding the establishment of wetland buffer zones. (36)

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

191. COMMENT: The rules set buffers for non-freshwater wetlands at "up to 300 feet" to be established on a case-by-case basis and provide that buffers may be less restrictive in developed areas. Not only does the lack of more specific information give the appearance that the decision will be subjective, but it also makes it virtually impossible to establish fair market value or to plan for site development. (157, 48, 42)

RESPONSE: The Wetlands Buffer rule (N.J.A.C. 7:7E-3.28) that has been in effect for many years allows for the establishment of a wetlands buffer width of up to 300 feet, on a case-by-case basis, in the case of non-freshwater wetlands. The amendment to this rule does not change this procedure. Because of the wide variation in site conditions and potential development impacts throughout the coastal zone, it is difficult to determine wetland buffer widths for all sites and all types of development. In response to concerns regarding the establishment of development constraints and fair market value, the Department has provided, and will continue to provide, pre-application guidance to assist permit applicants and prospective property owners on site-specific wetland buffer requirements.

192. COMMENT: We question the Department's imposition of buffers around coastal wetlands since neither the Wetlands Act of 1970 nor the Waterfront Development Law provide the Department with this authority. (45, 63)

RESPONSE: The authority for requiring wetland buffers is based on CAFRA, and not the Wetlands Act of 1970 or the Waterfront Development Law. Pursuant to CAFRA, the Department is authorized to regulate specific types of "development" in the coastal zone, and to protect coastal resources including wetlands.

193. COMMENT: We question the Department's authority to require wider buffers than those provided under the Freshwater Wetlands Protection Act (FWPA) to establish conformance with the Coastal Rules dealing with endangered or threatened wildlife or vegetation species habitats and critical wildlife habitat. (45, 63)

RESPONSE: A wetlands buffer of up to 300 feet for wetlands not defined and regulated pursuant to the FWPA is currently required under the Wetlands Buffers rule (N.J.A.C. 7:7E-3.28). This requirement is not proposed for amendment. Buffer requirements for endangered or threatened species are determined in accordance with N.J.A.C. 7:7E-3.38, Endangered or Threatened Wildlife or Vegetation Species Habitat. CAFRA authorizes the Department to protect coastal resources, including threatened and endangered species, and to restrict development that will jeopardize those species. The Department and most experts with which it has consulted agree that buffers in excess of 150 feet are often necessary to adequately protect sensitive habitats.

194. COMMENT: Will the wetlands buffers be applied on a case-by-case basis for a site on the bay with houses all around it and one lot left fairly close to wetlands? (144)

RESPONSE: The amendments to the Wetlands Buffer rule (N.J.A.C. 7:7E-3.28) include a provision for less restrictive wetlands buffer requirements for infill developments, where a majority of the area adjacent to the wetlands is developed. These requirements will be determined on a case-by-case basis by the Department.

N.J.A.C. 7:7E-3.32 Intermittent Stream Corridors

195. COMMENT: The Department should clarify the Intermittent Stream Corridors rule (N.J.A.C. 7:7E-3.32) because it may include swales. Under the Freshwater Wetlands Protection Act (FWPA) swales are considered ordinary resource value wetlands which do not have any buffers. (45, 63)

RESPONSE: The current rule includes language which states that if an intermittent stream corridor is also a wetland, then the Wetlands rule will apply; this is not proposed for amendment. Thus, if a swale is a freshwater wetland, under the Wetlands rule (N.J.A.C. 7:7E-3.27) it will be regulated pursuant to the Freshwater Wetlands Protection Act.

N.J.A.C. 7:7E-3.36 Historic and Archaeological Resources

196. COMMENT: The present wording of N.J.A.C. 7:7E-3.36(f) prohibits all commercial salvage of a shipwreck over 50 years old. It isn't clear to me if this pertains only to shipwrecks that are on the State and National Register or to all shipwrecks. There is no such category as "eligible" in the National Register to my knowledge, yet this wording appears in the regulations. Since almost all of New Jersey's natural shipwrecks (those shipwrecks that were not deliberately sunk as part of an artificial reef system) are over 50 years old, the regulation could constitute a virtual ban on salvage. This conflicts with the Abandoned Shipwreck Act, in which Congress set a policy to "Allow for appropriate public and private sector recovery to shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites."

The proposed regulations moderate this policy only slightly by "discouraging" any salvage of a shipwreck over 50 years, but allowing it under certain conditions. All of these extenuating conditions make sense as general rules to govern the salvage of potentially historic wrecks, with the possible exception of the last condition. The N.J.C.D.C. suggests that the proposed wording eliminate any reference to 50 years since it does not indicate a shipwreck is historic and probably stems from a misunderstanding of the National Historic Preservation Act.

The proposed regulations should substitute the wording reflected in the policy of Congress toward salvage instead of the 50 year standard and then add the overall conditions as proposed. Further, the 7th condition (The entire exploration and salvage effort will be . . .) should be reconsidered, as no one could realistically meet all those many pages of guidelines and qualifications and many of the guidelines were written by people that never saw a shipwreck. If a state tried to do everything mentioned in those guidelines, it would be spending half the state budget in shipwreck management. It is the policy of Congress in the A.S.A. that is enforceable within the state and not the guidelines, which are only advisory. Perhaps wording that suggests using the guidelines "as appropriate" would allow for a more realistic and flexible approach. (50)

RESPONSE: The sentence "Recovery of shipwrecks consistent with the protection of historic values and environmental integrity of the

Shipwrecks and their sites may be permitted subject to the following conditions:" has been inserted on adoption, thus making the rule consistent with the Federal Shipwreck Management Act.

197. COMMENT: The N.J. Council of Diving Clubs knows that most of what you and I call underwater archaeology is being done in this State by unpaid volunteers made up largely of sport divers. We would like to encourage underwater archaeology, both professional and volunteer. Occasionally, these low budget underwater archaeological divers may have to secure a permit in order to do a test hole or for other reasons. It would be inappropriate to treat this sort of permit application the same as applications for large construction projects or commercial salvage efforts. Perhaps wording could be inserted stating that small scale archaeological efforts (moving less than 200 cubic feet of bottom sediment) that have a letter of approval from the Department and State Archaeologist would be able to forego some of the more complicated requirements of the waterfront development permit. (50)

RESPONSE: The Department's jurisdiction related to these types of activities is established through the Waterfront Development Law, and any changes to this jurisdiction need to be made through revisions to the Law. However, the Department may in the future authorize the referenced procedures through a General Permit. Any such General Permit shall be adopted in accordance with the Administrative Procedures Act, and will be subject to public comment and formal rule adoption.

198. COMMENT: New wording with which I agree has been added to N.J.A.C. 7:7E-3.36(e). However, the referenced mitigation goes beyond the concept of recovering archaeological information. The Abandoned Shipwreck Act states that "shipwrecks offer recreational and educational opportunities to sport divers and other interested groups." Through the Act, Congress established a policy protecting habitat associated with shipwrecks and guaranteeing recreational exploration of shipwreck sites. Any project which destroys the habitat of a shipwreck or hinders recreational exploration (example—the massive sand replenishment project which will bury many shipwrecks along the Jersey shore) would be contrary to that policy and should be either prohibited or mitigated. (50)

RESPONSE: Because beach nourishment projects result in only temporary restoration, the impacts of these projects on shipwreck habitat are temporary as well. In addition, beach nourishment projects do not preclude the exploration or salvage of shipwrecks since these resources will be preserved in place, intact when the projects occur. Thus, the Department disagrees that beach replenishment is contrary to the intent of Congress.

199. COMMENT: The rationale that "the best way to preserve historic shipwrecks is to leave them alone . . . ." has been used as an excuse for a do nothing policy toward archaeology and shipwrecks in this State for too long. All shipwrecks, especially in the marine environment, are doomed by such natural factors as storms, marine worms, corrosion and other factors so that shipwrecks go through a life cycle that ends in total deterioration in a hundred to several hundred years. (50)

RESPONSE: The rationale has been revised upon adoption to address the commenter's concern with regards to preservation in place of shipwrecks. Specifically, language has been added to indicate that the decision to allow a project to proceed which could affect a shipwreck or shipwreck site will include consideration of a number of issues, including the recreational and educational opportunities provided by wrecks and wreck sites, their historic significance and their habitat value.

200. COMMENT: N.J.A.C. 7:7E-3.36(g)2 does not list what sorts of documentation are required to prove disturbance, which creates a potential for abuse. We suggest that applicants be required to submit defensible evidence, on the order of "as built plans" or detailed stratigraphic information, that support the claim of disturbance which can then be turned over to the New Jersey Historic Preservation Office archaeologists who have the expertise to evaluate the evidence. We feel that this type of site specific information should be required just as in the case of wetlands documentation. (90)

RESPONSE: The Environmental Impact Statement (EIS) submitted to the Department as part of the CAFRA permit application usually contains detailed topographic, soils, and other information including project site photographs. In most cases, the submitted information is adequate to broadly determine disturbance. However, if a setting would possess the potential for containing National Register eligible resources in the absence of ground disturbance, and the information contained within the EIS is not sufficient to determine the degree and extent of disturbance, the Department may request additional information of sufficient detail to document disturbance prior to making a determination about the need for an archaeological survey.

201. COMMENT: We support the conditions listed in N.J.A.C. 7:7E-3.36(g)3 and 4 that allow applicants to determine on their own whether or not their project may require a cultural resource survey. This can potentially make the process a little easier for a project that truly will not have an impact on cultural resources. (90)

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

202. COMMENT: We do not feel that the environmentalists and engineers within the Land Use Regulation Program have the expertise necessary to make informed decisions about cultural resources. We think that the Program should have a procedure whereby every application is submitted for review to the New Jersey Historic Preservation Office. In this way the people with the greatest expertise will be the ones making the decisions regarding permits and potential impacts to our finite cultural resources. The failure to operate in such a manner might bring the legitimacy of the entire Program into question. (90)

RESPONSE: In the past, all CAFRA applications were submitted to the New Jersey Historic Preservation Office for cultural and historic review by its staff qualified to perform the necessary reviews. The Department proposes to adopt a similar procedure in which the applications will have the opportunity to be reviewed by the New Jersey Historic Preservation Office if staffing levels permit.

203. COMMENT: The wording of N.J.A.C. 7:7E-3.36(f)1 is vague and could lead to conflicting interpretations. It is not clear what "The proposed project . . ." refers to. Is this directed towards the proposed construction/development or to the proposed excavation? (90).

RESPONSE: The proposed project would be the salvage of a shipwreck or shipwreck site. This includes salvage or other excavation (which falls under the jurisdiction of the Waterfront Development Law and must be consistent with the Rules on Coastal Zone Management) directed at the shipwreck or shipwreck site itself. The applicant's purpose in applying for a permit to conduct salvage could be for research and educational reasons, commercial salvage or a combination of both. N.J.A.C. 7:7E-3.36(f) establishes the parameters for salvage of a shipwreck or shipwreck site. This portion of the CAFRA rules was revised on adoption to be consistent with the Federal Abandoned Shipwreck Management Act of 1987 and its implementing regulations, with which the New Jersey Program must be consistent.

204. COMMENT: How will the "public interest" be determined when applying this rule? Will a difference be drawn between privately financed projects and publicly funded ones? (90)

RESPONSE: To what degree and manner a salvage project salvage is "in the public interest" will be determined on a case-by-case basis. The public interest includes a range of values such as recreational, historical, educational and ecological, etc. Because most embedded shipwrecks and shipwreck sites which would be reviewable are within lands which are the property of the State of New Jersey, even privately funded salvage for example, would in essence constitute an undertaking which is a public concern. Consequently, a distinction between publicly and privately funded projects would not be appropriate.

205. COMMENT: The criteria for requiring the submission of a cultural resource survey report should relate to the scale of the development and its eligibility for the State or National Registers of Historic Places. The broad application of this requirement suggested by the proposed language will be unreasonably burdensome. (157, 48, 42)

RESPONSE: The current Historic and Archaeological Resources rule (N.J.A.C. 7:7E-3.36) requires that a cultural resource survey be completed when there is a potential for impact to historic and/or archaeological resources on a proposed development site. In a majority of cases, a prospective permit applicant will request guidance from the DEPE, Office of Historic Preservation regarding the requirement for a cultural resource survey. This option will remain available and will not be affected by this rule adoption.

206. COMMENT: The Department should establish objective criteria by which the Historic Preservation Office will assess cultural resource surveys that are submitted with CAFRA applications. (45)

RESPONSE: Objective criteria for assessing cultural resource surveys submitted to the Department are already in use, yet the New Jersey Builders Association has raised this point consistently. The Department would welcome any suggestions for more "objective" criteria. What the Department uses today are the following: 1) the National Park Service's Professional Qualifications Standards (36 C.F.R. Part 61) which cite the

necessary professional qualifications for consultants performing cultural survey resource work; 2) the Historic Preservation Office's "Guidelines for the Preparation of Cultural Resource Survey Reports Submitted to the Historic Preservation Office" which details the appropriate information to be submitted in an archaeological report for review; 3) the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation; and 4) the Historic Preservation Office's "Scope of Work for Archaeological Survey" which details the appropriate scope for archaeological survey.

Each of these resources has been in use for at least several years and all archaeological firms working in the State have received copies of them. In addition, if at any point during preparation to conduct a survey or during the survey itself questions arise regarding a consulting firm's use and interpretation of these State and Federal standards and guidelines, the archaeologists involved in the work can contact the Historic Preservation Office to discuss them as they apply to the specific survey at hand.

207. COMMENT: The Department should establish a matrix or screening methodology for predictably defining circumstances in which cultural resource surveys will be required so as to provide for a more effective and equitable program. (45, 63)

RESPONSE: The amendment to this rule includes a subsection (g), which defines development activities which will generally not require a cultural resource survey. The Department acknowledges this comment in support of the proposed rule amendment.

208. COMMENT: Compliance with the present grid testing standards can be very costly and is often unnecessary because the testing does not identify any items of significance. (45)

RESPONSE: Archaeological surveys are not required for the majority of projects submitted to the Land Use Regulation Program. However, for projects where there is a reasonable likelihood that resources potentially eligible for inclusion in the National Register of Historic Places will be affected by the proposed project, a cultural resource survey is requested. The scale of the survey is commensurate with the size of the project. The present density of shovel testing is similar to that undertaken in other states.

Grid or other probability sampling strategies allow for representative sampling of a site to determine the presence of archaeological resources. This type of testing has proven effective in identifying the presence of sites and balances the need to identify archaeological sites with the desire to minimize excavation and its attendant costs (both monetary costs and the destruction of archaeological remains which can occur through the excavation itself). Areas such as previously excavated areas or wetlands generally need not be tested. Plowed fields with adequate visibility can frequently be "surface collected" with only limited testing augmenting the surface collection.

Grid pattern testing per se is not a requirement. Any well justified probability sampling strategy of equal overall test density is acceptable and in many cases preferable to the Historic Preservation Office.

N.J.A.C. 7:7E-3.37 Specimen Trees

209. COMMENT: The intent of the change eliminating the vague existing reference to "... large trees approaching the diameter of the known largest tree...." is understood. However, we are concerned as to whether documented, scientific methods were used to arrive at the conclusion that all trees with a circumference equal to or greater than 85 percent of the circumference of the record tree should be subject to regulation. If this number was chosen arbitrarily, without specific knowledge as to the probable population of trees falling into this range for a given species, the number of sites with trees regulated under this rule could be substantial and the resulting regulated area onerous. (66)

RESPONSE: This rule formerly provided that "large trees approaching the diameter of the known largest tree shall be considered specimen trees." In an effort to clarify this provision the Department revised the rule to state that trees with a circumference equal to or greater than 85 percent of the circumference of the record tree shall be considered specimen trees. Such trees "approach" the diameter of the known largest tree.

210. COMMENT: The proposed buffer exceeds the standards typically applied by landscape designers and architects in preserving and protecting trees. Those standards generally exclude excavation or construction activity within the active root zone of the tree. The active root zone is generally considered to extend to the drip line (or edge of crown) of the tree, although the root zone may extend slightly (less than ½ the crown radius) beyond the drip line in some species. (66)

211. COMMENT: The proposed rule change seeks to impose a standard that prohibits development within the "dripline" (the vertical extension of the crown to the ground) of any trees which have 85 percent of the circumference of specimen trees. The increased restriction appears to have no correlation with the stated rationale, which refers to specimen trees as having some association with historical events or as constituting irreplaceable scientific and scenic resources. The public benefit of this rule is not apparent. (154)

212. COMMENT: The State should determine the likelihood of encountering such trees and the potential economic impacts of such a rule change on landowners. It is not clear what purpose will be served by arbitrarily preserving individual "larger" trees, other than to reduce development intensity in areas where development should otherwise be permitted. It would be inappropriate to implement this arbitrary standard, which provides no apparent public benefit and will simply further restrict the rights of landowners to the reasonable economic use of their property. (3)

RESPONSE: In response to public comment, this rule has been revised on adoption to delete the requirement that the site of the tree be measured "from the trunk of the tree as three times the radius of the crown of the tree", or dripline, as originally proposed. The site of the tree will continue to be measured as including the buffer area necessary to avoid adverse impacts to the tree, or fifty feet from the tree, whichever is greater.

213. COMMENT: This rule protects specimen trees and trees that reach 85 percent of the specimen tree circumference. This rule is expected to result in the destruction of trees when they approach 84 percent of the specimen tree size. The rule is counterproductive to the development of natural resources. (44)

RESPONSE: In order to define a clear limit for tree sizes which "approach" the full size of a specimen tree, the Department established the 85 percent criterion. No matter what size limit is established, there will always be situations where certain trees will fall just under that limit.

214. COMMENT: We are seriously concerned with the confiscatory nature of this policy since it prohibits development activities on a site that could occur hundreds of feet away from a specimen tree. There is no scientific basis for the formula that determines the "site" of these trees to be three times the radius of the crown. (45, 63)

RESPONSE: The proposed language of this rule has been modified on adoption to limit the "site" of the specimen tree to the outer limit of the buffer area necessary to avoid adverse impacts to the tree, or 50 feet from the tree, whichever is greater.

N.J.A.C. 7:7E-3.38 Endangered and Threatened Wildlife or Vegetation Species Habitats

215. COMMENT: It will be virtually impossible for an applicant to plan a project without some guidance on record regarding the determination of habitat buffers for protected species. If the NJDEPE proposes to prepare a rule presenting guidance on determining the appropriate buffers from critical threatened or endangered species habitat, then the currently proposed language should be withdrawn until such time as that proposal is prepared and presented for public comment. (66)

RESPONSE: N.J.A.C. 7:7E-3.38 states that development is prohibited unless it can be demonstrated that endangered or threatened wildlife or vegetation species habitat would not directly or through secondary impacts on the relevant site be adversely affected. Compliance with this rule may be demonstrated in a variety of ways, only one of which is the establishment of habitat buffers.

Because each species, property, and plan for development will have different site-specific impacts, the Department does not plan to propose a generic buffer rule. Rather it believes that a case-by-case environmental assessment which simultaneously considers the characteristics of the flora and fauna present, the site's ecological and topographic features, and the design and density of the proposed development is the best method to establish compliance with this policy. To assist in this effort, the Department will provide prospective applicants with guidance on the potential restrictions for a particular property in a pre-application meeting.

216. COMMENT: The use of the term "... surrounding region ..." is vague. Region is generally defined as a large tract of land with some common physical or biological attributes. Identifying secondary impacts on a regional basis is well beyond the scope of the proposed impact assessment standards presented at N.J.A.C. 7:7E-3C.1 (26 N.J.R. 976). We suggest that the proposed language in N.J.A.C. 7:7E-3.38(b) not be adopted. (66)

RESPONSE: The Department agrees that there is an inconsistency between N.J.A.C. 7:7E-3C.1, which refers to the "surrounding area" and N.J.A.C. 7:7E-3.38(b), which refers to "surrounding region." Accordingly N.J.A.C. 7:7E-3.38(b) has been modified on adoption to refer to the "surrounding area" and to be consistent with N.J.A.C. 7:7E-3C.1.

217. COMMENT: Since there appears to be no defined threatened and endangered plant list from which to work, an applicant may find it difficult to properly identify critical habitat and assess impacts. Further, since many plant species may be identified only during specific, limited annual periods, the applicant should be given some consideration for the planning of field investigations. It is recommended that the applicant be able to rely on information on documented occurrences of endangered and threatened plant species on the site and site vicinity that are furnished by the N.J. Natural Heritage Program for project planning purposes. The applicant should be able to rely on that information for a period of at least one year to provide for scheduling of field investigations, project design and regulatory review. (66)

RESPONSE: Information available from the Natural Heritage database represents the extent of known locations of rare and endangered species at a specific time. However, it is not a conclusive inventory of all natural resources which may occur in New Jersey. As a result, relying solely on "documented" occurrences in lieu of the more comprehensive inventory efforts detailed in N.J.A.C. 7:7E-3C.1 will ignore the data gaps in the Department's natural resource information and could potentially cause adverse impacts on formerly unidentified rare species and their habitats.

218. COMMENT: The proposed rule calls for the regulation of habitat for all species "...under active review..." for Federal listing as threatened or endangered. The Federal government has several categories of plants which may fall into this category. Only one of these categories (identified as C1 species) have sufficient documentation to allow the Fish and Wildlife Service to contemplate a listing proposal. The NJDEPE appears to be extending its regulatory authority beyond the limits set in the applicable legislation (N.J.S.A. 23:2A-1.1 et seq. and N.J.S.A. 13:1B-15). However, if the habitats of any species not currently listed as threatened or endangered are to be regulated under this rule, then that regulation should be limited to C1 species. (66)

RESPONSE: The Endangered Plant Species List Act (N.J.S.A. 13:1B-15) defines an endangered plant species to include species "designated as listed, proposed or under review by the Federal government." Further clarification of the definition is provided in the implementing rules at N.J.A.C. 7:5C-1.4, where "under review" is defined as:

"plant species listed within status categories 1 and 2 in the most recent Notice of Review published in the Federal Register by the United States Fish and Wildlife Service."

The Department previously adopted its list of threatened or endangered plants on August 20, 1990 as a component of the endangered and threatened a species protection policy. The current proposal only provides additional information to assist the applicant and does not substantially change the previously adopted rule protecting these species.

In addition, these regulatory changes do not affect the protection provided for animal species under the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1.1 et seq.

219. COMMENT: N.J.A.C. 7:7E-3.38 should be clarified to specify when a habitat assessment will be required, because any additional studies conducted pursuant to Subchapter 3C, Assessing Impacts to Endangered and Threatened Wildlife Species in Environmental Impact Assessments, will be extremely time-consuming and expensive. Also, a word appears to be missing at N.J.A.C. 7:7E-3.38(g). We recommend that the word "apply" be inserted at the end of the sentence. (138)

RESPONSE: The Department currently provides guidance to prospective permit applicants regarding the requirements for endangered and threatened species surveys, based on the site habitat and past records of species in the surrounding areas. This guidance will continue to be provided by the Department, in an effort to require surveys only when there is a likelihood of the species being present at a particular site. In addition, the rule has been clarified on adoption in response to the omission cited by the commenter.

220. COMMENT: The Sierra Club strongly supports the proposals regarding these areas. (36)

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

221. COMMENT: We are very concerned with the Endangered or Threatened Wildlife or Vegetation Species Habitats rule (N.J.A.C. 7:7E-3.38) which states that the required habitat buffer area shall be dependent upon the range of the species and the development's anticipated impact to the species habitats. Without any standards to determine the buffer area, how will an applicant know in advance which portions of the site are off limits to development? The Department should establish objective criteria for determining the extent of an endangered species habitat and associated buffer area. (45, 63)

RESPONSE: This rule is intended to result in development which does not directly or through secondary impacts on the relevant site or in the surrounding region result in adverse impacts to endangered or threatened flora or fauna. Obtaining this goal can be accomplished in a variety of ways including establishing a buffer between the species' habitat and the proposed development. Unfortunately, the Department does not know how to specify a specific buffer size that would be appropriate and scientifically defensible for all potential sites. Many factors influence the size of the buffer necessary to minimize impacts, including site topography, type of development, associated level of disturbance, value of the habitat to the species in question, characteristics of the species, and many other site specific characteristics.

If a potential conflict with endangered or threatened species habitat is discovered based on the criteria provided at N.J.A.C. 7:7E-3C, an applicant should schedule a pre-application meeting with the Department. At such meetings, the particular restrictions and avenues for minimizing impacts to threatened or endangered such species or their habitats can be discussed prior to the development of detailed site designs.

222. COMMENT: The Department should establish objective criteria for when a species is either placed on or removed from an endangered species list. This criteria should be based on scientific methodology which evaluates the species population, population trends and causes for the population decline. (45)

RESPONSE: The Rules on Coastal Zone Management are not used to determine whether a species is threatened or endangered. Rather, the Endangered Species Act of 1973 (16 U.S.C. 1531 et al.), and Endangered and Nongame Species Conservation Act (N.J.S.A. 23:2A-1 et seq.), and the Endangered Plant Species List Act (N.J.S.A. 13:1B-15.151 et seq.) are used by the United States Fish and Wildlife Service, and the DEP's Division of Fish, Game and Wildlife and Office of Natural Lands Management to establish the status of species in New Jersey. The rule in question establishes guidelines for the protection of habitats important to species identified as threatened or endangered under the above State and federal statutes.

N.J.A.C. 7:7E-3.40 Public Open Space

223. COMMENT: The Sierra Club strongly supports the proposals regarding these areas. (45)

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

224. COMMENT: We endorse the concept of requiring buffers between a development and existing open space. (157, 48)

RESPONSE: The Department acknowledges this comment in support of the proposed rule amendment.

225. COMMENT: We strongly object to the proposed new language in subsection (f) of the Public Open Space rule (N.J.A.C. 7:7E-3.40), which requires that all new development adjacent to public open space be required to provide an adequate buffer area and to comply with the Buffers and Compatibility of Uses rule. (45, 63)

RESPONSE: Compliance with the Buffers and Compatibility of Uses rule is already required for all developments which are regulated pursuant to the Rules on Coastal Zone Management. The reference here is intended to clarify this preexisting requirement as it relates to public open space.

226. COMMENT: What objective criteria does the Department use to determine what constitutes an "adequate buffer."? (45)

RESPONSE: The Department evaluates the type of land use on existing properties, the type of land use of the proposed development, the specific construction proposed for the area adjacent to the site boundary, the condition of the land in the area of the property boundary (vegetation, topography, etc.), the proposed width of the buffer area, and the landscaping proposed for the buffer area.

N.J.A.C. 7:7E-3.43 Special Urban Areas

227. COMMENT: I object to the statement that the Filled Water's Edge rule should not be strictly applied in Special Urban Areas (N.J.A.C. 7:7E-3.43) in all cases. The very populations that most need recreation,

access to the waterfront, and the linkage of existing parklands are in the urban aid communities. The need for contiguous waterfront access in these cities is even greater than in outlying areas. (92, 107)

RESPONSE: The current Special Urban Areas rule (N.J.A.C. 7:7E-3.43) does not include any provision that "the Filled Water's Edge rule should not be strictly applied in all cases." Rather, the rule states that "Housing, hotels, motels and mixed use developments are acceptable in filled water's edge areas, provided that the development is consistent with the Filled Water's Edge rule (N.J.A.C. 7:7E-3.23) and public access to the waterfront is provided for, as required by N.J.A.C. 7:7E-8.11." The rules for Filled Water's Edge (N.J.A.C. 7:7E-3.23), Special Urban Areas (N.J.A.C. 7:7E-3.43) and Public Access to the Waterfront (N.J.A.C. 7:7E-8.11) are designed to ensure that adequate access to waterfront areas is afforded to all members of the public, both in urban areas as well as in suburban areas. The proposed amendments to the Rules on Coastal Zone Management will not reduce the ability of the Department to require public access to waterfront areas. 228.

228. COMMENT: Over the next 20 years or so, the loopholes in this rule could directly affect the ability to implement the Hackensack River Pathway along the redeveloping sections of the riverfront in the City of Hackensack if (or when) Hackensack becomes an urban aid community. In addition, we are concerned about the impact of this loophole on a statewide basis. (92, 107)

RESPONSE: The Special Urban Areas rule (N.J.A.C. 7:7E-3.43) does not currently include, nor is the rule proposed to include, waivers from compliance with the Public Access to the Waterfront rule (N.J.A.C. 7:7E-8.11). Rather, as stated in the rationale for N.J.A.C. 7:7E-3.43, the Department does not believe that the Filled Water's Edge rule (N.J.A.C. 7:7E-3.23) (which reserves the waterfront for water dependent) uses should be strictly applied in special urban areas in all cases. Housing, hotels, motels and other commercial developments, which benefit from a waterfront location and stimulate the revitalization of a special urban area, would be consistent with State coastal objectives and urban policy in a special urban area, even though they constitute non-water dependent uses.

N.J.A.C. 7:7E-3.44 Pinelands National Reserve and Pinelands Protection Area

229. COMMENT: It should be clearly stated that all wetland delineations in the Pinelands National Reserve/Coastal Zone overlap area will be performed pursuant to the requirements of the Freshwater Wetlands Protection Act rules. (66)

RESPONSE: All tidal and inland wetlands within this area, excluding the delineated tidal wetlands defined pursuant to N.J.A.C. 7:7-2.2, shall be identified and delineated in accordance with the USEPA three-parameter approach (that is, hydrology, soils and vegetation) specified under N.J.A.C. 7:7A-1.4 of the Freshwater Wetlands Protection Act Rules.

230. COMMENT: The Township of Dennis contains many lots that are located within the Pinelands overlap area and that may be located within 150 feet of freshwater wetlands. Who has jurisdiction over those areas? (78)

RESPONSE: The lots described by the commenter may be regulated under several laws including CAFRA. For wetlands under the jurisdiction of the Freshwater Wetlands Protection Act, wetlands buffers will be subject to the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A). For wetlands solely under CAFRA jurisdiction, wetland buffers will be established by the Rules on Coastal Zone Management (N.J.A.C. 7:7E) on a case-by case basis.

231. COMMENT: The proposed footnote to the list of coastal municipalities makes no sense. It incorrectly states that certain municipalities are "all within the Preservation Area of the Pinelands Protection Area." This is an impossibility since the Preservation Area and the Protection Area are separate regions within the State designated Pinelands Area. This statement also appears irrelevant; therefore we suggest that it be eliminated altogether. (99)

RESPONSE: The Department agrees with this comment and has deleted the footnote on adoption.

232. COMMENT: We believe the best approach in the future is for the Department and the Commission to undergo a process of conformity, to ensure that the planning areas in the overlap between the Pinelands National Reserve and the coastal zone are consistent with the land use regulations and policies of each agency. This would be a better way to maintain the consistency envisioned by the Legislature and it would make the mutual planning required by the Pinelands legislation clear to all applicants. (99)

RESPONSE: DEP's Request for preliminary Comment published in the February 22, 1994 New Jersey Register concerned the legislative directive that the coastal rules should be incorporated in the State Plan. The document also sought comments regarding consistency over land use regulation and planning areas in the overlap area between the coastal zone and Pinelands National Reserve. These comments will be addressed in the context of future rule proposals.

233. COMMENT: Proposed N.J.A.C. 7:7E-3.44 for the Pinelands National Reserve Area is unnecessary and will be unworkable. This proposed change will effectively and dramatically modify the Pinelands National Reserve area of Manchester Township. It will also effectively negate more than two years of work by the Manchester Township Planning Board, Mayor and Council, CAFRA staff, Pinelands staff, NJDEPE 208 Water Quality Planning staff, and the County Planning Board and 208 staff who undertook a combined effort to develop a plan for future development for the PNR area of Manchester Township to be consistent with the State Development and Redevelopment Plan, County 208 and Land Use Plan, the CMP and CAFRA Coastal Management Plan. As proposed, N.J.A.C. 7:7E-3.44 would not be consistent with the State Development and Redevelopment Plan recommendations which were prepared by Manchester Township Planning Board and submitted to the Ocean County Planning Board for Transmittal and adoption by the New Jersey State Planning Commission. It was our understanding that the proposed CAFRA management regulations were supposed to be developed in a manner which would provide consistency, not conflict, with the State Development and Redevelopment Plan. (151)

234. COMMENT: We respectfully request that the NJDEPE delete the proposed changes to N.J.A.C. 7:7E-3.44 from the regulations at this time. We recommend that a planning coordinating program for the Pinelands National Reserve areas of the Manchester and the remainder of the Pinelands/CAFRA overlap areas be conducted on a municipality by municipality basis to determine what would best be applicable to each of the PNR municipalities. (151)

RESPONSE: The Department has decided not to adopt the change as proposed and to leave the regulation as it has been for several years. The Department has determined that the language of the rule as currently written, including reference to the Memorandum of Agreement, provides sufficient direction to protect the Pinelands National Reserve as required by the National Parks and Recreation Act.

The CAFRA amendments enacted by the Legislature in 1993 provide that the Coastal Rules should be incorporated into the State Plan. As a result, the DEPE published a Request for Preliminary Public Comment in the February 22, 1994 New Jersey Register (see 26 N.J.R. 1003(a)). Through this discussion document, the Department has begun the process of considering how best to link the State Plan and Coastal Policies. The Department will coordinate with municipalities located in the coastal area as well as those located in the Pinelands overlap area during this process. The next step will be for the Department to discuss these issues further with the public and the Legislature and to then propose appropriate regulations.

235. COMMENT: The proposed rule at N.J.A.C. 7:7E-3.44 expressly states that an application in the CAFRA/Pinelands National Reserve overlap area must comply with the substantive provisions of the Pinelands CMP. Any application that does not comply will be denied. The result of this proposed regulation effectively extends the regulatory authority of the Pinelands Commission beyond the legislatively authorized Pinelands Area. (5)

236. COMMENT: The Pinelands Preservation Alliance has reviewed the recent DEPE rule proposal which requires applicants for CAFRA permits in the DEPE regulated portions of the Pinelands National Reserve to comply with the federally approved Comprehensive Management Plan. We support the proposed regulations. (119)

237. COMMENT: It is suggested that the following statement be eliminated: "the Department has established a mechanism for protecting wetland buffers or transition areas through the Freshwater Wetlands Protection Act. The standards for establishing wetlands buffers have been developed and implemented through the FWPA, and they have been found to adequately protect wetlands buffer areas in the coastal zone." Instead the comments should only refer to the fact that the statutory authority of the Department under the Freshwater Wetlands Protection Act is limited to a maximum of 150 foot wetlands buffer requirement, which is unlike the maximum 300 foot wetlands buffer under the Pinelands Comprehensive Management Plan. The reference to the reliance upon "arbitrary setback distances" in the Pinelands stormwater

management standards is unsupported and without basis. The stormwater management standards of the Pinelands Comprehensive Management Plan establish specific criteria for the management of stormwater run-off. These standards contain no reference to setback distances. The wetlands protection standards of the Pinelands Comprehensive Management Plan establish minimum buffers to wetlands that must be maintained for all development, including stormwater management facilities.

The assertion that the DEPE standards are "more comprehensive" than those contained in the CMP is also incorrect. Like the standards administered by the DEPE, the stormwater management standards contained the CMP are designed to prevent impacts on groundwater and surface water quality, to prevent impacts upon stream flow, and to control the quantity of runoff. The CMP requirements also provide for control of the quantity of stormwater run-off from a site in order to more closely match the natural infiltration patterns and to prevent impacts upon the recharge of stormwater to the aquifers. (99)

238. COMMENT: The Department's rules must provide for adequate implementation of the Pinelands Comprehensive Management Plan. The Federal Act provides significant financial penalties should the Secretary of the Interior find that the State is not implementing the Federally approved CMP in the entirety of the Pinelands National Reserve. (99)

239. COMMENT: CAFRA should not attempt to administer the Pinelands Plan as a surrogate for the Pinelands Commission. However, CAFRA and Pinelands Districts should be compatible and should be corrected in areas such as the Clarkstown area (south of Mays Landing), where CAFRA limited growth and Pinelands National Reserve regional growth areas overlap. (18)

240. COMMENT: An alternative to the second sentence of the proposed rule would be: "Coastal development that would not comply with the goals, intent, policies and objectives of the Pinelands Comprehensive Management Plan, the National Parks and Recreation Act of 1978, and the State Pinelands Protection Act of 1979 shall be prohibited." (99)

241. COMMENT: During our brief review of the proposed regulations, it is unclear what effect the proposed changes to the Pinelands Rule will have on Dennis Township. Does this mean every property within this area will have to comply with the Pinelands Comprehensive Management Plan (CMP) or will all of those properties fall under the new CAFRA II regulations? (78)

242. COMMENT: It is suggested that the rules be revised to require consistency with the overall policies of the Pinelands CMP rather than strict conformance with the regulations. (5)

243. COMMENT: The NJBA opposes any attempt to adopt a policy that gives the Pinelands Commission veto power over the decisions of the Department that are not in conformance with the Pinelands Comprehensive Management Plan (CMP) as this is not required by the Pinelands Protection Act. (45)

244. COMMENT: The NJBA reminds the Department that the Legislature in the recent revisions to CAFRA did not permit the addition of language that would have required the Department to consult with the Pinelands Commission in developing rules and regulations affecting development in those portions of the coastal area within the Pinelands National Reserve. (45)

245. COMMENT: Implementation of this proposed rule amendment will effectively place an additional 200,000 acres under the jurisdiction of the Pinelands Commission, which will probably result in a major down-zoning of many of the only developable properties remaining in that portion of New Jersey. (45)

246. COMMENT: The Department should not require that applicants submit their applications to the Pinelands Commission because the Commission clearly does not have jurisdiction over areas outside the Pinelands. (97)

247. COMMENT: The Legislature did not intend the provisions of the Pinelands Comprehensive Management Plan to supersede the provisions of CAFRA. Has this been the practice of the DEPE? (52)

248. COMMENT: The proposed regulations include language which states one "shall" adhere to all the regulations of the CMP, the Pinelands' Comprehensive Management Plan. Stafford Township is located wholly in the Pinelands National Reserve. Therefore it appears that if a property is located on the eastern side of the Garden State Parkway, it would have to comply with both the CAFRA regulations and the Pineland's Comprehensive Management Plan. What happens when the two sets of rules are in conflict? (13)

249. COMMENT: We are very much concerned that a major policy issue, not addressed in the legislation, is being made. Specifically, the regulations propose to mandate that coastal development in the "overlap area" comply with the substantive provisions of the Pinelands Comprehensive Management Plan, and further prohibit development which is not consistent.

This issue has not been addressed anywhere in the legislation, and has not been the subject of any public input. Implementation of this regulation will cause severe economic consequences to the State, municipalities, private land owners, and others.

We recommend that this issue be separated from the proposed rulemaking process in order to allow for further study. (25, 60, 168)

250. COMMENT: Subsection (b) states that Coastal development shall comply with the substantive provisions of the CMP as set forth in N.J.A.C. 7:50. A more specific reference to what these provisions entail or a recitation of the specific section(s) of the Pinelands Plan would clarify the nature of the effective standards of the CMP. (134)

251. COMMENT: Dennis Township has been particularly burdened because it is in the overlap between the Pinelands National Reserve and CAFRA. (161)

252. COMMENT: Shore residents will not only be affected by the proposed CAFRA changes but will also be affected by the expansion of the Pinelands jurisdiction encompassed in these pending rules. (27, 28 100)

253. COMMENT: The revisions to this rule should not be adopted based on the following: (a) Application of the Pinelands Comprehensive Management Plan within the CAFRA/PNR Overlap Area conflicts with clear legislative direction; (b) application of the Pinelands Comprehensive Management Plan in the CAFRA/PNR Overlap Area would be inconsistent with federal approval of the NJ Coastal Zone Management Program and over ten years of administrative interpretation; (c) The 1988 MOA does not authorize implementation of the Pinelands Comprehensive Management Plan in the CAFRA/PNR overlap; (d) Any attempt to apply the Pinelands Comprehensive Management Plan in the CAFRA/PNR Overlap Area would require federal approval of a substantial amendment to the Coastal Zone Management Program; (e) Economic impacts have not been considered, as required by the Administrative Procedure Act. (66)

As currently written, N.J.A.C. 7:7E-3.44 provides that the DEP shall follow the procedure outlined in February 8, 1988 Memorandum of Agreement between the DEP and the Pinelands Commission when acting on an application for development within the Pinelands National Reserve and Pinelands Protection Area. This MOA in turn specifically states that the Department will use the Pinelands Comprehensive Management Plan when reviewing a project in the Pinelands National Reserve.

254. COMMENT: Will projects presently existing within the National Reserve and not previously regulated by the Pinelands Commission be required to meet the standards of the Pinelands Commission Comprehensive Management Plan, which specifically requires new permits for resource extraction every two years and limits on total acreage and depth of excavation? Will restoration plans for existing facilities within the National Reserve have to conform to the restoration standards of the Pinelands Comprehensive Management Plan? Can projects within the National Reserve be grandfathered from strict compliance with the CMP? (66)

RESPONSE: As currently written, N.J.A.C. 7:7E-3.44 provides that the DEPE shall follow the procedure outlined in a February 8, 1988 Memorandum of Agreement between the DEPE and the Pinelands Commission when acting on an application for development within the Pinelands National Reserve and Pinelands Protection Area. This MOA in turn specifically states that the Department will use the Pinelands Comprehensive Management Plan when reviewing a project in the Pinelands National Reserve. The DEPE has determined that as currently written, N.J.A.C. 7:7E-3.44 provides sufficient direction to protect the Pinelands National Reserve, as is required by the National Parks and Recreation Act. Accordingly, the Department has decided not to amend this rule but to retain it as previously written. This means the Department will continue to follow the MOA when reviewing projects in the Pinelands National Reserve.

N.J.A.C. 7:7E-3.49 Urban waterfront redevelopment areas

255. COMMENT: Over the years many of us have been working on linear parks and green spaces adjacent to waterways. It is a lost opportunity for recreation and scenic amenities if these greenways are

destroyed in the name of urban redevelopment. Those who live in urban areas are the persons who are most in need of green areas and access to waterways and waterfront. (107)

256. COMMENT: We fully support the new rule at N.J.A.C. 7:7E-3.49, Urban waterfront redevelopment areas, as many of our facilities are along tidal waterways. We believe this new rule would apply to many of our facilities; however, in any event, we request that the definition be changed to read, "These areas include industrial sites, previously filled port areas, landfills and railroad yards and energy facilities." (138)

257. COMMENT: The proposed policy states that "Urban Waterfront Redevelopment Areas include previously developed urban sites, located along the tidal rivers of New Jersey outside the defined Coastal Area, which are subject to Department jurisdiction pursuant to the Waterfront Development Law" (emphasis added). We find this language confusing, since any area subject to the Waterfront Development Law is considered part of the coastal zone. This language should be clarified or removed. (41)

258. COMMENT: The City of Trenton borders on a portion of the Delaware River which is subject to regulation under the Waterfront Development Law and should be included in the list of urban waterfront redevelopment areas. (53)

RESPONSE: In response to Department discussions related to this rule proposal, and further review of the scope of this proposed rule, the Department has decided not to adopt this rule. The Department believes that this rule requires further development and refinement prior to adoption, in order to address additional concerns which have been raised since this rule was originally proposed. A revised version of this rule may be proposed at a future date in accordance with the Administrative Procedures Act, and will be subject to public review and comment at that time.

N.J.A.C. 7:7E-3A Standards for Beach and Dune Activities

259. COMMENT: Your N.J.A.C. 7:7E-3A.1, proposed standards applicable to routine beach and dune maintenance provides that "dredging sand for beach nourishment after a storm will not be considered an acceptable emergency beach restoration project." In addition, a host of restrictive conditions regarding emergency beach restoration will be placed on municipalities.

This proposal does not seem to include any consideration for the beaches or for the local municipality. Local municipalities may be required to invoke alternatives which may be much more costly and may be less successful when, in fact, following storms that denude the beaches and dunes, the majority of the sand that is taken away is sitting on the bottom of the ocean some number of feet away from the beach. Why not allow the dredging of this sand back onto the beaches and dunes? (75)

RESPONSE: The Department has determined that uncoordinated post-storm beach restoration activities could potentially cause adverse impacts to the beach and dune systems along the oceanfront. N.J.A.C. 7:7E-3A.2 defines four separate and acceptable post storm beach restoration activities, including the bulldozing of sand from the intertidal zone, shore parallel sand transfers, placement of sand filled bags or tubes, and placement of sand, gravel, rubble or concrete. These activities may all be authorized under a general permit which will be effective for a five year period. Requests to remove material from below the mean low water line would be considered dredging and would not be authorized under the general permit, but could be authorized through the issuance of a Waterfront Development permit. Because dredging results in the potential for adverse impacts to the nearshore environment as well as to the beach and dune system, such activities need to be evaluated through a Waterfront Development permit review.

260. COMMENT: This rule refers to Mean Sea Level (NGVD) and does not indicate which National Geodetic Vertical Datum is to be used—1929 or 1983. (44)

RESPONSE: The reference to NGVD has been changed on adoption to reflect the current datum, North American Datum (NAD), 1983.

261. COMMENT: N.J.A.C. 7:7E-3A.4, Standards applicable to the construction of boardwalks, attempts to practice engineering by rule which may violate N.J.A.C. 13:40. This rule should not be adopted. (44)

RESPONSE: The technical standards found at N.J.A.C. 7:7E-3A.4 do not conflict with N.J.A.C. 13:40, which establishes licensing requirements and standards of practice for professional engineers and land surveyors. The purpose of the standards for boardwalk construction is to ensure that such construction is completed so it will resist storm damages. The Department's experience in conducting post storm damage surveys has shown that one of the primary causes of boardwalk damage is inadequate design and construction. Currently, there are no standards which apply to boardwalk construction, as this construction is not subject to the requirements of the Uniform Construction Code (BOCA). The development of boardwalk construction standards was specifically identified as a DEPE priority in the Interagency Hazard Mitigation Survey Team Report following the December 1992 coastal storm and Presidential Disaster Declaration. The engineer retains the responsibility for the overall design of the project.

262. COMMENT: This rule specifies the method of inserting piles by drop hammer. This is ill-advised when the supporting soils are sand. This rule should not be adopted. (44)

RESPONSE: This requirement is taken directly from the Coastal Construction Manual prepared by the Federal Emergency Management Agency (FEMA-55, February, 1986). Other methods for inserting piles, such as jetting, result in a "low load" capacity, and the jetting operation causes the soil to loosen around the pile, reducing the load capacity of the structure. Therefore, the rule has not been deleted as requested.

263. COMMENT: This rule specifies the materials for construction, which is an engineering issue. Thus the rule may violate N.J.A.C. 13:40. Other superior materials for corrosive environments exist, such as stainless steel. However, the use of that material would be prohibited by this rule. This rule should not be adopted. (44)

RESPONSE: The technical standards found at N.J.A.C. 7:7E-3A.4 do not conflict with N.J.A.C. 13:40, which establishes licensing requirements and standards of practice for professional engineers and land surveyors. This rule specifies what material can be used for metal fasteners and hardware, and is intended to ensure that these materials do not corrode as quickly in the marine environment. This requirement does not preclude the use of stainless steel, although the cost of this particular material usually precludes its use for boardwalk construction. The engineer retains the responsibility for the overall design of the project.

264. COMMENT: The Department should continue its present policy allowing the creation of public access paths across the dunes and should allow the maintenance of dunes consistent with the general permit. (45)

RESPONSE: The Department acknowledges this comment in support of the proposal to include standards for dune walkover structures and beach access pathways.

265. COMMENT: The proposed requirement that the county engineer certify that activities on a county-owned beach conform to the beach and dune activities standard and that the engineer be held responsible for ensuring compliance with the requirements is inappropriate. (157, 48)

RESPONSE: The proposed requirement for certification applies to all property owners who undertake beach and dune maintenance activities. The responsibility of certification is proposed to be assigned to the property owner, regardless of whether the property owner is a private individual, a municipality, a county, or the State of New Jersey. The proposed requirement for engineering certification for municipal, county or State properties is based on the need to ensure conformance with the technical standards for beach and dune activities. That need is particularly acute on the larger parcels of beach which are controlled by these agencies.

266. COMMENT: The recordkeeping requirements for sand transfer activities are extreme and seem to have little functional value as an enforcement tool since wind and wave action perform sand transfer outside of regulatory purview. These requirements should be deleted. (157, 48)

RESPONSE: The rule amendments include a requirement that records of all mechanical sand transfer operations on a beach be maintained by the permittee because the Department has established limits on the amount of sand that can be transferred and on the frequency of sand transfer operations. Thus, there is a need for some mechanism to monitor these activities. The requirement to maintain records is based on enforcement concerns as well as on the need to track these activities in the event that problems related to the sand transfers arise.

267. COMMENT: It is unclear if the reference to wooden support posts for sand fencing implies that traditionally used steel stakes are now unacceptable. (157, 48, 42)

RESPONSE: The Department recommends the use of wooden posts for sand fencing support, as opposed to the use of steel posts which rust and corrode in the marine environment and form a potential hazard on the beach or in the water. However, the use of steel posts will not be specifically prohibited.

268. COMMENT: Where beach access pathways are used for maintenance equipment, patrol vehicles, authorized surf fishing vehicles and access to launch areas, maintenance of a 10 foot wide clearance should be permitted. (157, 48)

RESPONSE: The proposed rule amendment includes a requirement that at-grade dune walkovers at single family or duplex residential dwellings be limited to four feet in width, and that access ways through dunes elsewhere be limited to eight feet in width. Beach access pathways which do not cut through dunes would not be subject to these width limitations. The Department will permit beach access pathway construction in excess of these limits for the types of activities suggested by the commenter if there is no viable alternative route that would avoid cutting through a dune.

269. COMMENT: The language establishing acceptable dune vegetation should be made flexible to accommodate other naturally occurring species or acceptable vegetation that may not be specifically mentioned. (157, 48)

RESPONSE: The proposed list of acceptable dune vegetation was developed by the Department in conjunction with the United States Department of Agriculture, Soil Conservation Service, Plant Materials Specialists. The acceptable vegetation list includes 14 different species which either naturally occur in the dune environment or have been proven to be effective in dune stabilization at dune sites in New Jersey. This species list provides flexibility for plant selection, while encouraging the use of plant materials which are most effective for dune stabilization and are most likely to survive in the dune environment. If the Department is provided with evidence that other plant species are appropriate for dune stabilization, requests for use of that species shall be approved.

270. COMMENT: The use of temporary dune mats at-grade to satisfy ADA accessibility mandates should be permitted. The regulations should recognize that with natural dune growth, structures designed and built as elevated walkovers may eventually be at-grade. (157, 48)

RESPONSE: The use of "temporary dune mats" has the potential to adversely affect the dune, by damaging vegetation which stabilizes the dune. The proposed amendments include guidance for the construction of access ramps for people with physical handicaps to facilitate access across dunes to the beach. Such ramps have less impact on the dune and on dune vegetation since the ramps are elevated above the dune.

271. COMMENT: Clarification is needed regarding the definition of boardwalk. Are all timber walkways in the coastal area boardwalks or is the rule meant to apply to the extended linear walks parallel to the beach and dune which are traditional in many coastal communities? (157, 48)

RESPONSE: The Department has clarified the language in N.J.A.C. 7:7E-3A.4 on adoption to distinguish between boardwalks and beach/dune walkover structures.

272. COMMENT: The requirement that support piles be driven to a depth of at least -10 feet for all V-zone locations and that piles be inserted by a pile driver or drop hammer effectively precludes the use of municipal personnel for boardwalk construction. Economically, for a non-habitable structure such as a boardwalk, it makes more sense to invest less money in the initial construction and to assume the expense of occasional replacement, than it does to spend considerable dollars trying to construct the boardwalk as a permanent, storm-proof structure. (57, 48)

RESPONSE: The requirement for pile depth penetration and the method of installation is based on recommendations found in the Coastal Construction Manual, prepared by the Federal Emergency Management Agency. Both of these requirements are intended to provide the maximum structural integrity for boardwalks and to minimize the potential for boardwalk damage during storm events. Post-storm damage surveys conducted by the Department have shown that boardwalk damage along the oceanfront often causes damage to adjacent structures due to floatation and battering. These construction requirements are also supported by the New Jersey Hazard Mitigation Plan, which has identified boardwalk damage as a serious storm hazard. This Plan further recommends that more stringent boardwalk construction standards be developed. Over the long-term, the Department believes it is both safer and more cost-beneficial to construct a boardwalk which will resist damage from coastal storms than to continuously replace the boardwalk.

273. COMMENT: N.J.A.C. 7:7E-3A.1(a)1 states that if the activities in (a) above are proposed to be conducted by a municipal or county agency on property owned by that governing body, then the municipal or the county engineer must certify that the activities will be conducted in accordance with these standards. The appropriate municipal or county engineer is responsible for ensuring compliance with these requirements. I take strong exception to this provision in light of the pending consideration of a constitutional amendment for State mandate, State pay. These rules and regulations mandate that the municipality spend more money for engineering and for legal work. (27)

RESPONSE: The proposed requirement is intended to ensure some degree of accountability on the part of the permittees who conduct regulated activities on beaches and dunes and to ensure compliance with the standards and conditions for approval of these activities. In addition, this requirement will allow the Department to evaluate the effects of the regulated activities on the beach and dune system and to identify problems in the event that the activities are not conducted in accordance with the standards. The Department has created, in the Coastal Permit Program Rules at N.J.A.C. 7:7-7.3 (adopted elsewhere in this issue of the New Jersey Register), a category of general permits, for which the Department has specifically defined acceptable activities and standards, thereby reducing the fees and engineering costs that would be associated with an individual permit application for these activities. This more then compensates for the minor costs associated with engineering certification and tracking to ensure that the activities are conducted in accordance with the defined standards at N.J.A.C. 7:7-7.3. Furthermore, the preparation and submission of CAFRA permit applications generally do not require the services of an attorney and therefore this increased regulation should not result in increased legal fees.

274. COMMENT: I understand that with respect to post-storm emergency beach restoration, some communities are better at their management than others. Scraping sand is not always a good policy on the beach. Sometimes, depending on the width or height of the beach, there is enough available sand for scraping and sometimes there is not. Therefore, I have no objection to the DEPE being involved in that process. Some of the communities that I work with have already cooperated with the DEPE in this regard. (144)

RESPONSE: The purpose of the post-storm emergency beach restoration section is to provide standards for specific activities which are routinely conducted in the wake of a coastal storm. The standards are designed to minimize adverse impacts to beaches and dunes resulting from these activities.

275. COMMENT: I question the emergency beach restoration criteria, specifically, the requirement that no more than one foot of sand may be scraped off the berm and that it must revegetate. I believe these regulations will be a burden to municipalities. (144)

RESPONSE: The standards for emergency post-storm beach restoration found at N.J.A.C. 7:7E-3A.2 do not include scraping depth limits for bulldozing sand from the lower beach to the upper beach. The one foot scraping depth limit applies to "alongshore" (shore parallel) sand transfers, and is intended to protect the "borrow" areas from overscraping and from the subsequent adverse impacts associated with overscraping. Overscraping can potentially result in reduced vulnerability on the fill area but increased vulnerability on the borrow area. Other post-storm beach restoration activities are also authorized by N.J.A.C. 7:7E-3A.2, including the placement of fill material (sand, gravel, rubble, etc.), and the placement of sand filled geotextile bags and tubes.

N.J.A.C. 7:7E-3B Information Required in Wetland Mitigation Proposals

276. COMMENT: The mitigation proposal requirements would provide the NJDEPE with necessary plans assuming a mitigation site location has already been found and is suitable to the NJDEPE. The selection of a suitable mitigation site, however, is often the most important and complex task. Since the rules do not address this issue, the review process is often unnecessarily delayed because the NJDEPE will not comment on a location until construction details are provided. This is a "catch 22" situation for applicants. NJDEPE should agree on the appropriateness of a location before the development of costly mitigation plans. It is possible to conduct a mitigation site screening process based on reasonable site selection criteria without the need for detailed mitigation plans. Therefore, the proposed rule prematurely requires a specific level of plan detail without clear guidance by the NJDEPE on mitigation site selection. (154)

RESPONSE: The current practice of the Department in this area is to provide preliminary guidance to permit applicants on the suitability of a given property for use as a mitigation site. In many cases, this guidance assists in the identification of acceptable sites or results in the

identification of potential constraints to the use of a particular site. This guidance will continue to be provided by the Department and should be sought before detailed mitigation plans are developed.

N.J.A.C. 7:7E-3C Assessing Impacts to Endangered and Threatened Wildlife Species in Environmental Impact Assessments

277. COMMENT: The methodology which is outlined in N.J.A.C. 7:7E-3C requires the applicant to monitor the site whenever necessary (various times of the year and various times of the day) to determine the impact of proposed development on the species. Theoretically, a property owner/permit applicant could have several such species on the site, each of which could require a separate survey/study and could cost in the hundreds of thousands of dollars. (45)

RESPONSE: The Department recently funded regional status surveys for several endangered or threatened species. Costs for the two year studies ranged from $2,500 to $10,000. Based on these costs for regional studies, the Department cannot concur that localized site and vicinity studies will cost "hundreds of thousands of dollars."

278. COMMENT: We are very concerned with the proposed amendments at N.J.A.C. 7:7E-3C, Assessing Impacts to Endangered and Threatened Wildlife Species in Environmental Impact Assessments, which set forth the criteria that are to be used for assessing the impacts to endangered and threatened wildlife species in the EIS. As structured, the permit applicant would have to spend vast amounts of time and money in order to meet the standards of this policy, such as the survey methodology. (45, 63)

RESPONSE: The Department has proposed specific standards for habitat assessments, in response to concerns that there have not been any standard guidelines available to assist permit applicants in conducting such assessments in the past. The intent of this proposal is to standardize and formalize these guidelines, and to ensure consistency in habitat assessment requirements for all applicants. By proposing specific standards, prospective applicants will be able to define a scope of work for the survey which will be acceptable to the Department. This should reduce the frequency with which the Department requests additional surveying since the standards will have already been established, thereby saving the time and costs of additional survey work.

279. COMMENT: We support the stronger rule language relating to the inclusion of fishing catwalks and platforms in bridge design. (157, 48)

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

N.J.A.C. 7:7E-4.2(e) Docks and piers

280. COMMENT: The readoption of this rule limits structures extending more than 20 percent of the width of the lagoon. This limitation appears to conflict with the stated support of marinas. A site specific determination of pierhead lines should be used. (44)

RESPONSE: These standards apply to residential docks and piers in lagoons, not to marina developments. Therefore, the rule does not conflict with the support of marinas.

N.J.A.C. 7:7E-4.2(f) New dredging

281. COMMENT: We suggest that N.J.A.C. 7:7E-4.2(f), standards relevant to maintenance dredging, be clarified. Please specify when pre-dredging chemical and physical analysis of dredged material and/or its elutriate will be required. Also, please indicate in the rules when additional testing, such as bioaccumulation testing and bioassay of sediments, will be required. Finally, the reference to subsection (g) at the end of the paragraph at N.J.A.C. 7:7E-4.2(f)1 incorrectly states that subsection (g) is found above. "Above" should be changed to "below". (138)

RESPONSE: The incorrect reference has been corrected on adoption. With respect to the requirement for chemical, physical, bioaccumulation and bioassay analysis, it is not possible to identify every situation in which such testing will be required. This determination must be made on a case-by-case basis, upon evaluation of the specific dredging site, amount of material to be dredged, the method of dredging, the likelihood of the presence of contaminants contained in the dredged material and disposal site. For example, such testing is often required for ocean or other in-water disposal of dredged material, but would not typically be required for upland disposal.

282. COMMENT: Bay bottoms are a valuable habitat. In the Navesink, Shrewsbury, Manasquan, St. George's Thoroughfare, and Barnegat Bay, the additional or new dredging is going to change to contour of the bay bottom. Thus, where you might have previously had three feet of water and animals that live in three feet of water, you will end up with six feet of water. Statistics show that in these dredged areas where you have increased the water depth or doubled it, a violent change in the type of habitat and in what kind of animals can live there will sometimes result. (10)

RESPONSE: The Department acknowledges the importance of the bay bottoms as valuable estuarine ecosystem. This importance is reflected in the rules which address impacts to shellfish habitat, submerged vegetation habitat, intertidal shallows and prime fishing areas. However, the Department also acknowledges the importance of recreational and commercial use of the coastal waters, particularly boating. The proposed amendments are intended to address and balance the various competing interests in the use of coastal resources.

N.J.A.C. 7:7E-4.2(k) Standards relevant to mooring

283. COMMENT: The proposed standard is inappropriate and potentially unlawful. An owner of waterfront land with suitable adjacent open water for a marina should have the right to seek approvals and compete in the marina business, or utilize existing access to suitable water areas to expand existing business operations. This rule will further broaden the NJDEPE's discretionary power to require an applicant to rent space from a competitor, or deny an applicant the ability to reasonably compete in the marina business on waters that are currently accessible and would otherwise comply with the standards. (3)

RESPONSE: The standards relevant to marina developments are not contained in this subsection (N.J.A.C.7:7E-4.2(k)), but are contained elsewhere in N.J.A.C. 7:7E-7.3(d). The demonstrated need criterion does not apply to marina developments, and therefore would not prevent a waterfront property owner from "competing" in the marina business.

N.J.A.C. 7:7E-4.2(m) Bridges

284. COMMENT: We support the rule (N.J.A.C. 7:7E-4.2(m)2iv) that fishing catwalks and platforms are to be provided and considered during the design phase of all proposed bridge projects. However, we suggest adding wording to provide for such structures during bridge upgrading, replacement, and repair. Our rationale is that few new bridges will be built over tidal waters but many bridges will be rebuilt; we support anything that provides fishing access to tidal water. (10)

RESPONSE: The standards relevant to bridges apply to new and reconstructed bridges, both of which are subject to regulation under the Rules on Coastal Zone Management (N.J.A.C. 7:7E).

Subchapter 5 General Land Areas

285. COMMENT: The Department should clarify why a reference to another formal rule adoption is included in this rule. Including a reference to another rule adoption is unnecessary and the inclusion implies a hidden meaning. (44)

286. COMMENT: The proposed rules effectively ignore the legislative intent to use the State Development and Redevelopment Plan and the efforts that municipalities, counties and State agencies expended to achieve consistency in land use programs during the Cross-Acceptance process. (5)

RESPONSE: The reference to a separate formal rule adoption was included to inform the public that this section of the Rules on Coastal Zone Management is in fact the subject of a separate pre-proposal, or Interested Party Review. That proposal will result in a separate rule proposal and adoption amending N.J.A.C. 7:7E-5. This information was provided to give complete information to persons reviewing the proposed amendments to N.J.A.C. 7:7E. No hidden meaning exists or was intended.

287. COMMENT: N.J.A.C. 7:7E-5 states that the Department shall not apply the development intensity requirements of this section to single family and duplex developments located on lots which are less than 6,000 square feet in area that were subdivided on or prior to July 19, 1993 and which are not part of a larger development until such time as this section is revised through a formal rule adoption. The NJBA requests that the Department expand this section to also exempt from the development intensity requirements those activities to be authorized under the proposed general permits and permits-by-rule. (45)

RESPONSE: N.J.A.C. 7:7E-5.1(b) has revised to clarify that, pursuant to N.J.A.C. 7:7E-7.2(e), only a limited number of rules apply to the construction of any single family or duplex dwelling which is not part of a larger development; and General Land Areas is not an applicable rule. All projects eligible for a General Permit or Permit By Rule must meet only the requirements of the specific Permit; they need not also

address the intensity of development requirement. In issuing the general permit, the Department has determined that all the Rules on Coastal Zone Management will be satisfied provided that the specific conditions of the general permit are met. In addition, this section has been revised on adoption to delete the lot size and subdivision date requirements.

N.J.A.C. 7:7E-5.4 Environmental Sensitivity Rating

288. COMMENT: The Sierra Club strongly supports the inclusion and recognition of forest vegetation within the High Environmental Sensitivity Rating.(36)

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

289. COMMENT: The proposed revision of N.J.A.C. 7:7E-5.4(b) which appeared at 26 N.J.R. 984 is not consistent with a DEPE proposal to change this same rule in April 1990. At that time, the Agency stated:

"The rules would no longer use vegetation as one of the two indicators for the environmental assessment of the site. Since the suitability of the site for development is based primarily upon the site's capability to accommodate proposed development, soil capability alone would better indicate a site's environmental sensitivity. Vegetation is considered as an environmental asset upon a site. It is a valuable resource that should be preserved as much as possible but is not an accurate measure of the development limitation or the environmental sensitivity of any site."

We believe that this rationale is accurate and that DEPE should explain why it now proposes to add the forest vegetation criteria back into the rule. (66)

RESPONSE: The proposed inclusion of forest vegetation as a criterion for a site to be classified as environmentally sensitive is directly related to the environmental importance of forested sites. In addition to providing habitat for a wide range of animal species, these areas also help to stabilize soil, minimize erosion, and provide physical and visual buffers to adjacent uses. The Department's experience since the last revision of the rules in 1990 has been that large forested sites with a low ground water table have been excessively cleared and that the benefits of the forest vegetation have been lost, resulting in soil erosion, loss of natural buffer areas and wildlife habitat. The Department believes that the losses are contrary to the goals of CAFRA to enhance and preserve the resources of the coastal zone.

290. COMMENT: The proposed rules add forest vegetation to the high environmental sensitivity rating for development potential and define it as an area of trees and shrubs where a majority of the trees are four inches in diameter. This will significantly reduce the density of development, will be an extremely inefficient use of land and will significantly increase costs of public service. It should be deleted. (5)

291. COMMENT: We strongly object to the proposed modification to N.J.A.C. 7:7E-5.4(b) which expands those land areas which are classified as high environmental sensitivity areas to include all land areas with "forest vegetation." This provision is especially onerous since forest vegetation is defined as an "area of trees and shrubs where the majority of trees are four inches in diameter at breast height." The NJBA requests that the Department delete the reference to forest vegetation and leave this policy as it is currently structured. (45, 63, 97)

RESPONSE: The inclusion of forest vegetation as a criterion for a site to be classified as environmentally sensitive is directly related to the environmental importance of forested sites. In addition to providing habitat for a wide range of animal species, these areas also help to stabilize soil, minimize erosion, provide physical and visual buffers to adjacent uses, and therefore, should be a factor in determining the acceptable development intensity of a site.

292. COMMENT: The definition of "forest vegetation" is unclear. For example, the proposed rule states that forest vegetation is "... an area of trees and shrubs where ..." This vague reference does not appear to provide any lower limit on when an area containing trees will be considered "forest vegetation." Thus hedgerows, orchards or landscaped areas could be construed as having "high environmental sensitivity."

The definition concludes with the statement that in a regulated forest area the "... of trees are four inches in diameter ..." This implies that a survey must be conducted to quantify trees by size and class. However there are no guidelines for the survey process. Will it be necessary to count and measure all woody stems in a specific area, including all whips and saplings within a specific tract of land? Should the survey include only those species which are generally considered trees (for instance, those which can generally be expected to attain a specific height and to be part of the overstory)? If so, why does the proposed rule change include shrubs in the definition? (66)

RESPONSE: Due to the wide variation in tree species and sizes, as they relate to maturity of trees, it is difficult to define by rule the exact limits of forested areas for the coastal zone. This determination must be made on a case by case basis using the environmental sensitivity standards established in this rule. The Department used the proposed approach from 1978 to 1986, and during that time the identification of forested sites did not cause significant disagreement between permit applicants and Program staff.

293. COMMENT: The "forest vegetation" criteria for determining environmental sensitivity will not accomplish the goals stated by the agency. If the goal is to preserve mature forest, then the tree size limit of four inches diameter at breast height should not be used, since many species common to the coastal area have not attained reproductive maturity at this size. If the goal is erosion protection, then other elements, such as slope, soil texture and soil erodibility factors, should be considered before an area is determined to have a "high environmental sensitivity." (66)

RESPONSE: The Department established the four inch diameter criterion for determining forest vegetation because trees of this size are often competitive enough to provide significant wildlife habitat, canopy, and soil stabilization. In addition, many trees in the coastal zone, particularly those in poor soils, do in fact reach reproductive maturity at that size. Therefore, the Department believes that the classification of forested sites as "environmentally sensitive" is warranted.

294. COMMENT: The impact of the proposed rules on new or expanding commercial and industrial developments will be devastating. Has the State considered the economic impact of such businesses moving to other states to expand operations? Has the State evaluated the economic impact to landowners and the potential for legal action seeking compensatory damages? The proposed rule change imposes a significant reduction in development intensity without any technical evidence to support the presumed social economic and environmental benefits to be derived. The beneficial functions and values of forested areas vary widely and those deemed "highly sensitive" are typically associated with land areas purchased by government agencies for preservation. (3)

295. COMMENT: Have the land use intensity changes been clearly presented for public input? Since a proper evaluation of "environmental impacts" must consider physical, natural and socioeconomic issues, has the State carefully considered the economic impact to the landowner and secondary impacts to the region's economy and compared such impacts to predictable benefits? (154)

296. COMMENT: Forested land (four inches + dbh) is now rated as High Environmental Sensitivity. The result is a far higher order of regulation. This is not simply recodification or "fine tuning," but rather a marked increase in regulation. (86)

RESPONSE: Public input on the land use intensity changes was sought at three public hearings as well as several meetings with the Builders Advisory Group and Environmental Advisory Group. The Department acknowledges that this revision will affect the acceptable intensity of development for proposed CAFRA projects and thus, will have an economic impact on forested sites in all regions which have high development potential but not high groundwater and on land owners and development in extension regions which have medium development potential and do not have high groundwater. However, the inclusion of forest vegetation as a criterion for determining high environmental sensitivity is warranted, due to the concern regarding loss of forested sites in the coastal zone. These forested areas provide habitat for wide range of animal species, help to stabilize soil and minimize soil erosion, and provide physical and visual buffers to adjacent land uses. Therefore, inclusion of forested sites in determining high environmental sensitivity is appropriate. The Department believes that these revisions provide a balance between the need to protect and enhance coastal resources and the need to facilitate economic growth in the coastal zone.

297. COMMENT: The inclusion of forest vegetation within the definition of "High Environmentally Sensitive" rating will drastically change the permitted development intensity of a great majority of projects since it is common for undeveloped parcels to contain forest vegetation.

The proposed rule will change the allowable development intensity (that is, percent coverage with structures and paving) for development on forested upland sites (in "development regions" with "high development potential ratings") from 80 percent to less than 30 percent; this also assumes that no wetland or other special areas are on site.

The majority of the developments that are currently under review in extension regions and limited growth regions rarely obtain "high

development potential ratings." In these areas, the proposal rules would change virtually all development that would currently qualify for 30 percent coverage to five percent coverage (that is about four acres per one dwelling unit). (154)

RESPONSE: The Department acknowledges that this revision will affect the acceptable intensity of development for proposed CAFRA projects. However, the inclusion of forest vegetation as a criterion for determining high environmental sensitivity is warranted, due to the concern regarding loss of forested sites in the coastal zone. These forested areas provide habitat for wide range of animal species, help to stabilize soil and minimize soil erosion, and provide physical and visual buffers to adjacent land uses. Therefore, inclusion of forested sites in determining high environmental sensitivity is appropriate.

N.J.A.C. 7:7E-5.5 Development Potential

298. COMMENT: The section on development potential at N.J.A.C. 7:7E-5.5(b)2ii requires applications to be consistent with current Areawide Water Quality Management Plans (208). It is suggested that the Department discuss this with the designated planning agencies for further clarification. (5)

RESPONSE: The past practice of the Department regarding the application of this section has been to evaluate 208 consistency as part of "direct access to a wastewater treatment system with adequate capacity." The proposed amendment clarifies this existing practice. At the same time, the Department is changing the Water Quality Management Plan Program as warranted and has been exploring how it could best be changed with Counties and others. Additional comments and suggestions are welcome.

299. COMMENT: We request that the proposed modifications to N.J.A.C. 7:7E-5.5(b)2iii regarding infill be deleted. What is the Department's rationale for proposing a limit that a proposed development site be located within ½ mile of commercial or industrial development greater than 20,000 square feet? (45, 63)

300. COMMENT: The definition of infill relating to Development Potential Requirements has been expanded. As a result, many areas presently defined as "infill" that lie within rural or rural/residential areas, or properties that have been evolving toward infill status in accordance with the N.J. Coastal Zone Management Program for the past 15 years, will now be classified as having Low Development Potential. Low Development Potential coupled with High Environmental Sensitivity (see above) will render some elements of Municipal and County Land Use Programs meaningless and will make many development activities infeasible within these areas.

The amended definitions are not simply a clarification or a recodification, but constitute the introduction of substantial development regulations. As such these proposed modifications should be eliminated. A major increase in regulations to areas far beyond the 150 feet threshold was not the intent of the recent legislation. Expanded jurisdiction within these areas should be proposed specifically and should be subject to Legislative Review prior to Draft Proposals and Public Comment. (86)

RESPONSE: This is not an expansion of the Department's jurisdiction nor a change made in response to the recent legislation. The reason for the regulation is to further the Basic Coastal Policy that has been part of the Department's rules since 1978, to concentrate rather than disperse the pattern of development and to evaluate a location in terms of its advantages. The Department has amended the rule to insure that in order for a project to receive a high development potential, services or employment opportunities are located in proximity to the project site.

301. COMMENT: We request the Department delete the proposed changes to N.J.A.C. 7:7E-5.5(c)2iii which deal with major commercial and industrial development potential. These proposed changes are inconsistent with the earlier section on infill. (45, 63)

RESPONSE: Agreed. The Department is not adopting the proposed change because it addresses a commercial development of less than 100,000 square feet. This kind of development is considered minor commercial and must meet the standards at N.J.A.C. 7:7E-5.5(b).

N.J.A.C. 7:7E-6.1 Rule on location of linear development

302. COMMENT: The rule on location of linear development should be revised on adoption to specifically reference trails and public walkways so there is no misunderstanding that these facilities qualify as linear development and are, therefore, acceptable uses on beaches, coastal bluffs and other regulated areas. (157, 48)

RESPONSE: The language of N.J.A.C. 7:7E-6.1 has been revised upon adoption specifically include public walkways as another example of linear development. However, linear developments must still be designed to minimize impacts to sensitive environmental areas. The specific acceptability conditions are found at N.J.A.C. 7:7E-6.1 and 6.2.

N.J.A.C. 7:7E-7.2(b) Standards relevant to water area and water's edge housing

303. COMMENT: N.J.A.C. 7:7E-7.2(b)6 states that water area and water's edge housing shall include a provision for boat ramps wherever feasible unless an accessible boat ramp is nearby. This policy seems to contradict earlier proposed policies whereby boat ramps can only be built for public use. (45)

RESPONSE: The goal of the policy is that the boat ramps built as part of water's edge housing developments would also be available to the public to ensure that adequate provisions for water dependent activities are provided at those sites.

N.J.A.C. 7:7E-7.2(e) Standards relevant to the development of a single family home or duplex located upland of the mean high waterline

304. COMMENT: The definition of infill for the housing use policy stipulates that a house must be located on each lot abutting the property line of the proposed residential construction. This rule change does not recognize that other uses may abut the lot line of a specific property, for instance commercial or industrial development or roadways. The definition should be expanded to recognize these uses. (53)

RESPONSE: The Department has amended the language of this rule on adoption at N.J.A.C. 7:7E-7.2(e)1iii(3) to require that a residential or commercial building be located on each lot abutting the lot line of the specific property.

N.J.A.C. 7:7E-7.2(i) Standards relevant to large-scale multi-use development

305. COMMENT: The NJBA requests the Department not to delete N.J.A.C. 7:7E-7.2(i), which deals with large-scale multi-use development, since the rule represents an efficient method for preparing a development plan. (45)

306. COMMENT: The Department should not delete this rule, as it is a means of implementing one of its eight basic coastal policies: "Concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort development and encourage the preservation of open space" (N.J.A.C. 7:7E-1.5(b)1ii).

If the policy has had little effect on the "overall housing development pattern," that may be for reasons unrelated to the Large Scale Development policy. For example, considerable residential development has taken place below the CAFRA threshold of 25 units. Also, large-scale development requires large, well-located sites. Finally, by not proposing and adopting a "conceptual approval" procedural rule, in the aftermath of *Crema* v. *DEP*, 94 *N.J.* 286 (1983) DEPE has strongly discouraged (perhaps prevented) private developers from undertaking large-scale projects. (66)

307. COMMENT: We object to the proposed deletion of the Large-Scale Multi-Use Development Rule from the Rules on Coastal Zone Management especially as they relate to the Smithville Development, which is ongoing.

It is especially burdensome and onerous to apply this to ongoing developments such as Smithville, which, while they do not yet have all of their CAFRA permits, have previously obtained CAFRA permits for substantial numbers of units, and have installed and sized infrastructure based on an agreed number total units to be built. It would appear that at least those Large-Scale Multi-Use Developments which are partially constructed and have previously received CAFRA permits should continue to be able to avail themselves of the Large-Scale Multi-Use Development Policy. (58)

RESPONSE: This section has been deleted since it has very rarely been applied and since the past applications of this policy have shown that large-scale developments are generally residential, with very little accessory use (commercial, office, etc.). Therefore, the General Land Areas rule for residential development more accurately reflects the type of review which large-scale developments now undergo. That review includes an evaluation of the existing development and of the infrastructure adjacent to the proposed development site. In addition, the State Plan addresses this issue in the context of overall municipal development and better reflects the planning for these types of developments. The Department published a request for an Interested Party Review which is the forst step of incorporating the coastal policies

into the State Plan. Future revisions to the Rules on Coastal Zone Management will address the use of large scale multi-use development in the context of the State Plan.

N.J.A.C. 7:7E-7.3(d) Standards relevant to marinas

308. COMMENT: This rule states that "no pressure treated lumber or other lumber treated with any other substance shall be used in any portion of the project." This phrase is apparently missing one or more words. This rule should not be adopted without republishing since no one can effectively comment on the connected language until it is published. (44)

RESPONSE: In response to public comment, this rule has been revised on adoption to clarify that the prohibition on the use of treated lumber does not apply to upland construction.

309. COMMENT: On behalf of AWPI, we request the Department of Environmental Protection and Energy to delete from the proposed rules that section contained at 26 N.J.R. 988 identified as N.J.A.C. 7:7E-7.3(d)10ii which prohibits the use of pressure treated lumber in marinas identified in paragraph (d)10 in the Navesink, Shrewsbury, Manasquan Rivers (upstream of the Route 35 Bridge) and St. George's Thorofare. (96, 8, 131)

RESPONSE: The Department is concerned with potential contamination of productive shellfish habitat through the leaching of chemicals used in the treatment of lumber and its potential impact on human health. Treated lumber represents a potential hazard to shellfish and other marine life, and ultimately to human consumers. The prohibition on pressure treated lumber only applies to projects involving the construction of five or more docking facilities located on waterways that have been identified as highly productive, commercially viable shellfish habitat. Moreover, the proposed rule has been revised on adoption so that the ban on treated lumber will be limited to sheathing and planking materials placed over the water, and will not apply to pilings and upland construction activities. The ban has been lifted for pilings due to the fact that treated pilings do not leach the chemicals to the same degree that sheathing and planking do. The difference in leaching is due to the fact that pilings consist primarily of "heartwoods," which better absorb chemicals used to treat wood. In addition, the surface areas of pilings which come in contact to surface waters are much less than the surface area of bulkhead sheathing and dock planking; therefore, pilings do not represent as great a concern in terms of the impact of chemical leaching. Furthermore, due to the limited alternatives to timber pilings, the Department believes that pilings should be excluded from the ban on the four named waterways.

310. COMMENT: The rationale for the proposal does not mention the basis for precluding the use of pressure treated wood. However, the rationale does contain reference to a memorandum of understanding between the United States Environmental Protection Agency and others dated August 21,1986 concerning the Navesink River Water Control Shellfish Protection Program. This memorandum of understanding does not in any way preclude the use of pressure treated wood. (96)

RESPONSE: This limited prohibition on the use of treated lumber is intended to maintain water quality in water areas which have been identified as critical water areas for commercial harvests. The limited prohibition will protect shellfish resources and the health of human consumers of these resources.

311. COMMENT: It is clear the use of pressure treated wood, particularly CCA-C treated wood, has no adverse affect on water quality. The United States Environmental Protection Agency has never prohibited the use of this wood nor has any other state with tributaries or rivers of equally sensitive ecosystems. Pressure treated wood has been used effectively in the aquatic environment for hundreds of years. The product is registered and approved by the United States Environmental Protection Agency. It is safe and has no adverse impact on water quality, shellfish or the environment. For the foregoing reasons we respectfully request deletion of N.J.A.C. 7:7E-7.3(d)10ii which prohibits the use of sch wood. (96)

RESPONSE: The Department proposed this limited prohibition on the use of treated lumber in order to maintain water quality in water areas which have been identified as critical water areas for commercial shellfish harvests. The Department is attempting to protect the shellfish resources and to protect the health of human consumers of these resources. In addition, the Department's Bureau of Marine Water Classification and Analysis and Bureau of Shellfisheries has collected data which indicates that the use of treated lumber poses a potential public health hazard. A full list of scientific studies used by these Bureaus are contained in response to Comment 316. Based on these data and studies, the Department disagrees that the use of treated lumber has no adverse impacts on water quality or shellfish.

312. COMMENT: Millions of board feet of pressure treated wood is presently and safely in use in the aquatic environment throughout the state of New Jersey. Thousands of individuals are employed either directly or indirectly by companies doing business in this State who rely upon pressure treated wood as a use either primary or secondary to their employment. The Environmental Protection Agency, by virtue of legislation passed by the Congress and signed into law by the President, has jurisdiction and control over the use of pesticides in pressure treated wood pursuant to the act referred to as the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA). EPA has approved of the use of the materials used in pressure treated wood. The EPA decision to permit the continued use of pressure treated wood preempts the State of New Jersey from now banning its use. Further, pressure treated wood is clearly within the gambit of products or goods used in Interstate Commerce. The ban on its use in New Jersey would clearly interrupt the stream of Interstate Commerce and be violative of the United States Constitution. (96)

RESPONSE: The limited prohibition on the use of treated lumber, for marina developments located in only four waterways, is not expected to have an adverse effect on the pressure treated wood industry. In addition, this prohibition does not apply to pilings and any upland use of the product, and does not apply in most of the coastal water areas in New Jersey. The limited prohibition is being adopted to promote local water quality and the environmental protection of critical shellfish habitat as well as to protect human health. The Federal Clean Water Act and other Federal laws specifically allow States to impose more stringent standards than the Federal standards to promote State water quality in local waters. The Department does not believe that Federal regulation of pesticides preempts it from imposing measures intended to protect shellfish and to protect the health of human shellfish consumers.

313. COMMENT: The banning of pressure treated lumber will have an impact on employment in our industry if the proposed restriction is adopted. The industries employ thousands of employees, bulkheaders, pile drivers, deck builders and so on. (121)

RESPONSE: The prohibition on the use of pressure treated lumber applies to only a limited number of projects in a limited number of waterways. Specifically, the prohibition will apply to new or expanded marina projects on the Shrewsbury River, Navesink River and Manasquan River (upstream of Route 35 Bridge), and St. George's Thorofare. In addition, in response to public comments, the rule proposal has been amended on adoption to limit the prohibition to timber sheathing and planking materials placed in or over the water. The prohibition will not apply to pilings or construction above the mean high water line. However, at some future date when alternative piling materials become available, the Department may propose extending the prohibition to include pilings.

314. COMMENT: The manufacture of treated wood is strictly regulated by the USEPA, which also regulates product handling and use. Our industry complies fully with EPA regulations and informs consumers through the distribution of consumer information of safety concerns. (310)

RESPONSE: The method of treatment is not being questioned by the Department, however, the leaching of chemicals from the lumber represents a potential public hazard. This rule proposal is intended to address this potential hazard and to improve water quality in critical shellfish habitat. Further, as stated above, the rule as adopted will only ban the use of treated lumber for sheathing and planking in a limited number of waterways.

315. COMMENT: We recognize that the New Jersey DEPE's intent is to manage the State's coastal waters more effectively. We do not believe, however, that there is any scientific justification to restrict the use of treated wood in the Navesink, Shrewsbury, Manasquan Rivers or St. George's Thoroughfare. We appreciate and understand the importance of this region to the State of New Jersey's shellfish industry, but there is no conclusive data that indicates a direct correlation between the presence of treated wood in the four waterways cited in the newly proposed rules and the management issues addressed in these rules. (31, 131, 96, 3)

316. COMMENT: I support the Department's intent to manage the State's coastal waters more effectively, however, a general ban on treated

wood projects is not justified. There is no conclusive data to indicate a direct correlation between threats to shellfish in waterways and use of untreated wood. (8)

RESPONSE: The Department's Bureau of Shellfisheries and Bureau of Marine Water Classification and Analysis has collected data which indicates that the use of treated lumber poses a potential public health hazard by affecting shellfish in commercially harvested waters. Background studies indicating this potential risk include the following: Weis, J. and P. Weis, "Transfer of Contaminants from CCA-treated Lumber to Aquatic Biota", *J. Exp. Mar. Biol. Ecol.* 161 (1992):1899-199; Weis P., J.S. and L. Coohill, "Toxicity of Construction Materials in the Marine Environment: A comparison of Chromated-Copper-Arsenate-Treated Wood and Recycled Plastic", *Arch. Environ. Contam. Toxicol.* 22 (1992):99-106; Weis, P., J.S. Weis and L. Coohill, "Biological Impact of Wood Treated with Chromated Copper Arsenate on Selected Marine Organisms", *Arch. Environ. Contam. Toxicol.* 20 (1991):118-124; and Warner, John E., H.R. Solomon, "Acidity as a Factor in Leaching of Copper, Chromium and Arsenic from CCA-Treated Dimension Lumber", *Environmental Toxicology and Chemistry*. 9 (1990):1331-1337.

317. COMMENT: The DEPE regulations will effectively eliminate marinas. Marinas require dredging, and the regulations severely restrict dredging. (22)

RESPONSE: The proposed amendments to the Rules on Coastal Zone Management, specifically, the proposed amendments to the rules on Shellfish Habitat (N.J.A.C. 7:7E-3.2), Submerged Vegetation (N.J.A.C. 7:7E-3.6), and Intertidal and Subtidal Shallows (N.J.A.C. 7:7E-3.15), include provisions allowing new and maintenance dredging at existing marinas. Therefore, the Department disagrees with this comment.

318. COMMENT: The Center for Plastics Recycling Research of Rutgers, The State University of New Jersey applaud the purpose of this docket. Based on the research we have performed over the past several years, we believe that the time has come to replace chemically poisoned wood with recycled plastic lumber. We have been working with the both the Army Corps of Engineers and plastic lumber manufacturers to develop standards and testing methods to assure that structures can be built with these materials with high reliability. (104)

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

319. COMMENT: I have reviewed several pertinent sections of the proposed amendments to the Rules on Coastal Zone Management and would like to give my whole hearted support for N.J.A.C. 7:7E-7.3(d), which addresses waste disposal through pumpout facilities and prohibits the use of pressure treated wood near shellfish beds. (47)

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

320. COMMENT: Instead of banning treated wood, a little common sense would do the job much better. For example, there is nothing wrong with properly specified treated wood. (54).

RESPONSE: It is very difficult to ensure that the lumber is "properly specified treated wood," since this process is unregulated by the Department and since proper types of sapwoods are not always available. Since treated lumber may leach harmful chemicals into the waterways supporting commercially productive shellfish beds, thereby creating a potential human health threat, the Department believes the limited prohibition is appropriate.

321. COMMENT: A condition of acceptability for a new, expanded or renovated marina is an appropriate mix of marina uses. It would be helpful to prospective applicants and save them time and effort if DEPE simply stated its agenda relative to all marinas. Do you want all marinas to be full service? Do you want no loss of existing marina uses? It is difficult to plan and design a project when you are unsure what will be expected of you. (157, 48)

RESPONSE: The Department would like to promote not only new marina uses but increased availability of all services for recreational and commercial boating. Since not all marinas have sufficient space or uses to efficiently provide all services, the Department is adopting an amendment to N.J.A.C. 7:7E-7.3(d) to include marina guidelines which will address marina design, marina construction and marina operation. These guidelines will provide specific details which should assist in the planning and design of marina facilities. The specific standards required for marina developments are dependant on the exact location of a proposed marina project, and on the level and availability of existing marina services in the vicinity.

322. COMMENT: While we understand the rationale for a prohibition on treated lumber, we are concerned about the indirect impacts of such a rule as there are no practicable alternatives. (157, 48)

323. COMMENT: What alternatives are available considering "reasonable" availability and cost? Suggested alternative materials should be specified and subject to public review and comment. (3)

RESPONSE: The prohibition on the use of treated lumber applies to a limited number of projects in a limited number of waterways. Specifically, the prohibition on treated lumber is proposed for new, expanded or renovated boat mooring facilities for five or more slips which are located on the Navesink River, Shrewsbury River, Manasquan River (upstream of the Route 35 bridge) and the St. George's Thorofare. Alternatives to treated lumber include recycled plastic, fiberglass reinforced plastic composites, and vinyl, as well as steel (for bulkhead construction). These alternative materials are currently available at a comparable cost and have been utilized in a number of dock/bulkhead projects in New Jersey. Descriptions and specifications for vinyl and and fiberglass reinforced plastic products are availablefrom the Department's Land USe Regulation Program upon request.

324. COMMENT: The NJBA is concerned with the proposed prohibition on the use of pressurized treated lumber or other lumber treated with any other substance since this will destroy the ability of a person to construct a marina. (45)

RESPONSE: The ban of treated lumber will not destroy the ability of a person to construct a marina. Alternatives to pressure treated lumber include recycled plastic, fiberglass reinforced plastic composites, and vinyl as well as steel (for bulkhead construction). However, the rule proposal has been amended on adoption in response to public comments to limit the prohibition to timber sheathing and planking materials that will be placed over the water. The proposed prohibition will not apply to pilings, and will not apply to projects located outside of the Navesink, Shrewsbury and Manasquan Rivers and St. George's Thorofare.

325. COMMENT: A prohibition on the use of treated lumber throughout a project, whether or not the lumber is in contact with the water is excessive; a marina office constructed of lumber could not be painted or stained. (157, 48)

RESPONSE: The language of this proposed rule has been amended on adoption to state that the prohibition on treated lumber only applies to the construction of docks, piers, boat ramps, bulkheads and other "in-water" facilities. It does not apply, therefore, to marina offices and upland construction.

326. COMMENT: Requiring that marinas provide restrooms and marine septic disposal facilities is expensive, but is justified by the need to control fecal coliform levels. Putting the burden of increased coliform testing on the marina owner however, seems to be an inappropriate assignment of a public health responsibility. DEPE should not be using permit applicants to fund health or environmental studies. (157, 48)

RESPONSE: The requirement for fecal coliform testing is limited to marina developments of five or more slips which are located on the Navesink River, Shrewsbury River, Manasquan River (upstream of the Route 35 Bridge) and the St. George's Thorofare only. The purpose of this testing requirement is to monitor the effects of the specific marina development on water quality in areas which have commercial shellfish harvests, to determine if elevated fecal coliform levels are caused by the operation of the project. The Department believes it is appropriate that the burden of this testing requirement be borne by the facility which may generate the contaminants.

327. COMMENT: The Department has taken good marina development guidelines and made them bad marina development regulations. The guidelines describe an ideal marina which is impossible to achieve in a real world situation; it is unreasonable to make these standards to which an applicant will be held at the risk of permit denial. (157, 48)

RESPONSE: The marina development guidelines have previously been used informally by the Department in the review of marina development permit applications. The proposed amendments would "formalize" these guidelines by incorporating them into the codified Rules on Coastal Zone Management. However, the proposed language of this section has been clarified on adoption at N.J.A.C. 7:7E-7.3(d)9 to require compliance with the marina standards "to the maximum extent practicable." In addition, the marina "siting" guidelines have been deleted from this rule on adoption, since these requirements were determined to be difficult to comply with in the very heavily developed coastal areas of New Jersey.

328. COMMENT: What is the rationale for the prohibition on the use of pressure treated lumber? (45)

RESPONSE: The rationale for the limited prohibition on the use of treated lumber is a desire to maintain water quality in water areas which have been identified as critical waters for commercial shellfish harvests. The Department is attempting to protect the shellfish resources and to protect the health of human consumers of these resources.

N.J.A.C. 7:7E-7.3A Marina Development

329. Comment: I give my whole hearted support for N.J.A.C. 7:7E-7.3A, which addresses the siting of marinas. (47)

RESPONSE: The Department acknowledges this comment in support of the rule proposal. However, it has been determined that the "siting" guidelines are likely to be very difficult to comply with. The highly developed nature of the coast limits the number of large parcels of land available for a marina and, in most waterways, dredging would be required. Therefore, the siting guidelines have been deleted on adoption, while the marina design, construction and operation guidelines remain in the adopted rule.

N.J.A.C. 7:7E-7.4 Energy Use Rules

330. COMMENT: The proposed CAFRA regulations excessively penalize, casually lump together, and categorically close out certain activities practiced by the natural gas industry in the absence of compelling proofs that such restrictions will afford a greater degree of environmental protection. One reason for this treatment of the industry stems from the fact that natural gas pipelines are treated essentially the same as wastewater systems or petroleum pipelines, conveyance systems with significantly higher potential environmental impacts. The Department would better serve the overall interests of New Jersey's utilities by identifying through matrices or other means the specific activities permitted, restricted, or prohibited for each type of linear development. This would not be an unprecedented step; the CAFRA regulations already use matrices to summarize Water Area policies (see N.J.A.C. 7:7E-4.2) and Acceptable Level of Development (see N.J.A.C. 7:7E-5.7). We believe that in this way the CAFRA policies could clearly recognize and acknowledge the significant differences between natural gas pipelines and other utility pipelines such as petroleum pipelines or sanitary sewers. (37)

RESPONSE: Because of the variation in utility types and impacts, and due to the very different environmental constraints from site to site, such a matrix would be very difficult to establish. The Department would welcome suggestions from the Natural Gas industry regarding this idea, with specific details for how such a matrix could be fairly established. Such input could be used in future rule revisions which will certainly be forthcoming.

331. COMMENT: Energy facilities should be generally acceptable in all Special Areas. We fully recognize that protection of these areas is paramount; however, our facilities are long-established uses within the coastal zone and reliable operation of them contributes to the public health, safety and welfare. For example, maintenance dredging for energy facilities should be expressly permitted in previously disturbed Special Areas, such as submerged vegetation areas, without the need for mitigation. (138)

RESPONSE: Although disturbance to special areas is generally discouraged, certain types of development are acceptable, subject to the specific conditions of the special area rules. For example, in submerged vegetation areas, the installation of utility pipelines and submarine cables in the public interest is conditionally acceptable, as is maintenance dredging of navigation channels. The requirement for mitigation for destruction of submerged vegetation areas is intended to maintain this resource. In addition, mitigation shall only be required in cases where the development results in permanent, significant impacts to the submerged vegetation habitat.

332. COMMENT: We are concerned with the reference to the Department's Division of Energy and its review authority for certain types of energy projects. Recognizing that the Division of Energy has legitimate jurisdiction over certain energy planning issues, we suggest a clearer definition of the Division's role as compared to the existing authority of the Board of Regulatory Commissioners. (37)

RESPONSE: The reference to the DEP, Office of Energy is intended to reflect the current organizational structure of the Department, specifically in regard to coordination of reviews for energy facilities in the coastal zone. This will however, change after July 1, 1994, when the Board of Public Utilities separates from the Department of Environmental Protection. The Department will propose appropriate changes to this section once the new organizational structure and relationships are clarified.

333. COMMENT: N.J.A.C. 7:7E-7.4(r), which relates to Electric Generating Stations references the Federal Powerplant and the Industrial Fuel Use Act of 1978. The Act, which generally discouraged or prohibited the use of oil and natural gas fuels for new generating capacity, was repealed by Congress in 1987, in recognition of the abundant domestic supplies of natural gas, and, perhaps more importantly in, recognition of the environmental benefits of converting industrial and powerplant operations to natural gas and away from more-polluting fossil fuels. Therefore we suggest the deletion of the section relating to the Fuel Use Act of 1978. (37)

RESPONSE: In response to this comment, the reference to the Powerplant and Industrial Powerplant Fuel Use Act of 1978 has been deleted from N.J.A.C. 7:7E-7.4(r)2 upon adoption.

N.J.A.C. 7:7E-7.5 Transportation Use rule

334. COMMENT: Rail rights-of-way are valuable for a number of uses. Because they often serve as connections between important urban and suburban areas, these established rights-of-way are desirable for the planning of utility corridors. Many of the proposed utility lines can be constructed in the subsurface, thereby having minimal visual or environmental impact. An underground utility can be installed with no impairment to the capacity of the right-of-way to serve as a recreational trail. In precluding the conversion of these rights-of way to other uses and causing an owner to relinquish any future economic benefit, the Department may discourage owners from establishing easements for trail use. The Department should instead encourage multiple use management of these resources. (53)

RESPONSE: In response to the public comments received by the Department, the Transportation Use rule (N.J.A.C. 7:7E-7.5) has been further amended on adoption to "discourage" development of existing railroad rights-of-ways "which would preclude public recreational use."

N.J.A.C. 7:7E-7.8 Mining Use rule

335. COMMENT: This rule should be clarified to indicate that the 500 foot buffer from mining uses should be imposed only in the case of existing adjacent residential developments which have been fully constructed by the date of any initial filing for a DEPE mining use approval in the CAFRA zone. There have been many residential developments approved in the last few years that are still not constructed and may never be constructed due to a variety of economic reasons. If a buffer is established for approved residential subdivisions or site plans which have not yet been built, an economic hardship could be imposed on the owner of the property to be mined. Mining applications for areas in the CAFRA zone require extensive preparation time. If an application for residential development is made after an application for mining but is approved prior to the mining application, the buffer should not apply to the mining project. Such a project may have been planned for many years before filing an application to DEPE, and a substantial amount of money may have been expended for engineering fees. (57)

RESPONSE: In proposing this requirement, the Department intended the 500 foot buffer requirement will be applied only to existing residential development and not to areas "zoned" for residential development. This has been clarified upon adoption of this rule.

336. COMMENT: Adoption of a 500 foot buffer will mean the mine operator will not be able to mine or use this strip of land for any purpose. The State should consider the economic impact this will have on almost any building process in this state. The formula for concrete is three parts stone, two parts sand, and one part cement. Thus, reducing the area that can be mined will reduce the availability of sand and increase its price. (128)

RESPONSE: This requirement is intended to mitigate the impacts of a mining use on adjacent residential development. As indicated in the current rule, the buffer is required from "new on-land extractive activities and related processing." Accordingly, it is possible for the buffer area to be used for other purposes, including equipment and materials storage.

337. COMMENT: Is the 500 foot buffer from the property line or from the limit of the development? Will the entire 500 foot buffer area adjacent to residential development need to be vegetated to meet the Buffer and Compatibility of Uses rule? (66)

RESPONSE: The buffer will be required from the property line of an existing residential development to the new on-land extractive activities and related processing of the mining use. The Department will

use the buffer treatment requirements of the Buffers and Compatibility of Uses rule (N.J.A.C. 7:7E-8.13) to evaluate proposed buffers from mining activities, including any proposed vegetative buffer area.

338. COMMENT: The proposal requiring a 500 foot buffer between mining operations and any adjacent residential uses is an appropriate response to reduce conflicts between these two distinctly different land uses. Consideration should also be given to alternative buffers in those instances where it is not possible to provide a 500-foot separation. The Buffer rule, N.J.A.C. 7:7E-8.13, should be referenced in this section, or alternatively, a separate table should be established to address buffers adjacent to land mines. (134)

RESPONSE: The Department acknowledges this comment in support of the rule and has included this cross-reference on adoption.

339. COMMENT: It should be clarified if "a minimum buffer area of 500 feet will be required to residential developments" will apply to proposed residential development adjacent to an active or inactive mining operation. (154)

RESPONSE: The buffer requirement applies to mining uses which are proposed to be sited adjacent to residential development, not to residential development proposed to be sited adjacent to mining uses.

N.J.A.C. 7:7E-7.11 Coastal Engineering

340. COMMENT: Replacement of an existing bulkhead within 18 inches of the existing bulkhead sheathing is impossible using conventional bulkhead design. The existing whaler (10 inches) and piling (12 inches) plus a new whaler (10 inches) and new sheathing (three inches) occupy a minimum of 35 inches. A rule from which virtually all applications will require exceptions needs revision. (157, 48)

RESPONSE: The bulkhead replacement example given is not typical of most bulkhead replacement projects. Not all whalers are 10 inches wide, and not all pilings are 12 inches in diameter. Using the example of an existing bulkhead with a 10 inch whaler and 12 inch pile on the waterward side, a replacement bulkhead (using three inch sheathing) could be constructed within 25 inches of the existing bulkhead sheathing (10 inches + 12 inches + 3 inches = 25 inches). In many cases, existing bulkhead components are smaller in size; whalers are six inches wide, and pilings are 10 inches in diameter, and the 18 inch bulkhead replacement can be accommodated (6 inch whaler + 10 inch piling + 2 inch sheathing = 18 inch replacement). In addition, the proposed rule amendment includes a provision for waivers from the 18 inch requirement in cases where the physical condition of the existing bulkhead precludes an 18 inch replacement.

N.J.A.C. 7:7E-7.12 Dredged Material Disposal on Land

341. COMMENT: The revision of the rule to prohibit disposal of spoil material not only on natural undisturbed wetlands, but also on all wetlands, could result in the abandonment of existing facilities where no practicable alternative exists. If the wetland has already been used for this purpose and is non-productive, its continued use should be permitted rather than to forfeit an otherwise viable public facility. (157, 48)

RESPONSE: The language of N.J.A.C. 7:7E-3.27 has been revised upon adoption to conditionally allow the reuse of former dredged material "sites" as opposed to limiting this use to former dredged material "islands."

N.J.A.C. 7:7E-8.7 Stormwater Runoff

342. COMMENT: These standards encourage the creation of artificial wetlands and wet retention basins, and allow detention basins only if the other two options are "infeasible based on engineering criteria." When combined with the very restrictive peak-flow controls, the result appears to be a requirement for dedicating unnecessarily large land areas to stormwater control purposes. Further evaluation by professional engineers is required.

Many municipalities do not have allowances in their ordinances or standards for artificial wetlands and discourage retention basins due to public safety factors. These local standards should also be taken into consideration when assessing the feasibility of utilizing detention basins for stormwater management. (66)

RESPONSE: As indicated in the current rule, the buffer is required from "new on-land extractive activities and related processing," so it is possible for the buffer area to be utilized for other purposes, including equipment and materials storage. In addition, the CMP standards on acreage and restoration requirements will be used.

343. COMMENT: NRDC is concerned with whether DEPE's proposed rule adequately comports with guidance from the Environmental Protection Agency ("EPA") and National Oceanic and Atmospheric Administration in the provisions on stormwater controls. THE EPA/NOAA guidance contains the following management measures for new development: (1) by either design or performance, after construction ata site has been completed and the site is permanently stabilized, the average annual suspended solids loadings should be reduced by 80% from the levels that would have occurred in the absence of management measures; and (2) similar pre- and post-development peak runoff rates should be maintained. The Federal guidance also provides that both structural and non-structural measures must be used to mitigate stormwater impacts. State management measures are supposed to conform to the EPA/NOAA measures or be demonstrated to be at least as stringent as Federal measures. However, it is not clear whether the proposed stormwater runoff controls set out in N.J.A.C. 7:7E-8.7 comport with the Federal guidance. For example, at one point the proposed rules state that in some cases local conditions may preclude achievement of EPA's design standard. We would appreciate having a better understanding of how the proposed rules comport with the guidance. (23)

RESPONSE: The EPA standard of 80 percent reduction in total suspended solids ("TSS") is part of the proposed rule amendment, however, the techniques for measuring the levels of TSS have not been established by the Federal government. Therefore, the Department has proposed a number of stormwater management techniques which may be conditionally acceptable on a given site. It is assumed the use of these techniques will achieve the Federal goal of reducing TSS by 80 percent.

344. COMMENT: The proposal states that a "20 acre drainage area limit" shall be used for the Modified Rational Method (MRM) unless otherwise approved by the Department." However, the MRM can only be used for 20 acre drainage areas. The Department cannot change this standard. (16, 123)

RESPONSE: The Department is not proposing to change the requirement that this method only be used for drainage areas of 20 acres or less. However, in watersheds which have uniform drainage characteristics with drainage areas slightly exceeding 20 acres, this method may give reasonable results and will be acceptable to the Department.

345. COMMENT: Subparagraph (c)3vi states that "plans and calculations shall be provided to show that the discharge will not cause erosion along the flow path between the outfall and the receiving waterbody. All stormwater discharge paths shall be stabilized in accordance with the criteria in N.J.A.C. 7:13-3.3." This statement is duplicative regulation and should be rewritten to clearly state that the Soil Conservation Districts require stability from all outfalls. (16)

RESPONSE: This statement is intended to reinforce the requirement that stable conditions must be established for all stormwater discharge paths and has, therefore, been retained on adoption.

346. COMMENT: I appreciate that the Department has actually published its preferences in regulatory form. The currently recommended "best management practices" (as promulgated in the report titled "Stormwater Management in the New Jersey Coastal Zone" prepared by Cahill Associates for the DEPE in April, 1989) are sometimes inconsistently applied from project to project. (51)

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

347. COMMENT: The Stormwater Runoff rule needs to be completely revised, particularly the preferred stormwater management techniques. The emphasis throughout the regulations is on the creation of artificial wetlands or wet basins. Such methods of stormwater management are inconsistent with established and demonstratively effective stormwater management techniques adopted by municipal and county governments and other State level agencies such as the Soil Conservation Service and Pinelands Commission. (5)

348. COMMENT: The hierarchy of preferences for stormwater management project design is unnecessarily rigid. If certain methods are deemed to be acceptable, it should be the applicant's decision as to which method to use based on site and budget considerations. (157, 48)

349. COMMENT: I am concerned about the level and degree of duplicative design and analysis that may be required to prove that encouraged techniques have been utilized to the maximum extent or to justify the use of conditionally acceptable techniques. I have attended discussions with DEPE officials where they have said that an engineering narrative of the design procedures would be sufficient in proving certain techniques not feasible. However, different degrees of technical "back-up" in an engineer's report are still required to make conclusions. This

will certainly add cost to a project, particularly in the case of smaller developments where "discouraged" techniques may be required and proposed. (51)

350. COMMENT: I am concerned about the area requirements for the "encouraged" techniques specifically newly created artificial wetlands, wet ponds/retention basins, and to a lesser extent detention basins. Unless a site is particularly suited for such techniques, these techniques generally require a large percentage of the total site area. (51)

RESPONSE: The Department has amended this rule on adoption by eliminating the "encouraged" category of techniques and has combined these techniques within the "conditionally acceptable" category. All "conditionally acceptable" techniques will be accepted on an equal basis, provided that the use of the techniques meets the specific requirements contained in the rule. Artificial wetlands, retention basins (wet basins) and detention basins are now defined as "conditionally acceptable" systems, along with vegetated swales, infiltration basins and perforated pipe recharge systems. The rule also includes language allowing the use of a single technique or a combination of techniques, based on engineering requirements and site constraints. It should also be noted that techniques such as artificial wetlands have been demonstrated to be very effective in removing pollutants, and may be preferable to other "more established" techniques on certain sites. The language of this proposal is now more flexible and will allow a combination of techniques to be utilized, based on site constraints and physical conditions.

351. COMMENT: I am concerned about the proposed use of clay liners to assure adequate hydrology for artificial wetlands and wet ponds. Although proper hydrology and soils conditions are important to assure the creation of wetlands, artificial wetlands creation should not be an "encouraged" technique. Using clay liners to create a wetland, rather than encouraging the creation of a wetland in suitable, site-specific cases, will cause additional expense. (51)

RESPONSE: The Department has amended this rule on adoption. The artificial wetlands technique is no longer assigned to an "encouraged" category, but has been assigned to a "conditionally acceptable" category. The provision that a clay liner "may be required" is intended to ensure that adequate hydrology exists to sustain any artificial wetlands. However, site specific conditions may allow this liner requirement to be eliminated in appropriate cases.

352. COMMENT: The proposal states the infiltration basins are "conditionally acceptable" subject to the provision of an adequate back-up drainage system in the event of infiltration failure. Although this requirement appears to be well-intended, back-up systems that are "double-designed" for capacity defeat the purpose of utilizing an infiltration basin in the first place. If back-up systems are going to be required, then specific technical requirements for their design should be promulgated. (51)

RESPONSE: The requirement for adequate back-up systems is intended to address the potential failure of the infiltration system and to alleviate the possibility that this failure could result in increased flooding. An applicant has the flexibility not to choose this technique, however, if it is utilized, adequate protection must be provided.

353. COMMENT: In general, the "discouraged" stormwater management techniques are theones most often used for smaller, more densely developed sites. Discouraging such techniques will further hamper small development. This will, in turn, reduce the number of projects that would otherwise fall under CAFRA jurisdiction by virtue of the newly established regulatory thresholds. Many of the smaller developments would be "infill" development in established residential and commercial areas. Therefore the rule will effectively discourage and reduce the amount of land area scrutinized at the State level. (50)

RESPONSE: The list of discouraged techniques was developed based on the experience of the Department and the Soil Conservation Districts in evaluating the functioning of these systems. The rule includes a provision whereby these "discouraged" techniques may be acceptable in cases where other techniques are not feasible due to site constraints or engineering concerns. This flexibility should provide design engineers with sufficient ability to design a system using one technique or a combination of techniques. Thus, the rule should not necessarily discourage smaller infill developments.

354. COMMENT: The proposal states that "the design of stormwater management systems shall include adequate provisions, as described in this rule, to satisfy the 80 percent TSS reduction goal." "TSS" refers to total suspended solids. Although I acknowledge the design goal of reducing the total suspended solids from stormwater runoff, I am not intimately familiar with EPA and NOAA guidelines for quantitatively proving the desired reduction of 80 percent. Perhaps the Department will elaborate in its responses, or will review the need and practicality of requiring 80 percent TSS reduction. (51)

RESPONSE: Although the EPA goal of 80 percent reduction in TSS is part of the proposed rule amendment, the techniques for measuring the levels of TSS have not been established by the Federal government. Therefore, the Department has proposed a number of stormwater management techniques which may be conditionally acceptable on a given site. The use of these techniques is assumed by the Department to achieve the 80 percent TSS reduction goal.

355. COMMENT: The proposed rules, and the stormwater runoff regulations in particular, will increase the economic and social impacts on infill development of smaller sites now falling within CAFRA jurisdiction. The owners/developers of these sites may be hampered from undertaking infill projects, due to either an insufficient ability to use a large percentage of the land or to the cost-prohibitive nature of the required site designs, because the "encouraged" stormwater techniques require larger land areas. (51)

RESPONSE: This rule has been amended upon adoption to delete the "encouraged" category of stormwater management techniques. These formerly "encouraged" techniques are now assigned to the "conditionally" category. Therefore, the adopted rule provides adequate flexibility to allow for a single technique or a combination of techniques to manage stormwater on a development site, particularly smaller sites. This flexibility should not result in excessive costs in the design and construction of the smaller stormwater management systems.

356. COMMENT: Successional growth of agriculture fields is not always forested. This should be revised to include succession to scrub shrub and meadows. (N.J.A.C. 7:7E-8.7(3)iii)(6)

RESPONSE: In most cases, the predevelopment character of such sites can be demonstrated (that is, wooded, cleared. farmed). However, in the absence of such documentation, the Department shall use a conservative approach to site classification as it relates to the predevelopment conditions. This is intended to achieve the goal of reducing off-site runoff in the post-development condition.

357. COMMENT: Ponding factors only apply to calculations of peak runoff rate using the TR55 graphical procedure. Ponding factors should not be applied to other methods of calculating peak runoff.

RESPONSE: The intention of this requirement is to use this factor in any hydrologic model where it is required, for example, in the SCS TR55.

358. COMMENT: The Soil Conservation Districts have the review and enforcement authority for the Soil Erosion and Sediment Control Act. All references to including soil erosion and sediment control features in coastal permit applications should be stricken. These clauses represent unneeded regulation and duplicative review. (6)

RESPONSE: The reason for including a reference to Soil Conservation Districts is to ensure consistency in the review of system design and to provide applicants with adequate notice of overlapping regulations.

359. COMMENT: All stormwater discharge paths do not qualify to be regulated by N.J.A.C. 7:13-3.3. Therefore, this clause should be stricken. For those drainage paths that do have a drainage area above 50 acres, N.J.A.C. 7:13-3.3 will apply. This clause is unneeded and represents extension of the Flood Hazard Control Act beyond legislative intent. (6)

RESPONSE: The reference to N.J.A.C. 7:13-3.3 is made in the context of preventing soil erosion along a stormwater discharge path. N.J.A.C. 7:13-3.3 lists regulated uses in the flood plain, whereas the appropriate reference is the Soil Erosion and Sediment Control Standards. Therefore, the rule has been revised on adoption to reference the "Standards for Soil Erosion and Sediment Control in New Jersey, N.J.A.C. 2:90."

360. COMMENT: The Federal Highway Administration has released documents that indicate that it is inappropriate to measure total suspended solids (TSS) as a basis for regulation control of stormwater runoff. The TSS in stormwater is highly variable and depends upon many variables, that are beyond the control of an owner. This section should be rewritten to make the goal of water quality to remove TSS without reference to measuring pre-developed and post-developed TSS (N.J.A.C. 8.7(c)4ii). (6)

RESPONSE: The EPA standard of 80 percent reduction in TSS is part of the proposed rule amendment, however, the techniques for measuring the levels of TSS have not been established by the Federal

government. Therefore, the Department has proposed a number of stormwater management techniques which may be conditionally acceptable on a given site, and the use of these techniques is assumed to achieve the 80 percent TSS reduction goal.

361. COMMENT: The time of measurement should be revised to begin at the peak inflow rate. Very small diameter outflow orifices give inconsistent results. Brim-full may occur more than 24 hours after the beginning of a storm event. This results in residence times longer than desired. This requirement should be rewritten to have the time of detention begin at the peak flow point. This point is more readily defined and can be defined using tabular or other appropriate methods. Otherwise only expensive computer programs are needed to define the Brim-full period (N.J.A.C. 8.7(c)4ii). (6)

RESPONSE: This requirement is not a change from the existing standard contained in a report titled "A Guide to Stormwater Management Practices in New Jersey," which has been required by the Department in the past. The intention of this requirement is to retain the runoff for a longer period in order to increase the deposition of suspended solids. Past experience in project review indicates that this procedure is not an unreasonable burden for design engineers who normally utilize computer programs.

362. COMMENT: Literally construed even a developer of a single family house if engineeringly feasible would have to build a detention basin or wetland in his or her backyard. Any such detention facility within a residential neighborhood is not a prudent engineering design. Detention basins are a frequent source of mosquito habitat and ponded water. A provision to minimize the explosion of detention basins in residential neighborhoods. Wetlands are a regulated resource, owners who create wetlands are creating a risk to themselves and all subsequent owners. This risk is even greater considering that Federal and State legislation bodies and regulators are notorious for changing the rules of the game (N.J.A.C. 8.7(d)). (6)

RESPONSE: This conclusion is inaccurate. The adopted rule includes a provision for site specific design of stormwater management systems, based on the size of the drainage area, topography, and other engineering constraints. The rule also allows for the use of a combination of techniques, depending on site conditions and anticipated runoff from the developed site. In addition, individual single family or duplex developments are not required to comply with this rule.

363. COMMENT: Wetlands operate best with consistent in flow of water. Detention facilities by their nature have highly variable flows. As written, NJDEPE regulators have a wide latitude in determining "engineering constraints." However, very few LURP reviewers are qualified engineers. If an applicant does incorporate a wetland into the design and is inattentive in reviewing his GP#1 he could face fines or imprisonment. (6)

RESPONSE: The review of all stormwater system designs submitted as part of CAFRA permit applications are completed under the direction of a Professional Engineer, who provides technical reviews for the staff of the Land Use Regulation Program, and makes recommendations regarding engineering issues.

364. COMMENT: These rules favor open water/emergent wetlands over all other types. Also they discourage potentially more suited design. With 75 percent of the wetland at 6 inches depth or less the result will be a wonderful mosquito breeding habitat. Fish will not enter into shallow very warm water choked with vegetation. Therefore, in only 25 percent of the pond surface at best will fish be effective in controlling mosquito habitat. (6)

RESPONSE: The rule requires that these systems be designed to ensure adequate inflow of water during dry periods and limit stagnation. The use of emergent wetland plants will provide a mechanism for nutrient removal and uptake which provides primary treatment of stormwater runoff.

365. COMMENT: N.J.A.C. 7:7E-8.7(d)2 is fundamentally flawed. It is highly doubtful that conditions exist anywhere that will result in a vegetated swale meeting all constraints. The NJDEPE should consult with the State Soil Conservation Committee (SSCC) for the design parameters of a swale. The SSCC has the best experienced engineering staff in the State to write this section. (6)

RESPONSE: The Department has amended this rule on adoption to modify the design conditions for vegetated swales. Regarding the suggestion that the SSCC write these sections, it should be understood that the primary goal of the Soil Conservation Districts (SCD) is to concentrate on soil stability and erosion protection. While the DEPE is also concerned over these issues, there are other concerns related to water quality which must be addressed through these rules. Many of the SCD requirements do not address the potential for groundwater or surface water contamination through the introduction of soluble contaminants. The Department has attempted to address these different concerns through this rule adoption.

366. COMMENT: The requirement in N.J.A.C. 7:7E-8.7(d)2ii(6) for complete recharge in 72 hours is unrealistic. (6)

RESPONSE: This requirement is an existing standard contained in the report titled "A Guide to Stormwater Management Practices in New Jersey," and does not represent a change from current practices.

Department experience in reviewing numerous projects proposing infiltration basins in the coastal zone shows that this recharge standard has been met.

In areas where this criteria can not be met, an alternative stormwater management technique should be used as the soils are not suitable for infiltration techniques.

367. COMMENT: The result of the proposed rule will be the explosion of detention basins which must be approved by the DEPE. The additional time to review the applications and the additional twice yearly monitoring reports, store the data, enforce the regulation will result in the need to hire an untold number of reviewers. Stormwater management is routinely required by local and county planning boards and engineering offices. The addition of this task to the NJDEPE represents another in a long line of increased NJDEPE responsibility which feeds the explosive growth of the NJDEPE payrolls. (6)

RESPONSE: The task of reviewing stormwater management systems, as part of the CAFRA application review, is not a new one. Staff of the Department have conducted these reviews since CAFRA has been in effect over the past twenty years. The CAFRA amendments and the amendments to the associated Rules on Coastal Zone Management do not change this review requirement.

368. COMMENT: In the rationale for this section and amendment, the Department states that one of the functions of a buffer is the stabilization of soil and prevention of erosion. The prevention of erosion through elimination of soil disturbances in buffer areas frequently is in conflict with "Standards for Soil Erosion and Sediment Control." However, the rule contains no reference to the Memorandum of Agreement (MOA) between NJDEPE and New Jersey Department Of Agriculture which prescribes conditions for the discharge of stormwater through buffers when the impact of direct discharge into buffers would otherwise be damaging. (123)

RESPONSE: A general goal of any stormwater management system is to incorporate non-structural management techniques into project planning. Under this approach, alternative land uses and site designs are considered in order to minimize the quantity and volume of off-site runoff. This goal does not preclude the application of "Standards for Soil Erosion and Sediment Control," but guides initial project design.

369. COMMENT: A statement should be added that the "best available technology" includes measures prescribed in the Standards for Soil Erosion and Sedimentation Control in New Jersey. It should be readily apparent that the use of these "standards" provides the primary basis for control of construction related stormwater runoff. (16, 123)

RESPONSE: In response to this comment, the stormwater system design section of the proposed rule has been revised on adoption to include a specific reference to the "Standards for Soil Erosion and Sediment Control in New Jersey" which apply to all disturbances of more than 5,000 square feet in any case. While reference to these standards was found throughout this section, the rule has been clarified to indicate that compliance with the "Standards of Soil Erosion and Sediment Control in New Jersey" is required for all stormwater management system designs.

370. COMMENT: In many cases, elimination of curbing is not physically feasible or desirable. Without curbing, uncontrolled runoff frequently results in random rill and gully erosion, which does not promote water quality or sedimentation control. Attempts to develop "sheet flow" conditions by the elimination of curbing are unsuccessful in all but a few instances involving small drainage areas with flat slopes. (16, 123)

RESPONSE: In many cases, the elimination of curbing will promote overland flow without causing soil erosion. The Department does not want to preclude the use of this technique in any development, but will carefully evaluate its proposed use to ensure that the potential for erosion is limited, and will typically apply this technique in small drainage areas with flat slopes.

371. COMMENT: There are no references to the Soil Erosion and Sediment Control Program or associated Standards. A citation of the Standards must be included in this section so it is understood that swales must also be approved by the conservation district. (16, 123)

RESPONSE: The acceptability conditions for the use of vegetated swales (N.J.A.C. 7:7E-8.7) includes a condition that swales must be designed in accordance with the Soil Conservation District "Standards for Soil Erosion and Sediment Control in New Jersey."

372. COMMENT: N.J.A.C. 7:7E-8.7(c)1 provides that for sites subject to fluvial flooding, "the flood and erosion control standard for detention requires that the volumes and rates will be controlled so that after development the site will generate no greater peak runoff from the site prior to the development for the 2 and 10 year, and/or up to 100 year storm event considered individually." The statement refers to an "erosion control standard," but is unclear what standard this is. The Standards for Soil Erosion and Sediment Control in New Jersey do make provisions for increased peak discharge from a point source provided that this will not result in downstream erosion. This is a site specific determination. (16, 123)

373. COMMENT: N.J.A.C. 7:7E-8.7(c)1ii contains several typographical errors and the wording is unclear. The provision does not explain why the Modified Rational Method is advocated. (16, 123)

RESPONSE: This comment addresses the language of the existing rule, which has been proposed for amendment. The typographical errors and perceived ambiguity have been corrected in the amendment.

374. COMMENT: N.J.A.C. 7:7E-8.7(e) states that swale designs must meet the Standards for Soil Erosion and Sediment Control. It appears that NJDEPE is intending swales to be used as infiltration devices and is stipulating that maximum swale slope shall be two percent and that swales shall be planted with native woody species at sufficient densities to delay surface water flow and promote evapotranspiration. These restrictions are inconsistent with the Standards. Slopes exceeding two per cent may be required in different areas of the State due to topography. However, the Standards do not limit swale designs to two percent and do not allow native wood species to be used as a vegetative lining. Woody stems placed in the flow path create turbulent eddies. This destroys steady, uniform flow conditions, which is the basic underlying theory of open channel design. (16, 123)

RESPONSE: The requirements for swale design contained in the rule proposal provide a minimum swale slope of 0.5 percent and the rule has been revised on adoption to delete the requirement for the use of woody vegetation. The use of swales is also conditioned on compliance with the "Standards for Soil Erosion and Sediment Control in New Jersey." Therefore, adequate provisions are in place to provide design flexibility and to ensure that the concerns of the Soil Conservation Districts are adequately addressed.

375. COMMENT: N.J.A.C. 7:7E-8.7(f)1 provides for "sheet flow through vegetated areas." Usually this is not possible except within very small drainage areas and flat slopes. It is not clear if this is intended to address natural or man-made vegetated areas. (16, 123)

RESPONSE: The reference to "sheet flow through vegetated areas" is intended to promote this method of filtration wherever feasible on a development site. The specific application of this technique will be dictated by site constraints, including drainage areas, topography, and vegetation limits.

376. COMMENT: N.J.A.C. 7:7E-8.7 refers to the "use of sheet flow from streets and parking areas." This statement requires a condition which is physically impossible. The Soil Conservation Program experience has recognized severe problems with this when an applicant is required to provide drainage via sheet flow. As a result of these experiences, the design criteria for "level spreaders" (a structure for creating sheet flow) was removed from the standards as a design option. This modification was agreed to by NJDEPE representatives who helped develop the current version of the "Standards." (16, 123)

RESPONSE: The proposed rule amendment will not "require" that an applicant design a stormwater system which utilizes sheet flow drainage. Instead. the rule presents an opportunity to incorporate sheet flow into the overall design of the on-site stormwater system, if site conditions can accommodate such a system. It is expected that the limited use of sheet flow will provide increased flexibility to design engineers.

377. COMMENT: The Standards for Soil Erosion and Sediment Control are referred to as one of the examples of stormwater runoff techniques. After the phrase "All stormwater management systems shall be designed in accordance with this section" there should be an additional reference to the Standards which states that designs must meet the criteria set forth in the Standards. Also, the Standards are incorrectly referred to in this section as a "source book." The Standards are a rule promulgated by the State Soil Conservation Committee, and are the technical basis for erosion control plan certification pursuant to N.J.S.A. 4:24-39 et. seq. (16, 123)

RESPONSE: The proposed rule has been amended on adoption to include a statement in the system design section which references the "Standards for Soil Erosion and Sediment Control in New Jersey."

378. COMMENT: N.J.A.C. 7:7E-8.7(c)3ii contains typographical errors. NJDEPE should refer to the Soil Conservation Service as USDA SCS, not as USSCS. Additionally, the Modified Rational Method is incorrectly described as being developed by the USDA SCS.

RESPONSE: The typographical errors and incorrect reference have been corrected upon adoption.

379. COMMENT: Since swales will still function properly when the water table is less than three feet below the swale bottom, this is an unnecessary restriction. This should be a site specific determination. (16, 123)

RESPONSE: The separation requirement between the bottom of the swale and the seasonal high water table has been revised on adoption to provide that the bottom of the swale shall be "higher than" the seasonal high water table elevation.

380. COMMENT: Due to a lack of moisture retention ability, it is difficult or impossible to establish grass in soil which is totally or predominantly sand. What is to be done in areas of the State which have predominantly clay or silt soils? This restriction, which cannot be supported by engineering or agronomic science, should be eliminated. (16)

RESPONSE: The types of vegetation used in the various stormwater management systems should reflect the regional and site-specific conditions. The proposed rule amendment includes a specific requirement that the species and quantity of vegetation used as part of a stormwater management system shall be consistent with the standards and specifications of the local Soil Conservation District.

381. COMMENT: Open channel design is not a function of development intensity. The Standards do not base the use of swales on development intensity but on engineering design principles. This constraint should be eliminated. (16, 123)

RESPONSE: The goal of limiting the use of swales to low intensity developments is intended to ensure that systems used in large drainage areas are adequately designed to function during a wide range of storm intensities and frequencies, and to discourage the use of swales as a primary technique for large developments.

382. COMMENT: The standards for vegetated swales apply to a filter strip standard and should not be applied to a grass swale which is designed for conveyance purposes. For swales with minimum velocities (one to two fps), excessive lengths will be required to meet the time criteria. (16, 123)

RESPONSE: Swales serve both a conveyance function and a filtration function. The contact time requirement is intended to provide design guidance to ensure that there is adequate opportunity for the vegetation in the swale to filter runoff and to cause the deposition of suspended sediments.

383. COMMENT: It appears that NJDEPE based the five minute contact time came from the document entitled, "CONTROLLING URBAN RUNOFF: A Practical Manual for Planning and Designing Urban BMP's" by Department of Environmental Programs, Metropolitan Washington Council of Governments. On page 9.2, that document states, "Runoff normally has a very short contact time in the swale (5—20 minutes) which does not give runoff much chance to infiltrate into the soil."(123)

RESPONSE: Stormwater quality through a vegetated swale is attained by settlement of suspended solids as runoff flows through the vegetation, and through the uptake of nutrients by the vegetation. This can be attained by prolonged flow time through the swale for the water quality storm. The five minutes contact time standard has been amended on adoption to reflect a range from "five to twenty minutes," and was chosen to facilitate the use of these systems and to provide practical use of this Best Management Practice.

384. COMMENT: Although it is reasonable to think that channel slopes below 0.5 percent may be too shallow, hydraulic design of open channels is a function of several variables, including slope. There may be instances when it is necessary to utilize a shallow slope in order to properly design a channel. Because of this, the Standards for Soil Erosion and Sediment Control in New Jersey do not place such channel slope

restrictions on grassed waterways. There is no justification for this restriction and NJDEPE should rely on the "Standards". (16, 123)

RESPONSE: This requirement is intended to ensure that positive drainage through the swale is maintained and to reduce the potential for ponding and mosquito breeding. This is the minimum practical slope which can be properly constructed.

385. COMMENT: This criterion poses a serious problem in designing a stable grassed waterway. Grassed waterways are designed based on a boundary layer theory. By trying to void the boundary layer, instability in the swale occurs. Since resistance to flowing water by the grass lining changes with the season, and the maintenance and magnitude of flow, an approach such as this is pointless. In fact, this approach typically exceeds the design parameter range established in the USDA SCD Engineering Field Manual. This criterion is a complete contradiction to the fundamental theory upon which waterways are designed. (16, 123)

RESPONSE: The acceptability conditions for the use of vegetated swales include a specific provision to allow for the use of rip-rap in the swale design in cases where a stable condition using vegetation alone cannot be achieved. In addition, this rule requires that all swales be designed in accordance with the "Standards for Soil Erosion and Sediment Control in New Jersey."

386. COMMENT: The Standards for Soil Erosion and Sediment Control in New Jersey do not include native woody species in the vegetation specifications as an acceptable alternative because such species would cause instability in the swale. (16, 123)

RESPONSE: The provision for requiring native woody species was intended to address the problems associated with the construction of check-dams, which cause erosion in the swale. The use of woody vegetation is proposed to retard the flow through the swale to promote settlement of suspended solids. During past stormwater presentations to the Department staff, representatives of the Department of Agriculture, Soil Conservation Service recommended the use of woody species instead of check-dams. However, in response to comments, the requirement for the use of "woody species" has been deleted and the adopted rule now requires that the selection of species be coordinated with the local Soil Conservation Districts.

387. COMMENT: The "Standards for Soil Erosion and Sediment Control in New Jersey" are promulgated by the State Soil Conservation Committee, not the Soil Conservation Districts. This citation must be corrected. (51)

RESPONSE: This citation error has been corrected on adoption.

388. COMMENT: The proposed rules set forth specific design standards which presume that the stated objective of improved post development water quality (that is, TSS and oil, grease and other contaminants) over pre-development water quality will be achieved. The rationale section indicates that the design standard of this rule shall provide adequate provisions to satisfy the 80 percent TSS reduction goal of the Federal government.

Do the new rules abandon the previous standard requiring a two foot vertical buffer between the bottom basin and the depth to the seasonal high water table in the creation of artificial wetlands? This requirement conflicts with N.J.A.C. 7:8, which requires a two foot separation from the basin bottom and SHWT. (154)

RESPONSE: There is no separation requirement for newly constructed wetlands since the wetlands vegetation will provide treatment of the runoff and provide nutrient uptake. In addition, the water in the wetlands system will also provide a certain amount of dilution of the runoff. The separation requirement only applies to detention and retention basins, infiltration systems and vegetated swales.

389. COMMENT: Does the use of the term "engineering criteria" provide clear guidance where specific criteria are not provided (that is, N.J.A.C. 7:7E-8.7(d)1iii(a) and (d)2)? In addition, would an applicant have the option to choose whether or not to create a wetland stormwater facility based on liability concerns associated with children who may be attracted to water areas? Would the NJDEPE also assume such liability? Since upland facilities are "encouraged," an applicant should have the option to construct such facilities without the requirement of providing a feasibility study of alternative wetland facilities. If the three types of water quality control basins are encouraged, why are the methods contained in N.J.A.C. 7:7E-8.7(d)li and ii weighed as preferred over those contained N.J.A.C. 7:7E-8.7(d)iii? (154)

RESPONSE: The engineering criteria have been provided in the rule and are the standards for each specific stormwater management technique listed in N.J.A.C. 7:7E-8.7(d). In response to the second concern, the Department has amended this rule on adoption to eliminate the "encouraged" category of techniques and has combined the techniques formerly included in the "encouraged" category with the other techniques listed as "conditionally acceptable." These "conditionally acceptable" techniques are equally acceptable, provided that they meet the specific requirements established in the rule.

390. COMMENT: Does the NJDEPE automatically renew the GP#1 every five years as specified at N.J.A.C. 7:7-8.7(f)1ii(4), or is the applicant responsible for seeking renewals? (154)

RESPONSE: The approval of the use of artificial wetlands will include the issuance of a GP 1 for the maintenance of the wetland facility. The permittee is responsible for the renewal of this permit every five years. The GP 1 will be issued by the Department, provided that the standards contained in the Freshwater Wetlands Protection Act Rules are met.

391. COMMENT: We strongly object to the requirement that there shall be at least three feet of vertical separation between the bottom of the basin and the seasonal high water table. (45, 63)

392. COMMENT: N.J.A.C. 7:7E-8.7(d)iii(3) requires that detention basins maintain at least three feet of vertical separation between the bottom of the basin and the seasonal high water table. This requirement is too restrictive and should at least be modified to be consistent with the Pinelands Comprehensive Management Plan's two foot requirement. (14)

393. COMMENT: The New Jersey Builder's Association is concerned with the requirement that a vertical separation distance of three feet between the bottom of the detention basin and the seasonal high water table be provided. A two-foot separation distance is currently in effect, which we feel is sufficient. We also see no reason for increasing that distance because that will prohibit detention basins from being used in many areas in the coastal zone. (97)

394. COMMENT: With regards to infiltration basins, the depth to seasonal high water table should be two feet. (6)

395. COMMENT: The minimum distance to groundwater should be two feet for detention basins. Detention basins constructed in hydraulically restrictive zone will prevent contamination of groundwater supplies. (6)

396. COMMENT: The proposed rule changes do not provide evidence of a need to require a three foot separation from a swale or infiltration basin to the seasonal high water table and do not clarify why encroachment into the water table is permitted for other stormwater facilities. (154)

397. COMMENT: The requirement to provide at least three feet of vertical separation between the bottom of a swale and the seasonal high water table is impractical and unnecessary. Swales are constructed to drain water to an outlet and if the design elevation intercepts the water table at some point this should not interfere with its stormwater management capabilities. (127)

398. COMMENT: In many cases, swales lead from upland portions of a site to either a wetland or State open water. Maintaining a three foot separation from the seasonal high water table ("SHWT") may not be physically possible under many circumstances. (66)

399. COMMENT: The requirement that any detention or retention basin bottom be three feet above seasonal high water table is inconsistent with county and State regulations requiring a two foot depth. It should be made consistent. (5)

400. COMMENT: I question the attempt to increase the vertical separation between the bottom of detention basins, swales, infiltration basins, recharge systems, etc., and the seasonal high water table from two to three feet. I am not familiar with any conclusive technical standard demonstrating that two feet of clearance is inadequate or that three feet would be such improvement. I also question any need for two feet of clearance for a detention basin that will drain after a storm. So long as the detention basin bottom is set above the Seasonal High Water Table, the installation of underdrainage, as required by many municipalities, can adequately address basin bottom stability. Moreover, if a vegetated swale will discharge into a wet pond or wetland, there will certainly not be vertical clearance for some distance of the swale at its discharge area. I do acknowledge that a minimum separation of two feet is required for infiltration basins and recharge systems. (51)

RESPONSE: The rule has been revised upon adoption to eliminate a required separation distance from the groundwater table in the case of swales and detention basins because these systems are not dependent on removal of pollutants by infiltration through the soil and therefore, the depth to seasonal groundwater is not critical to their ability to function as designed. However, the proposed separation distance will remain three feet in the case of infiltration basins in order to minimize

the potential for contamination of groundwater, which is the principal potable water supply in the coastal zone. The Department has determined that the potential for contamination warrants a three foot separation distance for infiltration basins, due to the heavy reliance on groundwater in the coastal zone.

401. COMMENT: The Department should not eliminate the flexibility to provide stormwater quality management prior to discharge to wetlands and open water areas. No technical evidence proves that contamination of groundwater is associated with the two-foot distance when used in transportation improvement projects (that is, widening) which are located in low elevations near tidal areas. Where limited land is available for detention basins and there is a limited depth to SHWT, there are relatively few options for stormwater management. Contamination of groundwater adjacent to tidal areas appears unlikely and any threat of contamination is outweighed by the need to maximize contaminant removal of stormwater prior to reaching open waters. Increasing the required separation to the SHWT may eliminate the ability to effectively treat stormwater in these situations. (154)

RESPONSE: In response to public comments, this rule has been revised upon adoption to eliminate the separation requirement for swales. This revision should provide design flexibility for stormwater management systems located in low elevation areas.

402. COMMENT: N.J.A.C. 7:7E-8.7(d)2ii(7) as proposed assumes that all infiltration systems will not function properly. Evidence of soil texture, permeability and the absence of clay lenses should be required data for consideration of infiltration basins; if such data forecast an infiltration system failure, other stormwater management strategies should be pursued. The State's proposed maintenance standards appear to provide reasonable assurance that impediments to infiltration should be removed. (154)

RESPONSE: In response to public comment, this rule has been revised upon adoption to include infiltration systems as a "conditionally acceptable" stormwater management technique. The conditions for the use of this technique should ensure that these systems will be designed and constructed to adequately function in the long term.

403. COMMENT: The use of the language "minimizes the amount of impervious coverage on a project site" and "unless it is demonstrated that these practices are not feasible, from an engineering perspective, on a particular site" is unclear. These phrases presume that an applicant must first prove that a proposed development cannot be reduced in scale, despite the applicant's previous business decisions and the applicable project permit standards. It is redundant to impose a "feasibility study" pertaining to impervious coverage and site layout at this stage, since the purpose of stormwater management is to mitigate impacts from a site design that is designed to comply with other standards. (154)

RESPONSE: These statements in the rule are intended to provide guidance in the design of stormwater system designs so as to minimize the scope and size of the stormwater system itself. Proposed developments are encouraged to minimize the amount of site coverage, but the actual requirements which apply to project site coverage are established by the General Land Areas rules, not the Stormwater Runoff rule.

404. COMMENT: The rule provides that "consistent with the provisions of the stormwater runoff rule, the overall goal of the post-construction stormwater management system design shall be the reduction from pre-development level of suspended solids and soluble contaminants." Thus, the rule requires that post development stormwater quality be improved over existing runoff from undeveloped forested sites. This appears to be an unrealistic objective. Furthermore, the language conflicts with the rationale section, which indicates that the design standard of this rule shall provide adequate provisions to satisfy the 80% TSS reduction goal. (154)

RESPONSE: The quoted statement expresses the overall goal of the stormwater management system and is intended to provide guidance during the stormwater management system design phase. The statement is not contained in the specific standards for system design, and therefore does not conflict with the rationale section.

405. COMMENT: The proposed revisions to the Stormwater rule now discourage many techniques previously required under the Land Use Program. (86)

RESPONSE: Certain stormwater management techniques which were previously encouraged by the Department are now discouraged, based on an evaluation of the long-term functioning of these systems. For example, porous asphalt pavement and sediment/oil separators in catch basins often become clogged, due to inadequate design and maintenance, and are therefore now discouraged.

406. COMMENT: This entire rule is written for residential, commercial or industrial "block" type development, and contains standards for design and maintenance that are important or impossible for linear developments such as roadways to meet. We suggest that a separate section be written to provide achievable standards for roadways that recognize the unique constraints associated with linear projects (nearly all surfaces impervious, limited rights of ways, funding constraints for maintenance, numerous drainage areas affected, etc.). These rules should also recognize the limitations on what can be done with existing roadways, versus the construction of new roads. (127)

RESPONSE: The stormwater runoff rule has been revised upon adoption to establish two categories of techniques, "conditionally acceptable" and "discouraged." This revision should increase design flexibility for stormwater management techniques and take into consideration the limited stormwater management options associated with roadway projects. Moreover, the elimination of the proposed separation requirement for swales should facilitate design of stormwater systems for linear developments such as roadways.

407. COMMENT: Another term should be used instead of "artificial wetlands" as this implies something that is fake or not real. We simply suggest "constructed wetlands."(127)

RESPONSE: This rule has been revised upon adoption to include the term "constructed" wetlands.

408. COMMENT: Emphasis should be placed on using plant species best suited for the assimilation of pollutants common to the watershed. For example, some species are better for heavy metal assimilation in urban areas, while others are more appropriate for nutrients common to farmlands. (127)

RESPONSE: The rule includes a provision that plant species are to be selected in accordance with Soil Conservation District Standards. This should ensure that regional vegetation requirements are satisfied.

409. COMMENT: The standards for maintenance of detention basins will be very expensive to comply with, particularly for government agencies with regional responsibilities and numerous facilities such as the NJDOT. We also question whether such frequent maintenance intervals as yearly removal of silt are advisable, as this can possibly lead to water quality problems through erosion because the vegetation will also be removed. Rather than specifying an arbitrary time for maintenance, we suggest that this section be based on the design life of the facility, and that maintenance be performed when a specified capacity is reached. (127)

RESPONSE: The maintenance standards have been established in order to ensure that stormwater management facilities will continue to function over the long-term. If, after the systems have been in place for a period of time, the Department is presented with documentation that the maintenance schedule is excessive, based on the proven functioning of the system, the schedule may be modified as appropriate.

410. COMMENT: The automatic issuance of any permit is laudable; however, the implications of regulating wetlands created for stormwater management are problematic.

It should be clearly stated in the proposed rule that wetlands created expressly for the purposes of stormwater management shall be classified as detention facilities and shall retain an ordinary resource value classification for the entire life of the associated development. In addition, permit requirements pursuant to the Freshwater Wetlands Protection Act should be waived for the replacement or reconstruction of systems which fail to adequately meet the Stormwater Runoff rule objective, provided that the applicant can provide evidence of that failure and has made a reasonable effort to explore alternatives which would not result in the alteration of the artificially created wetland system. (66)

RESPONSE: The Freshwater Wetlands Protection Act (FWPA) rules provide that man-made detention facilities containing wetlands are classified as ordinary resource value wetlands. The Department has included a provision in this rule to automatically issue a FWPA GP 1 for maintenance for such facilities for a five year period. However, if at some point in time these wetlands become habitat for endangered or threatened wildlife or vegetation species then the wetlands could be reclassified as exceptional resource value wetlands. There is no provision in the FWPA rules to ignore the presence of such species in determining resource value classifications. The recommendation that these areas remain as ordinary resource value wetlands, regardless of the presence of endangered or threatened species would require revisions to the

FWPA rules. In cases where endangered or threatened species start to inhabit a constructed wetland, the Department will work cooperatively with the property owner to devise appropriate methods to protect the species.

411. COMMENT: N.J.A.C. 7:7E-8.7 requires Tide Flex valves. This is a patented device, and requiring its use will create a lot of business for its maker the Red Valve Company. This section also states the valve is attached to the outfall. However, in many cases, engineers do not like putting valves out there because if an outfall is the last control structure under the Sewerage Infrastructure Improvements Act, sampling is supposed to occur at the outfall. Engineers therefore prefer fitting the valves inland from the outfall. (44)

RESPONSE: The Department has amended the language of this rule on adoption to require a "tide-check" type valve, which is not a specific patented product. The specific location for this structure is not dictated by this rule, but shall be determined by the design engineer for the project.

412. COMMENT: In some cases Tide Flex should not be required because they are used to prevent water from backing up onto the land from which it is coming. If that land is above tidal variations, trying to protect it with the valve will serve no purpose. This is an example of regulators deciding something is a good idea, but forgetting there are design considerations that are very site specific. (44)

RESPONSE: The purpose of the tide-check valve is to prevent tidal waters from flowing up through a storm sewer pipe onto an upland area, causing flooding. These valves are designed to open up when sufficient flows from the upland (runoff) build up in the storm sewer pipe, allowing stormwater to drain into the receiving water body. In response to the commenter's concerns regarding design constraints, the language of this rule has been revised on adoption to eliminate the standard requirement for installation of the tide-check valve and to allow for its installation if the physical conditions of the site, including land elevation, bulkhead elevation, 100-year flood elevation and tidal elevation, warrant such installation.

413. COMMENT: A lot of the State Master Plan was developed for areas not in South Jersey. The stormwater system in Ocean City handles a two-year storm. If you have a 100-year storm, most of the island is under water. We do not need retention basins for 100-year storms because the basin would be filled by salt water, not rain water. (44)

RESPONSE: Areas which are subject to tidal inundation or drain to tidal waterways are not subject to and are not proposed to be subject to the flood control requirements of the Stormwater Runoff rule (N.J.A.C. 7:7E-8.7).

414. COMMENT: The proposed revisions to the Stormwater Management section of the rules include revisions to the Best Management Practice's (BMP's), including the encouragement of artificial wetlands and the discouragement of porous pavement. Storm water management is a complicated issue which should not be addressed by saying the best way to institute it is with artificial wetlands. If an artificial wetland is used for storm water management, will it later be necessary to apply a buffer to the wetland when there is an addition to the building?(13)

RESPONSE: In response to a number of comments regarding the proposed amendment to the Stormwater Runoff rule (N.J.A.C. 7:7E-8.7), the Department has revised this rule on adoption to slightly reclassify the preferred BMP's, specifically to acknowledge the success of Stafford Township's stormwater management program. This revision is intended to address the concerns expressed by this commenter and others. Any project involving the creation of wetlands from an upland area would result in the wetlands having an "ordinary resource value" classification with no buffer required under the Freshwater Wetlands Protection Act.

415. COMMENT: I agree with the goals in this section Many of the things discussed in the section are consistent with Stafford Township's ordinances. (147)

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

416. COMMENT: I have seen nothing but problems with the systems that the proposed rule is encouraging, especially artificial wetlands. These systems tend to bring in mosquitos. The rule indicates that stocking the basins with fish that eat the mosquito larve should occur. I question the ability of fish to survive in an environment that's fed by runoff. In addition, the rule includes a provision for clay liners. I question a basin's ability to meet the criteria for infiltration if a clay liner is installed. (147)

RESPONSE: In response to a number of comments on this rule proposal, the Department has revised the proposal on adoption to establish acceptability conditions for five different stormwater management techniques which are all equally acceptable. Therefore, the use of artificial wetlands will not be encouraged over the use of the other four defined now as "conditionally acceptable."

417. COMMENT: We have been very successful in Stafford Township in developing an ordinance which uses underground infiltration and underground recharge. The ordinances and the processes that we have developed proved over the past 12 years to be extremely successful. I agree that underground infiltration does not work with every application. We have areas of the town where these systems do not work, and will not work, and our ordinance addresses that. However, I ask that you consider using these in areas where they do work because they seem to work much better than any other system that we've been able to use. (147)

RESPONSE: In response to this comment, the use of underground infiltration has been redefined on adoption as a "conditionally acceptable" technique.

418. COMMENT: The stormwater regulations should encourage the construction of dry detention or retention basins constructed so that the basins may be totally drained for maintenance purposes. (5)

RESPONSE: Detention and retention basins are both listed as "conditionally acceptable" in the rule. However, it should be noted that retention basis are by design intended to "retain" stormwater and therefore are not expected to be completely drained.

419. COMMENT: The storm events should be those that are consistently used by other regulatory agencies. (5)

RESPONSE: The stormwater runoff rule was developed in conjunction with the Department's Stream Encroachment section, to ensure that these two regulatory programs utilize the same standards for stormwater management system design.

420. COMMENT: In view of the extremely varied site characteristics in the coastal zone subject to the regulations, including the development of vacant land and redevelopment, the regulations should seek to maximize flexibility in stormwater management to achieve the policies of both water quality and water quantity control. (5)

RESPONSE: The rule allows for the use of a single technique or a combination of techniques to manage stormwater, based on engineering requirements and site constraints. Therefore, flexibility is part of the rule.

421. COMMENT: The provision for maintenance on-site of the "water quality" storm is appropriate but the Department should permit the applicant to demonstrate adequate control and management of the larger storm events depending on the proposed development and the characteristics of the site. (5)

RESPONSE: This requirement represents a minimum criterion for stormwater management system design. Applicants would also address, as part of a stormwater management report, how the stormwater management system will function during higher intensity events.

422. COMMENT: The County disagrees with the findings that the use of porous pipe and other underground infiltration devices, when adequately installed and maintained are not effective in addressing both water quality and quantity concerns. (5)

RESPONSE: The Department had originally proposed to define porous pipe as a "discouraged" technique, due to the problems associated with long-term maintenance of this type of facility, and due to the high potential for these infiltration devices to fail. This position is also supported by the Soil Conservation Districts. However, in response to public comment, particularly constructive dialogue with representatives from Stafford Township, the Department has reclassified these techniques as "conditionally acceptable" on adoption.

423. COMMENT: The rule should clearly state that the preferred method of wastewater treatment in the coastal zone is connection to a publicly operated wastewater treatment plant when feasible. (5)

RESPONSE: Current Department regulations (Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A) require that any proposed development be served by a municipal sewer system, if such a system is available within 100 feet of the property. Where sewer service is available, tie-in to the system will be required. However, in many areas of the coastal zone sanitary sewer service is not available, and the construction of individual septic systems is the only alternative.

424. COMMENT: The NJBA urges the Department to utilize a stormwater rating system that entails the use of a matrix in order to quantify the use of certain best management practices by assigning a minimum number of points to their use. (45)

RESPONSE: The amendment to this rule includes a listing of "conditionally acceptable" and "discouraged" stormwater management

techniques. These "conditionally acceptable" techniques represent the Land Use Regulation Program's best management practices, which include specific design standards for each technique. Due to the large number of variable which must be considered in the design of a stormwater management system, it is difficult to prepare a "matrix" to establish the most appropriate stormwater management system for a given site.

425. COMMENT: The Department must assure that the Stormwater Runoff rule (N.J.A.C.7:7E-8.7) is consistent with the Uniform Site Improvement Standards that are currently being developed through the Department of Community Affairs (DCA) Site Improvement Advisory Board. (45)

RESPONSE: The DCA standards are currently being developed, in conjunction with Department staff. The revisions to the Rules on Coastal Zone Management and the Stream Encroachment rules will be considered in the development of the DCA standards.

426. COMMENT: We are also concerned with the provisions dealing with the timing of the discharges and the directive that new development reduce the amount of runoff after development to less than what occurs prior to development. (45, 63)

427. COMMENT: The goal of reducing stormwater runoff from pre-development levels is admirable; requiring by rule that post-development peak runoff be only 50 or 75 percent of pre-development peak runoff is totally unrealistic in many situations. DEPE should consider a sliding scale for its runoff reduction requirements; for minimal development, no gain should be the rule; for larger development, require reductions. (157, 48)

RESPONSE: The Department's experience in the review of stormwater management system design and function has shown that detention basins, which are generally provided to reduce the peak runoff in post-development conditions from a site, in lower reaches of a watershed may result in the increase in flooding of the waterway. This occurs when peak runoff from the basin and the stream coincide. Also, this does not reduce the volume of runoff from a developed site. One method of completing the "time analysis" versus peak flow is to perform a full watershed study of the stream, which is a very time consuming and costly endeavor. The proposed procedure is intended to provide a simplified method for a design engineer by working only from the drainage on the proposed development site.

These commenters suggested the development of a "sliding scale" for runoff reduction requirements, depending on the size of the development. While this idea seems to have some merit, there are a number of problems associated with such a procedure, namely determining what developments are considered "minor" and "major" and what specific reduction requirements will be assigned. In addition, the Department has specific stormwater management goals, based on the need to address non-point source pollution and to be consistent with the EPA goal of total suspended solids reduction for all developments.

N.J.A.C. 7:7E-8.8 Vegetation

428. COMMENT: It is unclear whether site specific landscape plans will be required for the buffer planting. Will certified landscape architects be required? Will the buffer areas need to be monitored each year until the fifth year? What will qualify as a "solid" visual screen? Under the Mining Use rule, buffer areas require maximum feasible screening. How can a developer determine if the existing forest will require supplemental planting? The buffer requirements are a thinly veiled "reforestation" regulation. (66)

RESPONSE: Site specific landscape plans have routinely been required for CAFRA applications in the past. This requirement will continue, however these plans need not be prepared by a certified landscape architect. The Department intends to evaluate existing and proposed vegetative plantings to determine if adequate screening between uses will be established. Approval of a landscaping plan for a specific project may include maintenance provisions for newly landscaped areas, which the Department believes will achieve the five-year screening goal.

N.J.A.C. 7:7E-8.11 Public Access to the Waterfront

429. COMMENT: It is a known fact that developers manipulate *Mt. Laurel* housing regulations to circumvent local zoning ordinances and DEPE regulations. Developers should not be able to argue that they should not include pathway construction because construction would render a project economically infeasible. (92, 107)

RESPONSE: The Rules on Coastal Zone Management do not include any specific waivers for *Mt. Laurel* housing developments.

430. COMMENT: It sounds unconventional, but having front yards along the waterfront is better than asphalt roadways or rear yards. It's better to keep roads further away because roads and vehicular use impact on the environment. Keeping rear yards non-adjacent to the environmentally sensitive waterfront is also desirable because people tend to dump yard wastes behind their rear yards, and because rear yard fences make any pathway corridor appear narrow, forbidding and unwelcome. (92, 107)

RESPONSE: The suggested requirement that the waterfront portion of single family/duplex residential lots be considered the front yard could be inconsistent with local zoning and subdivision plans. Trying to incorporate public access pathways as "front yards" along the waterfront is further complicated by the presence of existing developments of varying uses, sizes, locations, and with different infrastructure (roads, sewers, utilities and their associated easements). The physical constraints posed by these different types of developments often preclude the implementation of a continuous linear walkway. The existing and proposed rules represent standards for the design and construction of certain types of development, and not behavior control guidelines. Department experience has shown that people who illegally dispose of wastes will do so regardless of the presence of public access pathways. The fencing of private property directly adjacent to public access pathways may give the appearance of a narrow pathway. However, fencing is often constructed for security reasons. The goal of the Department's rules related to public access to the waterfront is to provide access to the waterfront for all members of the public, and to clearly designate and provide signage to these access areas. Restricting the use of fencing along the private property/public access boundary is beyond the scope of the rules.

431. COMMENT: N.J.A.C. 7:7E-8.11(b)13 requires developments that reduce existing on-street parking to mitigate for the loss of these public parking spaces. This section should be deleted as it is a decision that should be made by the municipality in conformance with its zoning ordinances. (45, 63)

RESPONSE: One of the primary goals of the New Jersey Coastal Management Program is to facilitate public access to the waterfront, which is dependent on the availability of adequate public parking. Development activities which reduce the number of existing on-street parking spaces are inconsistent with this goal. Therefore, the proposed amendment is intended to maintain a balance between development and maintenance of adequate public parking spaces. In addition, not all municipal ordinances adequately address the need for public parking.

432. COMMENT: The NJBA commends the Department for exempting single family or duplex residential lots which are not part of a larger development from requiring public access to the waterfront. (45)

RESPONSE: The Department acknowledges this comment in support of the proposed rule amendment.

N.J.A.C. 7:7E-8.12 Scenic Resources and Design

433. COMMENT: The Scenic Resources and Design rule (N.J.A.C. 7:7E-8.12) should be eliminated as it is unnecessarily onerous and represents a clear taking of property without compensation, especially with respect to the set-back requirements and the dedication of one half of the preserved open space for public space. (45, 63)

RESPONSE: Any project which is of a scale and location that has significant effect on the scenic resources of a region is considered to have a regional impact and to be of State concern. This rule only applies to developments which by their singular or collective size, location and design could have a significant adverse effect on the scenic resources of the coastal zone. Moreover, the rule does not require dedication of open space for public use as stated by the commenter.

N.J.A.C.7:7E-8.13 Buffers and Compatibility of Uses

434. COMMENT: There appears to be an error under subparagraph (b)4iii Buffer treatment..."shrubs must be at least three to four inches in height". The word inches should be changes to feet which is more appropriate. (101)

RESPONSE: This comment is correct, and the appropriate change has been made on adoption.

435. COMMENT: Buffer distances of zero and five feet for public development seem low given the definition of public development at N.J.A.C. 7:7-1.3 as meaning solid waste facilities, highways, wastewater treatment facilities, etc. Does a zero buffer distance on a forested site allow the removal of the forest up to the property line? (18)

RESPONSE: In response to public comment, the Department has deleted the proposed buffer matrix table from the rule on adoption, and

therefore there is no specific buffer distance required. The buffer requirements shall be determined on a case-by-case basis, and will consider the existing land condition, existing and proposed developments, and the anticipated impacts of the proposed development.

436. COMMENT: The Buffers and Compatibility of Uses rule (N.J.A.C. 7:7E-8.13) should be eliminated as it is onerous and duplicative with other programs and is an issue that is best addressed by local government; this policy is also contrary to the Municipal Land Use Law. If the Department persists, then the substance of this policy could be addressed in the Vegetation Rule. (45, 63)

RESPONSE: The intent of this rule is to provide and/or maintain some type of physical buffer between adjacent, and often conflicting land uses. Many local ordinances do not require adequate buffers between uses, either in the buffer width or in the buffer treatment. The Department's experience in implementing CAFRA has shown this to be a problem, particularly for large commercial developments which are proposed to be constructed on sites directly adjacent to existing residential developments.

437. COMMENT: There should be a Buffers and Compatibility of Uses rule for Special Areas, but not for overall land use which is subject to other Legislation. (86)

RESPONSE: In response to public comment, the proposed buffer matrix table has been deleted on adoption and the buffer treatment section has been retained. Therefore, the rule as adopted should not conflict with local zoning requirements.

438. COMMENT: We recommend the deletion of N.J.A.C. 7:7E-8.13, Buffers and Compatibility of Uses. It is not clear if this rule would apply to new development as well as to improvements within an existing development. It is also unclear as to the definition of "adversely affect," "degree of impact," and "beneficial uses." These terms are very subjective and are likely to result in inconsistencies among development applications based on individual interpretations of NJDEPE project reviewers. (138)

439. COMMENT: It should be clarified that the transportation category, which "only applies to new road construction" does not apply to realignments associated with bridge replacement projects that may be situated outside but adjacent to existing ROW areas. (154)

440. COMMENT: The buffer matrix should not be applicable to new public roadways as this will lead to the acquisition of unnecessary right of way, which will cause problems regarding maintenance, loss of tax rateable, access to adjacent parcels, etc. (127)

441. COMMENT: The buffers required from public open space appear to be overly stringent. They are not sufficiently flexible to accommodate the special conditions and circumstances of individual sites. This regulation also unsurps municipal zoning standards. Also, given the broad definition of open space, the restrictions related to the proposed buffers will be excessive under many circumstances. For instance, the presence of a small neighborhood playground could effectively restrict construction of existing building lots, even if those are considered infill and are located within development region municipalities. Our concerns regarding the buffer matrix will be discussed in detail under a separate comment. (66)

442. COMMENT: If a residential development is proposed adjacent to an undeveloped residential non-forested site, a 50 foot buffer is required. Will the subsequent development of the adjacent lot also require a 50 foot buffer, thus resulting in a 100 foot buffer?(66)

RESPONSE: The Department has revised this rule upon adoption to delete the buffer matrix table which established setback distances for different land uses. However, the section of the rule proposal which addressed buffer area treatment has been adopted. The rationale for this adoption is provided in the response to Comment 438 above.

443. COMMENT: This section, which proposed what appear to be reasonable standards for buffer setbacks, should be revised to include minimum standards for buffer widths. Subparagraph (b)4iii also sets standards for the size of plantings. The size of the required shrub plantings should be noted as "feet" instead of "inches." (134)

RESPONSE: In response to comments, the buffer matrix table has been deleted upon adoption. In addition, the size requirement for plantings has been corrected on adoption to indicate "feet" instead of "inches."

444. COMMENT: The rules on Buffers and Compatibility of Uses seem vague and can be misinterpreted by both applicants and project reviewers. This section should be better defined to eliminate the possibility of misinterpretation. (139)

RESPONSE: The Department proposed a set of buffer distances in N.J.A.C. 7:7E-8.13 in an effort to provide clear, definitive guidance in this area. However, in response to comments suggesting that these buffer requirements would conflict with municipal zoning, the Department has amended this proposal on adoption to provide for a case-by-case evaluation of required buffer distances, and for specific standards for buffer area treatment through landscaping.

445. COMMENT: Where does the Department get authority to impose zoning regulations such as set backs? Local zoning should address this issue. (139)

RESPONSE: CAFRA provides the DEPE with authority to evaluate the impacts of proposed developments in the coastal zone, including the impacts of proposed development on adjacent land uses. The proposed amendments were intended to provide more definitive guidance on buffer requirements. However, in light of the comments received, which stated that these buffer requirements would conflict with municipal zoning, the Department has amended this proposal on adoption to provide for a case-by-case evaluation of required buffer distances and to provide specific standards for buffer area treatment through landscaping.

N.J.A.C. 7:7E-8.14 Traffic

446. COMMENT: The changes to this section include the State Standard of two parking spaces per dwelling unit regardless of type of unit or location. This requirement assumes automobile transit rather than an individual project review based upon the variety of factors associated with design and market decisions. (86)

RESPONSE: For most coastal area developments, particularly on the barrier island communities, there is very limited mass transit available. Further, the Department's experience in reviewing CAFRA permit applications and in conducting post-construction inspections has shown that most residential developments result in a large increase in automobile traffic and in the associated demand for parking at these facilities. Therefore, the Department believes the changes are appropriate.

447. COMMENT: Traffic parking spaces for residential uses should be specified as being off-street (on-site). On-street parking can become especially problematic in cases where cartway widths are reduced to less than thirty (30) feet. Reduced street widths are encouraged by DEPE (N.J.A.C. 7:7E-8.7), and in the Model Subdivision and Site Plan Ordinance which contains cartway widths as narrow as 20 feet. (134)

RESPONSE: This rule provides that on-street parking spaces along public roads cannot be credited as part of the off-street parking provided for a project. This restriction should address the commenter's concerns.

Comments Beyond Scope of Proposal

The following is a list of comments that were beyond the scope of the February 22, 1994 proposal. Most of them suggest changing or deleting sections of the DEP's existing coastal regulations that have not been proposed for amendment. The Department could not adopt such changes without first proposing them for public discussion. As with many comments received by the Department on existing rules, these comments will be evaluated and considered during future rule proposals.

448. COMMENT: We suggest that NJDEPE make a greater effort to protect and support existing energy facilities and provide for necessary future expansion and/or siting. (138)

449. COMMENT: NJDEPE's role should be limited to assisting the State Planning Commission. The Legislature empowered the Commission to adopt NJDEPE's Coastal Planning Rules as part of the State Development and Redevelopment Plan for the coastal area. The Office of State Planning should initiate a Cross Acceptance Program with the municipalities located within the CAFRA and Waterfront Development areas. The process will enable municipalities to review their land development and zoning ordinances to identify inconsistencies with the proposed rules. Together with the Office of State Planning, municipalities can develop guidelines to be placed within the municipal ordinances that meet their needs and the needs of their citizens as well meeting Legislature's objective of protecting the coastal area of New Jersey. (138)

450. COMMENT: The CAFRA regulations proposed by DEPE will impose unnecessary and unreasonable burdens on many public programs having negligible or minimal environmental impact where such projects would otherwise be in the public interest, with the result that many such projects will become nonviable or unnecessarily expensive. (24, 81)

451. COMMENT: I would like to see the policy of Congress as reflected in the Abandoned Shipwreck Act in these regulations. Note—some of these concepts may fit in 7:7E-3.13, but apparently this

regulation is not up for change. In any case you should look at shipwrecks as a total or multi-use resource and not try to separate historic values and concepts from educational and recreational concepts. (50)

452. COMMENT: I am writing our legislators by way of a copy of this letter, to vote for S908 and A1604, extending the implementation of the new CAFRA revisions for one year to July 19, 1995. The extension will allow our legislators to draft a program with common ensuing environmental protection without over reaction. (49)

453. COMMENT: The Mayor and governing body of the Township of Dover have found that these regulations go significantly beyond the legislative intent of P.L. 1993 Chapter 190 and create an overreaching and burdensome regulatory challenge to the property rights of individuals. Further, the economic loss to individual home owners, the tourism industry, and the local communities will be significant to the entire State of New Jersey. (72)

454. COMMENT: We urge you to reconsider your 1993 amendments as they simply are not in the best interest of the thousands upon thousands of human beings who live in close proximity to the ocean. (75)

455. COMMENT: Like many who have been reading the proposed rules, I am often lost within the document trying to keep track of headings and sub-headings. For clarity, I suggest much more indenting of numbers and letters so the reader can go back and forth in the document more easily, i.e.: (10)

SUBCHAPTER 3.
7:7E 3.1
A (capital)
I. (Roman)
(a) (lower case)
1.
B.

456. COMMENT: The Farmland Conservation rule should be revised so that it applies only to those agricultural development areas which are approved by the County Agricultural Development Boards. (63, 45)

457. COMMENT: The Critical Wildlife Habitat rule should be deleted since it is redundant with the endangered species habitat rule. (63)

458. COMMENT: We are concerned with the Department's liberal application of the Steep Slope rule to borrow pits and sand gravel mines; under these circumstances, development will often remedy the problem by stabilizing the loose material. (63, 45)

459. COMMENT: The New Jersey Builders Association feels the Traffic Rule should be deleted. The Department of Transportation has the authority for reviewing projects on state highways, and therefore this rule is duplicative with the state highway access regulations and other county and local requirements. In addition, it does not to make sense for DEPE to emphasize mass transit, when the other agencies are cutting back on mass transit. (97)

460. COMMENT: I am totally against CAFRA II and all the restrictions and hardships that it will create for all the property owners in Cape May County. (116)

461. COMMENT: If it is difficult for the State to acquire money to protect environmentally sensitive pieces of ground that are very important to the future of our State, why not try to get and implement ecology bonds, which would be like savings bonds, war bonds, or educational bond? Bond holders that would have equity in the land that the State is protecting and they could use the bonds for collateral to pay their bills and to keep their future intact without taking money out of the coffers of the State. (84)

462. COMMENT: The coastal area is subject to sea level rise, to flooding, and wind damage. The federal flood insurance program is up for grabs. Private insurance companies are tightening the screws on what they will charge for insuring houses near the shore. It seems to me that most of what is recommended recognizes these as fact of life and says, in a sense, that we're slowly but surely going to change the way the game is played, and we have to charge fees and regulate people who have land and want to use it at the shore so that there is some public benefit. (10)

463. COMMENT: The NJBA believes that the Coastal Bluffs rule (7:7E-3.31) should only apply to the prominent bluffs that are noted in the rationale section along portions of the Delaware River and Raritan Bay. (45)

464. COMMENT: Under the current language of N.J.A.C. 7:7E-3.31, the DEPE has at times classified as bluffs some features that are only a few feet high. This fact, in combination with the 25 foot setback, renders some properties undeveloped and as a result the 25 foot setback should be deleted. (45)

465. COMMENT: The Critical Wildlife Habitat rule (N.J.A.C. 7:7E-3.39) should be deleted since it is redundant with the endangered species habitat policy. The NJBA requests the Department to document which additional habitats are provided protection under this policy that are not already protected under the endangered species policy. What procedure can interested persons follow to obtain maps of these habitat areas? (45)

466. COMMENT: The Basic Location rule (N.J.A.C. 7:7E-6.2) should be deleted as it is void for vagueness. (45, 63)

467. COMMENT: The NJBA requests the Department to remove the requirement for recreational areas for single family home developments. This matter should be referred to the municipality. (45)

468. COMMENT: N.J.A.C. 7:7E-7.14 should recognize that high rise structures may well be the only economically feasible way to provide housing in certain areas along the shore (for example, urban aid municipalities). These types of areas need revitalization and would benefit from such structures. Also, the price of land in some areas makes any type of development except high rise structures uneconomical. (45, 63)

469. COMMENT: The Groundwater Use rule (N.J.A.C. 7:7E-8.6) should be modified so it does not apply to projects which will be served by public water since water purveyors must go through a permitting process. (45)

470. COMMENT: We believe that the Air Quality rule (N.J.A.C. 7:7E-8.10) should not apply to residential developments since it was intended for industrial facilities. (45)

471. COMMENT: The Traffic Rule (N.J.A.C. 7:7E-8.14) should be deleted since only the Department of Transportation only reviews projects on state highways. In addition the traffic policy is also duplicative with the State Highway Access Regulations and other county and local requirements, and it does not make sense that the DEPE emphasize mass transit when the other agencies are cutting back on mass transit. (45, 63)

472. COMMENT: Standards for bridges permit pedestrian and bicycle use to be excluded if it is inappropriate. This exemption should be used sparingly and only where potential conflicts such as pedestrians and trains pose an unmanageable hazard; if pedestrian and bicycle use is permitted only on the right-of-way of which the bridge is a part, it should be accommodated on the bridge. (157)

473. COMMENT: The cost to smaller marinas of complying with extensive chemical testing can easily add 10 percent or more to the total cost of maintenance dredging. The scale of the project and results of prior testing should be considered in determining what testing would be reasonably required. (157, 48).

474. COMMENT: The application of guidelines for boat ramp construction as regulated standards is inappropriate. What is minimal practicable disturbance? What makes a material environmentally acceptable?(157, 48)

475. COMMENT: The necessary infrastructure to accommodate public access to the private land in Whale Beach is lacking. Extensive public funding for police, fire, hygiene, parking, transportation, roads, service buildings, etc. costing millions of dollars would be required, in addition to the cost of the land and property. (135)

476. COMMENT: We oppose this legislation. (69)

477. COMMENT: The New Jersey Legislature should be authorized to utilize its authority to veto onerous bureaucratic rules and regulations that are unfair and unjust to the citizens and taxpayers of New Jersey. (83)

478. COMMENT: The legislature should appoint a joint committee of the Senate and Assembly to meet with the drafters of the regulations to discuss with them the problems raised by the public at recent public hearings. (15)

479. COMMENT: As residents of a Southern Ocean County community, we vehemently oppose CAFRA II and its interpretations. (160)

480. COMMENT: As a private and average resident of this state, I urge you [Governor Whitman] to withhold your approval of these onerous rules that will create unbearable hardships for people like us who own a property at the Jersey Shore. (89)

481. COMMENT: CAFRA-II should be repealed, not delayed, as many officials have stated, because the New Jersey Department of

Environmental Protection and Energy has not followed the legislative intent and, in my opinion, is incapable of doing so. (29)

482. COMMENT: The fundamental flaw with the legislation is that it puts the burden on us to prove we're not doing something wrong. It would be much simpler, and a lot more palatable to craft standards for land use and construction which could implemented as part of the local building permit process. That seems infinitely easier than forcing a complex CAFRA review, with its interminable delays, outrageous expense, and convoluted application process on people who don't deserve it. (77)

Summary of Agency Initiated Changes:

The Department has made the following changes on adoption for the reasons indicated:

1. N.J.A.C. 7:7E-1.1(a) and N.J.A.C. 7:7E-3.44(a)1 have been amended on adoption to correct the citation for the Surface Water Quality Standards, which were recodified from N.J.A.C. 7:9-4 to N.J.A.C. 7:9B as of December 1993.

2. Under Reorganization Plan No. 001-1994 (see 26 N.J.R. 2171), the Department is reorganized and redesignated the "Department of Environmental Protection." Consequently, the Department has, throughout the chapter, modified "Department of Environmental Protection and Energy" and "DEPE" to "Department of Environmental Protection" and "DEP."

3. N.J.A.C. 7:7E-1.5(a) has been amended upon adoption to add "cultural" to the list of types of resources encompassed by these rules. Cultural resources are addressed at N.J.A.C. 7:7E-3.36.

4. The definition of "development" at N.J.A.C. 7:7E-1.5(c) has been amended upon adoption to reflect that P.L. 1993, c.190 exempts the reconstruction of developments destroyed or damaged by storm, natural hazard, fire or act of God from CAFRA permit requirements.

5. The definition of "dwelling unit" has been amended upon adoption to clarify that the type of room in a hospital that counts as a dwelling unit is a patient or client room, and that a floating home is considered a dwelling unit. The latter change comports with the definition of dwelling unit contained in the amendments to N.J.A.C. 7:7, the Coastal Permit Program Rules, as adopted and published elsewhere in this issue of the New Jersey Register.

6. The definition of "habitable structure" has been amended upon adoption to comport with the definition of "habitable structure" contained in the amendments to N.J.A.C. 7:7, the Coastal Permit Program Rules, as adopted and published elsewhere in this issue of the New Jersey Register.

7. In the definition of "mean high water" at N.J.A.C. 7:7E-1.5(c) "Tidelands Management Program" has been replaced with "Bureau of Tidelands Management" to reflect the correct title of the program.

8. The definition of "reconstruction" at N.J.A.C. 7:7E-1.5(c) has been amended upon adoption to specifically exclude repairs or maintenance, such as replacing siding, windows or roofs, unless such repairs or maintenance are associated with expansion.

9. The Department has decided not to adopt proposed N.J.A.C. 7:7E-1.6(b) that would have stipulated that proposed mitigation will not be considered in deciding whether the Department will issue a permit. That provision is part of the law and the Department's regulations protecting wetlands because of the many competing resources including wetlands that are managed under CAFRA and the Coastal Management Program; however, the Department has concluded there may be situations in which an applicant would propose mitigation that would have great benefit in furthering one of the Rules on Coastal Zone Management, providing extensive public access to a waterfront or protecting a wide buffer around a valuable wetland, for example, to make up for not fully meeting one of the other policies. The Department believes it appropriate and potentially of benefit to the environment to retain the flexibility to have such proposals on a site specific basis subjected to public review and consideration by the Department through the permit process.

10. N.J.A.C. 7:7E-2.1 has been amended upon adoption to replace "policies" with "rules." This change had been made throughout the proposed amendments to accurately reflect the legal status of these provisions, but was overlooked in this instance.

11. N.J.A.C. 7:7E-3.2(c) has been amended upon adoption to include the phrase "downgrading of the shellfish growing water classification" (for example, from "seasonal" to "special restricted" or from "special restricted" to "prohibited") to explain the meaning of condemnation in this context.

12. N.J.A.C. 7:7E-3.2(k) has been amended upon adoption to replace "possesses" with "poses" to correct a typographical error.

13. N.J.A.C. 7:7E-3.5(a) has been amended to remove the unnecessary quotation marks around finfish migratory pathways.

14. N.J.A.C. 7:7E-3.6 has been amended upon adoption to add "habitat" to the section heading, to clarify that the submerged aquatic vegetation habitat area is included in the definition of this Special Area, in addition to the areas which currently contain submerged aquatic vegetation.

15. N.J.A.C. 7:7E-3.6(a) has been revised to delete the unnecessary quotation marks around submerged vegetation.

16. N.J.A.C. 7:7E-3.6(a) has been amended upon adoption to delete "estuarine," since submerged vegetation also exists in water areas which would not be considered estuarine.

17. N.J.A.C. 7:7E-3.6(b) has been amended upon adoption to replace "submerged vegetation beds" with "submerged vegetation habitat" to make the terminology of the rule internally consistent.

18. N.J.A.C. 7:7E-3.7(b)6 has been deleted upon adoption. This provision regarding the construction of recreational docks and piers and potential impacts to navigability has been incorporated into N.J.A.C. 7:7E-4.2(e) which directly relates to residential dock and pier construction.

19. N.J.A.C. 7:7E-3.14(f)1 has been amended upon adoption to replace "spoil" with "dredged material" for consistency of terminology throughout the chapter.

20. N.J.A.C. 7:7E-3.15(a) has been amended upon adoption to delete the reference to "mean high water line" and replace it with "spring high tide," because an intertidal or subtidal shallow is classified as a special water area (N.J.A.C. 7:7E-3.15), and all other development standards for Special Water Areas refer to the "spring high tide."

21. N.J.A.C. 7:7E-3.17(a) has been amended to delete the unnecessary quotation marks around overwash fans.

22. N.J.A.C. 7:7E-3.17(e) has been amended upon adoption to make the last paragraph grammatically correct.

23. N.J.A.C. 7:7E-3.18(e) has been amended to delete the comma after "oceanfront," correcting a typographical error.

24. "The Department has amended the Bay Islands Rule at N.J.A.C. 7:7E-3.21 on adoption to delete "Old Avalon Boulevard Island" from the list of bay islands which are not required to comply with the provisions of the Bay Islands rule. Old Avalon Boulevard Island does not meet the criteria for exclusion due to the presence of environmentally sensitive areas on this island, and due to the limited development and infrastructure at this location. The inclusion of Old Avalon Boulevard Island on the original proposal was inadvertent.

25. N.J.A.C. 7:7E-3.23(f) has been amended upon adoption to delete "shall," making the sentence grammatically correct.

26. N.J.A.C. 7:7E-3.23(i) has been amended upon adoption to clarify that this rule limiting public access in residential situations refers only to individual single family homes to reflect N.J.A.C. 7:7E-7.2(e) which specifically limits the rules that are applied to single family homes and duplexes that are not part of a larger development.

27. N.J.A.C. 7:7E-3.27(h)2 (recodified on adoption from N.J.A.C. 7:7E-3.27(g)2) has been amended to delete an incorrect cross-reference to N.J.A.C. 7:7E-3.25.

28. N.J.A.C. 7:7E-3.27(h)6 (recodified on adoption from N.J.A.C. 7:7E-3.27(g)6) has been amended to add a reference to "the Registrar of Deeds and Mortgages, of applicable," since, in some counties, the county clerk is not responsible to register deed restrictions.

29. N.J.A.C. 7:7E-3.36(d) has been amended to delete the reference to the Office of New Jersey Heritage in the Division of Parks and Forestry in the Department because it is redundant, and to delete a repetitive sentence.

30. N.J.A.C. 7:7E-3.43(e) has been amended to insert "rule" to make the sentence grammatically correct.

31. N.J.A.C. 7:7E-3.49 has been deleted because the Department has determined that this rule requires further refinement prior to adoption, in order to address additional concerns related to urban waterfront redevelopment areas.

32. N.J.A.C. 7:7E-3A.3(e)1 has been amended to insert "residential" before "building" for clarification, since this subsection specifically applies to walkovers for residential buildings.

33. N.J.A.C. 7:7E-3A.3(f)2 was amended upon adoption to replace "normal" with "spring" to provide additional protection to newly created dunes and minimize the potential for trees to get washed away.

34. N.J.A.C. 7:7E-3B.1(a) has been amended to cross-reference N.J.A.C. 7:7A-14.4, the wetlands mitigation proposal rule contained in the freshwater wetlands regulations to clarify that mitigation proposals based on disturbance of freshwater wetlands must also conform to the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A).

35. N.J.A.C. 7:7E-3B.1(b)16 has been amended to clarify that freshwater wetlands mitigation within the coastal zone needs to conform to the Coastal Permit Program Rules at N.J.A.C. 7:7, Rules on Coastal Zone Management at N.J.A.C. 7:7E and the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A, while tidal wetlands mitigation needs to conform to the Coastal Permit Program Rules at N.J.A.C. 7:7 and the Rules on Coastal Zone Management N.J.A.C. 7:7E.

36. The definition of a dock at N.J.A.C. 7:7E-4.2(e) has been amended upon adoption to include docks cantilevered over the water because such docks are the subject of numerous applications. The Department needs to clarify that N.J.A.C. 7:7E-4.2(e) contains the appropriate standards for their review.

37. N.J.A.C. 7:7E-4.2(f)1 has been amended to replace "Dredging" with "dredging," correcting a typographical error.

38. N.J.A.C. 7:7E-4.2(f)2i has been amended to insert "dredged" before "material," correcting an omission.

39. N.J.A.C. 7:7E-4.2(g)2vi(3) has been amended upon adoption to replace "N.J.A.C. 7:7E-3.9" with "N.J.A.C. 7:7E-3.5" to reference the correct citation.

40. N.J.A.C. 7:7E-4.2(l)2 has been amended to add "other" to distinguish between lakes, ponds, reservoirs, man-made harbors, and tidal guts, where sand and gravel extraction is prohibited and water areas where it is discouraged.

41. N.J.A.C. 7:7E-5.5(c)1, the word "regional" has been deleted from "major shopping center." The Department's proposal was intended to replace the definition of major shopping center with clear language based on the size of the shopping center rather than the subjective term "regional." The term regional is not defined in the rules and therefore does not provide the needed guidance to permit applicants.

42. The Department has clarified the language at N.J.A.C. 7:7E-7.2(e) to indicate that only those rules identified in this section pertain to the construction of a single family home or duplex that is located upland of the mean high water line and provided that it is not part of a larger development.

43. N.J.A.C. 7:7E-7.2(e)2 has been amended upon adoption to correct the spelling of "erosion."

44. N.J.A.C. 7:7E-7.3(d)10iii has been amended upon adoption to include a period after "October 31," correcting typographical errors.

45. N.J.A.C. 7:7E-7.3A(a), (a)9 and (b)15i and ii have been amended upon adoption to replace "marine" with "marina," correcting a typographical error.

46. N.J.A.C. 7:7E-7.3A(b)5 has been amended upon adoption to correct the misspelling of "dredging."

47. N.J.A.C. 7:7E-7.4(b)1 has been amended upon adoption to correct the spelling of "within."

48. N.J.A.C. 7:7E-7.4(r)2 has been amended upon adoption to delete the phrase "in the last decade" since the sitings to which this refers did not occur within the last decade. In addition, the third paragraph of the rationale has been deleted because it is extraneous and does not support the rule.

49. N.J.A.C. 7:7E-7.6(b)5 has been amended upon adoption to delete "Policies" and maintain "rules," to reflect the legal status of this chapter.

50. N.J.A.C. 7:7E-7.10(a)1 has been amended upon adoption to correct the spelling of "motels."

51. N.J.A.C. 7:7E-7.10(c)1 has been amended upon adoption to delete the unnecessary quotation marks around "Retail and trade service."

52. N.J.A.C. 7:7E-7.11(e)1v has been amended to require that structural shore protection projects be consistent with the New Jersey Shore Protection Master Plan to provide standards given the fact that projects addressed by the Plan are still under consideration by various State and Federal agencies.

53. N.J.A.C. 7:7E-7.12(b) has been amended upon adoption to insert "disposal" after "material," correcting an omission.

54. N.J.A.C. 7:7E-8.7(c)2ii(3) has been amended on adoption to clarify the list of water bodies in which the flood control requirements of the Stormwater Management rule need not be complied with. This clarification indicates that the excluded water bodies should be limited to only to those listed in subparagraph (c)2ii(2).

55. At N.J.A.C. 7:7E-8.7(c)3ii, the reference proposed for the Modified Rational Method has been replaced, for accuracy, with the original 1851 reference for the Rational Method, which is now considered to be a "term of art" and appears in most hydrology textbooks and hydrologic engineering manuals. This method is used universally throughout the world for establishing rainfall distributions and runoff calculations.

56. The amendment upon adoption to N.J.A.C. 7:7E-8.7(c)3iii is intended to clarify that runoff calculations for cultivated lands must include documentation that these lands have in fact been cultivated. The Department's experience in the past has shown that the previous language was vague, in that lands may or may not have been cultivated for the period immediately prior to completion of the calculations. Therefore, the Department has revised the rule to require that for lands to be considered cultivated, they must have been used for such purposes "without interruption." In addition, since this revision was made to require that the use be "without interruption," the Department felt it was appropriate to reduce the required time period for such use, from 10 years to five years. These changes provide the proper balance to ensure that runoff calculations accurately reflect the condition of the lands being evaluated.

57. The revisions upon adoption to N.J.A.C. 7:7E-8.7(c)4 are intended to clarify the language of this rule as it relates to the maximum feasible reduction of total suspended solids (TSS) loading after construction of a development. The changes specifically quantify this "maximum feasible reduction" standard by stating that post-construction loadings of TSS shall match the pre-development loadings. In addition, the reference to "water quality design storm" has been included in the standards throughout this rule, and, therefore, its inclusion in N.J.A.C. 7:7E-8.7(c)4 is intended to increase clarity."

58. The addition of the subparagraph at N.J.A.C. 7:7E-8.7(d)1i(9) is necessary to ensure that the design and construction of "constructed wetlands" address the need for these systems to be maintained by sufficient inflow of water, particularly during dry weather periods. This standard is critical to designing a system which will be able to sustain itself and maintain its function as a wetland. This addition also expands on the design standard of N.J.A.C. 7:7E-8.7(d)1i(8), as originally proposed."

59. The revisions to N.J.A.C. 7:7E-8.7(d)1iii(4), which delete the reference to the use of underdrains below the low flow channel, were made in response to the Department's concern regarding the limited use of these systems and the limited data available on the long-term function of these underdrains. The Department believes that more detailed information regarding underdrains is necessary before these systems are included as acceptable in the design of swales. In addition, the deletion of the reference to "similar material that will allow for the growth of vegetation" was made in response to the Department's concern regarding vegetative growth in low flow channels, and the potential impact of vegetation on flow patterns in the channel.

60. The revisions to N.J.A.C. 7:7E-8.7(d)1vi(2) through (7) were made in response to comments provided by the Department's Stormwater Permitting Program, as they relate to the design and construction of vegetated swales. These revisions are based on standards contained in a report which has been referenced in the rationale of the Stormwater Management rule at N.J.A.C. 7:7E-8.7(f), entitled "A Current Assessment of Urban Best Management Practices: Techniques for Reducing Non-point Source Pollution in the Coastal Zone," written by Thomas Schueler, et al., Department of Environmental Programs, Metropolitan Washington Council of Governments, dated March 1992. These additional standards are required to provide guidance to permit applicants in the area of swale design.

61. The addition of N.J.A.C. 7:7E-8.7(d)1vi was made in response to concerns expressed by representatives of Stafford Township, a coastal municipality which relies heavily on the use of these perforated pipe stormwater management systems. The Department had proposed to discourage the use of these systems, due to concerns related to design and long-term maintenance of the systems. However, the Department was presented with technical data, including the engineering and maintenance requirements embodied in the Stafford Township Stormwater Management Ordinance, which adequately address the Department's concerns. Therefore, these additional requirements for perforated pipe have been included on adoption, and this technique has been reassigned to the "conditionally acceptable" category of stormwater management techniques.

62. The revisions to N.J.A.C. 7:7E-8.7(d)2iii(5), indicating that maintenance schedules "may be required to" include certain maintenance activities, are based on the Department's recognition that

these maintenance activities may not always be necessary. Therefore, rather than requiring these maintenance activities in all cases, the adopted revisions allow the Department the flexibility to require these activities in cases where there is a documented concern related to clogging of the porous asphalt, in which case weekly vacuuming and monthly pressure washing may be required.

63. The additions at N.J.A.C. 7:7E-8.7(f)1vi through ix were included on adoption to provide guidelines for maintenance of certain stormwater management facilities described in this rule, specifically for wet ponds/ retention basins, infiltration facilities, swales and perforated pipe recharge systems. These revisions are based on standards contained in a report which has been referenced in the rationale of the Stormwater Management rule at N.J.A.C. 7:7E-8.7(f), entitled "A Current Assessment of Urban Best Management Practices: Techniques for Reducing Non-point Source Pollution in the Coastal Zone," written by Thomas Schueler, et al., Department of Environmental Programs, Metropolitan Washington Council of Governments, dated March 1992. These changes are required to ensure long-term functioning of these systems, and therefore warrant inclusion on adoption.

64. At N.J.A.C. 7:7E-8.7(f), the inclusion of an added reference to the rationale of this rule is required to provide reference to the most recent (1993) version of the Schueler report, since some of the standards contained in this rule were taken from this version.

65. N.J.A.C. 7:7E-8.10(c)3i has been amended upon adoption to replace "Rules" with "rules," correcting a typographical error.

66. N.J.A.C. 7:7E-8.11(c) has been amended upon adoption to replace "lots" with "dwellings" because one cannot construct a lot but can construct a dwelling.

67. In proposing a prohibition of the construction of subsurface sewerage disposal systems in the V-zone, the Department believed it was accurately reflecting the National Flood Insurance Program (NFIP) standards. However, the NFIP standards do not prohibit construction in V-zone but instead establishes standards which must be met in the V-zone. N.J.A.C. 7:7E-8.21 has been amended to clarify that the construction of subsurface sewage disposal systems in flood hazard areas must comply with all applicable standards of the National Flood Insurance Program Regulations (44 CFR 60).

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

SUBCHAPTER 1. INTRODUCTION

7:7E-1.1 Purpose

(a) This chapter presents the substantive rules of the Department of Environmental Protection *[and Energy]* regarding the use and development of coastal resources, to be used primarily by the Land Use Regulation Program in the Department in reviewing permit applications under the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq (as amended to July 19, 1993), Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., Waterfront Development Law, N.J.S.A. 12:5-3, Water Quality Certification (401 of the Federal Clean Water Act), and Federal Consistency Determinations (307*[(c)(1)]* of the Federal Coastal Zone Management Act). Requests for Water Quality Certification shall also be reviewed in accordance with other applicable statutes and regulations administered by the Department including the Surface Water Quality Standards, N.J.A.C *[7:9-4]* ***7:9B***. The rules also provide a basis for recommendations by the Program to the Tidelands Resource Council on applications for riparian grants, leases and licenses.

(b) In 1977, the Commissioner of the Department of Environmental Protection submitted to the Governor and Legislature the Coastal Management Strategy for New Jersey-CAFRA Area (September 1977), prepared by the Department as required by CAFRA, N.J.S.A. 13:19-16, and submitted for public scrutiny in late 1977. The Department revised the Coastal Management Strategy for public review as the New Jersey Coastal Management Program-Bay and Ocean Shore Segment and Final Environmental Impact Statement (EIS) for Federal approval, which was received in September 1978. In May 1980, the Department submitted further revisions, published as the Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement for Federal approval, which was received in September 1980. The Rules on Coastal Zone Management (Rules) constitute the substantive core of the program. The Rules were amended on June 4, 1981, January 12, 1982, April 19, 1982, February 7, 1983, February 3, 1986, August 15, 1988, May 15, 1989, August 20, 1990, April 5, 1993, November 15, 1993 and *[(the effective date of these amendments)]* ***July 18, 1994***.

(c) By revising and readopting these policies as administrative rules, according to the Administrative Procedure Act, the Department aims to increase the predictability of the Department's coastal decision-making by limiting administrative discretion, as well as to ensure the enforceability of the Rules on Coastal Zone Management of the coastal management program of the State of New Jersey prepared under the Federal Coastal Zone Management Act. Further, the Department interprets the "public health, safety and welfare" clause in CAFRA (N.J.S.A. 13:19-10f) and the Wetlands Act of 1970 (N.J.S.A. 13:19A-4d) to include a full consideration of the national interests in the wise use of coastal resources.

7:7E-1.2 Jurisdiction

(a) General: This chapter shall apply to five categories, as defined in N.J.A.C. 7:7E-1.3(c) through (g), of actions or decisions by the Department on uses of coastal resources within or affecting the coastal zone:

1. Coastal Permits;
2. Program Management Actions;
3. Consistency Determinations;
4. Financial assistance;
5. *[DEPE]* ***DEP*** management actions affecting the coastal zone; and
6. *[DEPE]* ***DEP*** planning actions affecting the coastal zone.

(b) Geographic scope of the New Jersey Coastal Zone: This chapter shall apply geographically to the New Jersey Coastal Zone, which is defined as:

1. The coastal area under the jurisdiction of the Coastal Area Facility Review Act (CAFRA);
2. Areas extending waterward to the State's seaward (Raritan Bay and Atlantic Ocean) jurisdiction on the east, the State's bayward (Delaware Bay) jurisdiction on the south and southwest, and the State's riverward (Delaware River) jurisdiction on the west;
3. The regulated area under the jurisdiction of the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(a);
4. All areas containing tidal wetlands; and
5. The Hackensack Meadowlands Development Commisssion District as defined by N.J.S.A. 13:17-4.

(c) Coastal Permits: This chapter shall apply to all:

1. Waterfront Development permits (N.J.S.A. 12:5-3);
2. Wetlands permits (N.J.S.A. 13:9A-1 et seq.); and
3. CAFRA permits (N.J.S.A. 13:19-1 et seq.).

(d) Program management actions: This chapter shall apply to all actions of the Land Use Regulation Program within the Coastal Zone to the extent statutorily permissible:

1. Permits for use of a floodway (N.J.S.A. 58:16A-50 et seq.);
2. Promulgation of regulations concerning land use in flood hazard areas (N.J.S.A. 58:16A-50 et seq.);
3. Certification pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. §1251 et seq. (Water Quality Certification); and
4. Permits for activities regulated pursuant to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.).

(e) (No change.)

(f) Financial assistance decisions: This chapter shall apply to State aid financial assistance decisions by *[DEPE]* ***DEP*** under the Shore Protection Program and Green Acres Program within the coastal zone, to the extent permissible under existing statutes and regulations.

(g) *[DEPE]* ***DEP*** management activities: This chapter shall apply, to the extent statutorily permissible, to the following *[DEPE]* ***DEP*** management actions in or affecting the coastal zone in addition to those noted at N.J.A.C. 7:7E-1.1:

1. Tidelands Resource Council: Conveyances of State owned tidelands (N.J.S.A. 12:3-1 et seq.).
2. Division of Water Quality:

i.-iv. (No change.)

v. Designation of Critical Sewerage Areas (N.J.S.A. 58:11-44).

3. Land Use Regulation Program:

i. Permits for 50 or more Sewerage (septic) Facilities (N.J.S.A. 58:11-23).

ii. Approval for Sewerage Facilities in Critical Areas (N.J.S.A. 58:11-45).

iii. Permits to Perform Regulated Activities within Freshwater Wetlands (N.J.S.A. 13:9B-1 et seq.).

iv. Issuance of Permits pursuant to the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.).

4. Water Supply Regulation:

i. Permit to divert surface and/or subsurface or percolating waters for public and private water supply (N.J.S.A. 58:1A et seq.).

ii. Approval of diversions for water supply (N.J.S.A. 58:1A et seq.).

iii. Permits to drill wells (N.J.S.A. 58:4A-14).

iv. Certifications to construct new or modified public water supply sources, treatment plants, and distribution systems (N.J.S.A. 58:12A-1 et seq.).

v. Permits to install or maintain a physical connection between an approved public potable water supply and an unapproved supply (N.J.S.A. 58:11-9.1 to 9.11 and 58:12A-1 et seq.).

5. Bureau of Stormwater Permitting: Permits for the discharge of stormwater to surface waters for industrial and other facilities (N.J.S.A. 58:10A-1 et seq.).

6. Air Quality Regulation Program:

i.-ii. (No change.)

iii. Approvals of variances to exceed air quality standards (N.J.S.A. 26:2C-9.2).

7. Division of Solid Waste Management: Certification of Solid Waste facilities (N.J.S.A. 13:1E-1 et seq.).

8. Green Acres and Division of Parks and Forestry:

i. Adoption of regulations concerning use of State-owned lands (N.J.S.A. 13:1L-19.).

ii.-iv. (No change.)

9. (No change.)

10. Natural and Historic Resources, Engineering and Construction Section: Dam Permit (N.J.S.A. 58:4-1).

11. All Divisions: Management of State-owned lands by *[DEPE]* ***DEP***.

(h) *[DEPE]* ***DEP*** planning actions: This chapter shall provide the basic policy direction for the following planning actions undertaken by *[DEPE]* ***DEP*** in the coastal zone as the lead state agency for Coastal Management under Section 306 of the Federal Coastal Zone Management Act.

1. Land Use Regulation Program:

i. Coastal zone management;

2. Natural and Historic Resources Program:

i. Navigational dredging; and

ii. Shore protection.

3. Land and Water Planning:

i.-iii. (No change.)

iv. Implementation and coordination of the Federal Coastal Zone Management Program.

4. Air Quality Regulation: Air quality planning

Recodify existing 4. and 5. as 5. and 6. (No change in text.)

7:7E-1.4 Review, Revision and Expiration

The Department shall periodically review this chapter, consider the various national, State, and local interests in coastal resources and developments seeking coastal locations, and propose and adopt appropriate revisions to this chapter. Under the requirements of the federal Coastal Zone Management Act, the Department expects to conduct an annual review of the rules and expects to revise, amend or readopt the rules before the five year deadlines under Executive Order No. 66 of 1978 for periodic review of administrative rules.

7:7E-1.5 Coastal decision-making process

(a) General: Decisions on uses of coastal resources shall be made using the three step process comprising the Location Rules (subchapters 2 through 6), the Use Rules (subchapter 7), and the Resource Rules (subchapter 8) of this chapter. Depending upon the proposed use, project design, location, and surrounding region, different specific rules in each of the three steps may be applicable in the coastal decision-making process. The Rules on Coastal Zone Management address a wide range of land and water types (locations), present and potential land and water uses, and natural, ***cultural,*** social and economic resources in the coastal zone. *[DEPE]* ***DEP*** does not, however, expect each proposed use of coastal resources to involve all Location Rules, Use Rules, and Resource Rules. Rather, the applicable rules are expected to vary from proposal to proposal. ***Decisions on the use of coastal resources in the Hackensack Meadowlands District will be made by the Hackensack Meadowlands Development Commission, as lead agency, and by the Department, consistent with the Hackensack Meadowlands District Master Plan, its adopted components and management programs.***

(b) Principles: The Coastal Zone Management Rules represent the consideration of various conflicting, competing, and contradictory local, State, and national interests in diverse coastal resources and in diverse uses of coastal locations. Numerous balances have been struck among these interests in defining these rules, which reduce but do not presume to eliminate all conflicts among competing interests. One reason for this intentional balancing and conflict reducing approach is that coastal management involves explicit consideration of a broad range of concerns, in contrast to other resource management programs which have a more limited scope of concern. Decision-making on individual proposed actions using the Coastal Zone Management Rules must therefore consider all three steps in the process, and weigh, evaluate, and interpret inevitably complex interests, using the framework established by the rules. In this process, interpretations of terms, such as "prudent", "feasible", "minimal", "practicable", and "maximum extent", as used in a specific rule or combinations of the rules may vary, depending upon the context of the proposed use, location, and design. Finally, these principles should not be understood as authorizing arbitrary decision-making or unrestrained administrative discretion. Rather, the limited flexibility intentionally built into the Rules on Coastal Zone Management provides a mechanism for incorporating professional judgment by *[DEPE]* ***DEP*** officials, as well as recommendations and comments by applicants, public agencies, specific interest groups, corporations, and citizens into the coastal decision-making process.

1. In the application of administrative discretion, *[DEPE]* ***DEP*** officials will be guided by eight basic coastal policies which summarize the direction of the specific rules.

i.-iii. (No change.)

iv. Protect the health, safety and welfare of people who reside, work and visit the coastal zone.

v. Promote public access to the waterfront through **protection and creation of meaningful access points and** linear walkways and at least one waterfront park in each waterfront municipality.

vi. Maintain active port and industrial facilities, and provide for necessary expansion in adjacent sites.

vii. Maintain and upgrade existing energy facilities, and site additional energy facilities determined to be needed by the New Jersey State Energy Master Management Plan in a manner consistent with the rules of this Coastal Management Program.

viii. Encourage residential, commercial, and recreational mixed-use redevelopment of the developed waterfront.

(c) Definitions: The Rules on Coastal Zone Management are stated in terms of actions that are encouraged, required, acceptable, conditionally acceptable, discouraged, or prohibited. Some rules include specific conditions that must be met in order for an action to be deemed acceptable. Within the context of the Rules on Coastal Zone Management and the principles defined (b) above, the following words have the following meanings.

"Acceptable" means that a proposed used of coastal resources is likely to be approved.

"Action", "activity", "project", "proposal", or "use" are used interchangably to describe the proposed use of coastal resources that is under scrutiny using the Rules on Coastal Zone Management.

"Area": See definition for "site" below.

"Commercial development" means a development designed, constructed or intended to accomodate commercial, retail or office uses. "Commercial development" shall include, but need not be limited to , any establishment used for the wholesale or retail sale of food or other merchandise, or any establishment used for providing professional, financial or other commercial services.

"Conditionally acceptable" means that a proposed use of coastal resources is likely to be acceptable, provided that conditions specified in the rules are satisfied.

"Development" means any activity for which a Wetlands Act of 1970 or Waterfront Development Permit is required, including site preparation and clearing. "Development," for an application under the Coastal Area Facility Review Act, means the construction, relocation, or enlargement of any building or structure and all site preparation *[thereof]* ***therefor***, the grading, excavation or filling on beaches and dunes, and shall include residential development, commercial development, industrial development and public development. ***For the purposes of these rules, "development" pursuant to CAFRA does not include the reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard and/or act of God. Such reconstruction must be in compliance with existing requirements or codes of municipal, State and Federal law, but does not require a CAFRA permit provided that the reconstruction does not result in the enlargement or relocation of the footprint of the development or an increase in the number of dwelling units or parking spaces within the development. Development does not include repairs or maintenance such as replacing siding, windows or roofs, unless such repairs or maintenance are associated with expansions.***

"Dwelling unit" means a house, townhouse, apartment, cooperative, condominium, cabana, hotel or motel room, a room in a hospital, nursing home or other residential institution, mobile home, campsite for a tent or recreational vehicle or any habitable structure of similar size and potential environmental impact, except that dwelling unit shall not mean a vessel as defined in section 2 of P.L. 1962, c.73 (N.J.S.A. 12:7-34.37).

"Department", or *["DEPE"]* ***"DEP"*** means the Department of Environmental Protection *[and Energy]*.

"Discouraged" means that a proposed use of coastal resources is likely to be rejected or denied as the Department has determined that such uses of coastal resources should be deterred and developers should be dissuaded from proposing such uses. In cases where the Department considers the proposed use to be in the public interest despite its discouraged status the Department may permit the use provided that mitigating or compensating measures can be taken so that there is a net gain in quality and quantity of the coastal resource of concern.

"Dwelling Unit" means a house, townhouse, apartment, cooperative, condominium, cabana, hotel or motel room, a ***patient/client*** room in a hospital, nursing home or other residential institution, mobile home, campsite for a tent or recreational vehicle***, floating home*** or any habitable structure of similar size and potential environmental impact, except that dwelling unit shall not mean a vessel as defined in section 2 of P.L. 1962, c.73 (N.J.S.A. 12:7-34.37).

"Encouraged" means that a proposed use of coastal resources is acceptable and is a use, by its purpose, location, design, and effect, that the Department has determined should be fostered and supported in the coastal zone.

"Habitable structure" means a structure that *[has a valid]* ***is able to receive a*** certificate of occupancy from the municipal construction code official, or can be demonstrated to have been legally occupied as a dwelling unit for the *[last]* ***most recent*** five years.

"Location": See definition for "site" below.

"Major commercial development" means a commercial development with a cumulative building area of greater than 100,000 square feet.

"Minor commercial development" means a commercial development with a cumulative building area of 100,000 square feet or less.

"Mean high water" (MHW) is a tidal datum that is the arithmetic mean of the high water heights observed over a specific 19-year Metonic cycle (the National Tidal Datum Epoch). For the New Jersey coast, the two high waters of each tidal day are included in the mean. This datum is available from the *[DEPE, Tidelands Management Program]* ***DEP, Bureau of Tidelands Management***.

"Mean high water line" (MHWL) is the intersection of the land with the water surface at the elevation of mean high water. The elevation of mean high water varies along the oceanfront and the tidal bays and streams in the coastal zone. (Note: For practical purposes, the mean high water line is often referred to as the "ordinary" high water line, which is typically identified as the limit of wet sand or debris line on a beach, or by a stain line on a bulkhead or piling. However, for the purpose of establishing regulatory jurisdiction pursuant to the Coastal Area Facility Review Act (CAFRA) and the Waterfront Development Law, the surveyed mean high water elevation will be used.)

"Navigable" means deep enough and wide enough to afford passage to watercraft, including canoes, at high tide. Navigability will also apply to areas upstream of obstructions (for example, culverts), provided that the water course is still tidally influenced in the upstream area.

"Program" means *[NJDEPE]* ***NJDEP*** Land Use Regulation Program.

"Prohibited" means that a proposed use of coastal resources is unacceptable and that the Department will use its legal authority to reject or deny the proposal.

"Reconstruction" means the repair or replacement of a building, structure or other parts of a development, provided that such repair or replacement does not increase or change the location of the footprint of the preexisting development, does not increase the area of impervious coverage associated with the development, and does not result in a change in the use of the development. Reconstruction *[or repair]* does not include *[cosmetic]* repairs ***or maintenance***, such as replacing siding, windows or roofs, *[but does not include the demolition of exterior walls]* ***unless such repairs or maintenance are associated with expansions***.

"Site" means the geographic scope of the proposed use of coastal resources that is under scrutiny using the Rules on Coastal Zone Management. "Site" also means the land or area upon which a proposed development is to be constructed.

"Spring tide" means a tide that occurs at or near the time of new and full moon and which rises highest and falls lowest from the mean level. "Spring high water line " is the intersection of the land with the water surface at the elevation of spring high tide.

"Water dependent" means development that cannot physically function without direct access to the body of water along which it is proposed. Uses, or portions of uses, that can function on sites not adjacent to the water are not considered water dependent regardless of the economic advantages that may be gained from a waterfront location. Maritime activity, commercial fishing, public waterfront recreation and marinas are examples of water dependent uses, but only the portion (of the development requiring direct access to the water is water dependent. The test for water dependency shall assess both the need of the proposed use for access to the water and the capacity of the proposed water body to satisfy the requirements and absorb the impacts of the proposed use. A proposed use will not be considered water dependent if either the use can function away from the water or if the water body proposed is unsuitable for the use. For example, in a maritime operation, a dock or quay and associated unloading area would be water dependent, but an associated warehouse would not be water dependent.

1. Examples of water dependent uses include: docks, piers, marina activities requiring access to the water, such as commissioning and decommissioning new and used boats, boat repairs and short term parking for boaters, storage for boats which are too large to be feasibly transported by car trailer (generally greater than 24 feet), rack systems for boat storage, industries such as fish processing plants and other commercial fishing operations, port activities requiring the loading and unloading of vessels, and water-oriented recreation.

2. Water dependent uses exclude, for example: housing, hotels, motels, restaurants, warehouses, manufacturing facilities (except for

those which receive and quickly process raw materials by ship), dry boat storage for boats that can be transported by car trailer, long-term parking, parking for persons not participating in a water-dependent activity, boat sales, automobile junk yards, and non-water oriented recreation such as roller rinks and racquetball courts.

"Water oriented" means development that serves the general public and derives economic benefit from direct access to the water body along which it is proposed. (Industrial uses need not serve the general public.) A hotel or restaurant, since it serves the public, could be water-oriented if it takes full advantage of a waterfront location. An assembly plant could be water oriented if overland transportation is possible but water-borne receipt of raw materials and shipment of finished products is economically advantageous. Housing is not water-oriented despite the economic premium placed on waterfront housing, because it only benefits those who can afford to buy or rent the housing units.

7:7E-1.6 Mitigation

(a) Mitigation shall be selectively considered on a case-by-case basis as compensation for the loss or degradation of a particular natural resource. In general, mitigation should be similar in type and location to the resource disturbed, destroyed, that is, replacement in kind within the same watershed. The Program will, however, consider proposals for mitigation that differ in type and/or location from the disturbed or destroyed resource provided the mitigation would provide a major contribution to meeting the Basic Location Policies (N.J.A.C. 7:7E-1.5(b)1). Requirements for mitigation of a particular resource are addressed more specifically in each applicable Special Area Rules (N.J.A.C. 7:7E-3.1 through 3.48).

[(b) The Department will not consider a mitigation proposal in determining whether a project should be awarded a permit, but will require mitigation as a condition of any permit found to be acceptable under the criteria listed in N.J.A.C. 7:7A-3 and/or 7:7E-3.15 and 3.27.]

*[(c)]**(b)* **Rationale: This rule is intended to conserve those physical and biological values described under applicable Special Area rules, while allowing development consistent with acceptability criteria. Use of this mitigation rule will result in real gain, or no net loss of habitat productivity or resource value.**

SUBCHAPTER 2. LOCATION, USE AND RESOURCE RULES

7:7E-2.1 Introduction

The coastal land and water areas of New Jersey are diverse. The same development placed in different locations will have different impacts on the coastal ecosystem and built environment as well as different social and economic implications. Different rules are therefore required for different locations. This subchapter and subsequent subchapters defines the Location, Use and Resource Rules of the Coastal Program. This presentation of the rules is lengthy and detailed because the coast is large, varied, and complex. The method of applying the *[policies]* ***rules*** is, however, relatively simple.

7:7E-2.2 Classification of land and water types

(a) The Location rules classify all land and water locations into a General Area and some into one or more Special Areas.

1. Special Areas are so naturally valuable, or so important for human use, or so hazardous, or so sensitive to impact, or so particular in their planning requirements, as to merit focused attention. Special Areas are defined and given special rules in subchapter 3. Special Area types are grouped under four broad headings: Special Water Areas; Special Water's Edge Areas; Special Land Areas; and Special Coast Wide Areas.

2. General Areas are general types of locations which classify the whole coastal zone with the exception of the Special Water's Edge, which is entirely a Special Area. Parts of General Areas may also be classified as one or more Special Areas. General Areas are defined and given general rules in subchapters 4 and 5. General Area types are grouped under two broad headings: General Water Areas (subchapter 4) and General Land Areas (subchapter 5).

SUBCHAPTER 3. SPECIAL AREAS

7:7E-3.1 Introduction

(a) Special Areas are those 48 types of coastal areas which merit focused attention and special management rules. This subchapter divides Special Areas into Special Water Areas (See N.J.A.C. 7:7E-3.2 through 3.15), Special Water's Edge Areas (See N.J.A.C. 7:7E-3.16 through 3.32), Special Land Areas (See N.J.A.C. 7:7E-3.33 through 3.35), and Coastwide Special Areas (See N.J.A.C. 7:7E-3.36 through 3.48).

1. Special Water Areas extend landward to the spring high water line or the level of normal flow in non-tidal waters.

2. The Special Water's Edge Areas can be found at N.J.A.C. 7:7E-3.16 through 3.32 and are divided into three subcategories, depending on their locations:

i.-iii. (No change.)

3. Special Water's Edge Areas in (a)2i and ii above are found only next to the ocean, major open bays and backbay waters, while Coastwide Special Water's Edge Areas are found adjacent to tidal as well as non-tidal waters.

4. Special Land Areas are landward of the Water's Edge.

5. Coastwide Special Areas may include Water, Water's Edge or Land Areas.

(b) All land or water locations, except Special Water's Edge Areas, are subject to either the Land Area or Water Area General rules. In addition, certain locations are subject to one or more Special Area rules. All Special Water's Edge Areas are subject to one or more Special Area rules. Where the applicable General and Special Area rules differ, the Special Area rules shall be applied.

7:7E-3.2 Shellfish habitat

(a) Shellfish habitat is defined as an estuarine bay or river bottom which has a history of production for hard clams (Mercenaria mercenaria), soft clams (Mya arenaria), eastern oysters (Crassostrea virginica), bay scallops (Argopecten irradians), or blue mussels (Mytilus edulis), or otherwise listed below in this section. A shellfish habitat area is defined as an area which meets one or more of the following criteria:

1. The area has a current shellfish density equal to or greater than 0.20 shellfish per square foot;

2. The area has a history of natural shellfish production according to data available to the New Jersey Bureau of Shellfisheries, or is depicted as having high or moderate commercial value in the Distribution of Shellfish Resources in Relation to the New Jersey Intracoastal Waterway (U.S. Department of the Interior, 1963), "Inventory of New Jersey's Estuarine Shellfish Resources" (Division of Fish, Game and Wildlife, Bureau of Shellfisheries, 1983-present); and/or the "Inventory of Delaware Bays Estuarine Shellfish Resources" (Division of Fish, Game and Wildlife, Bureau of Shellfisheries, 1993);

3. The area is designated by the State of New Jersey as a shellfish culture area as authorized by N.J.S.A. 50:1 et seq. Shellfish culture areas include estuarine areas presently leased by the State for shellfish aquaculture activities or hard clam relay, transplant and transfer as well as those areas suitable for future shellfish aquaculture development; or

4. The area is designated as productive at N.J.A.C. 7:25-24, Leasing of Atlantic and Delaware Bay Bottom for Aquaculture.

(b) Any area determined by the Department to be contaminated by toxins is excluded from this definition. The Final Short List, prepared by the Department pursuant to the Federal Clean Water Act 33 U.S.C.A. Section 1313(c) (1), identifies these known contaminated areas. Also excluded from this definition are those sites for which the Department is presented with clear and convincing evidence that the sites lack the physical features necessary for the support of a shellfish population, excluding those waterways listed at N.J.A.C. 7:7E-7.3(d)10 and (j) below.

(c) The water located under any boat mooring facility (including docks and associated structures) is automatically condemned and reduced to "prohibited" status pursuant to N.J.A.C. 7:12-2.1(a)1ii.

Development which would result in the destruction, condemnation ***(downgrading of the shellfish growing water classification)*** or contamination of shellfish habitat is prohibited.

1. The term "destruction" includes actions of filling to create fast land, overboard dumping or disposal of solids or spoils which would smother shellfish populations, or create unsuitable conditions for shellfish colonization or the creation of bottom depressions with anoxic conditions.

(d) Construction of a dock or boat moorings in shellfish habitat is prohibited, except for the following:

1. Public fishing piers owned and controlled by a public agency for the sole purpose of providing access for fishing; and

2. In waters which have been classified as "prohibited" for the purpose of harvesting shellfish.

(e) New dredging (defined at N.J.A.C. 7:7E-4.11(g)) within shellfish habitat is prohibited, except when it is necessary to maintain the use of public launching facilities (ramps) with 25 or more trailer parking spaces or marina facilities with 25 or more dockage units, consisting of either dry dock storage or wet slips. New dredging for existing marinas or for the expansion of such facilities is conditionally acceptable provided that:

1. The expanded portion of the marina, other than the access channel, will not be located within the shellfish habitat;

2. The marina provides on site restrooms, a marine sanitation disposal device and pumpout station; and

3. The width, depth and length of the to-be-dredged channel and boat basin are limited to the minimum dimensions needed to service the existing or expanded facilities.

(f) Maintenance dredging (defined at N.J.A.C. 7:7E-4.11(f)) within shellfish habitat is conditionally acceptable, provided the disturbance to shellfish habitat is minimized to the greatest extent possible.

(g) New dredging adjacent to shellfish habitat is discouraged in general, but may be conditionally acceptable if it can be demonstrated that the proposed dredging activities will not adversely affect shellfish habitat, population or harvest. If the Department determines dredging to be acceptable, dredging shall be managed pursuant to N..J.A.C. 7:7E-4.11(g) so as not to cause significant mortality of the shellfish due to increased turbidity and sedimentation, resuspension of toxic chemicals, or any other occurence which will interfere with the natural functioning of the shellfish habitat.

(h) For the purpose of this rule all docks and piers, except public fishing piers defined in (d)1 above, are considered boat mooring facilities.

(i) Development required for national security for which there exists no other prudent and feasible alternative site is acceptable under this rule, provided that the shellfish resource is salvaged and mitigated pursuant to a plan approved in writing by the Department. The applicant is responsible for all the expenses of resource salvaging and mitigation. All such programs shall be coordinated with the appropriate shellfish management agency.

(j) N.J.A.C. 7:7E-7.3(d)10 shall also apply to development of boat mooring facilities of five or more slips on the Navesink, Shrewsbury, and Manasquan Rivers and St. George's Thorofare.

(k) Rationale: Estuarine shellfish are harvested by both commercial and recreational fisherman, with the sport group concentrating on hard clams. Oysters, bay scallops and soft and hard clams are predominantly commercial species. Commercial dockside landing values in New Jersey for 1988 were $6.03 million for estuarine mollusks. As with commercial species, processing and distribution considerably increase the value of this fishery to the State's economy. The commercial harvest is estimated to support employment of 1,500 persons in fishing, distribution, processing and retail. Recreational clammers purchased 13,179 licenses in 1988. Furthermore, it is estimated that there are approximately 10,000 senior citizen recreational clammers. In addition to direct human consumption, shellfish play an important role in the overall ecology of the estuary. Young clams are important forage foods for a variety of species such as winter flounder, crabs and migratory waterfowl, especially the diving species.

There is an inherent conflict between shellfish habitat and water quality protection and boating related activities, such as mooring and dredging, though both are important water-dependent activities in New Jersey. Mooring facilities are a source of pollution with a high potential for improper disposal of human waste. Shellfish grown in or near marinas and docks are unsafe for human consumption due to the potential health threats associated with the pollution generated as a result of leaching of toxic chemicals from waterfront construction materials and boat-related pollutants, and human waste disposed in close proximity to these marinas and docks. Shellfish (bivalve molluscs) readily bioaccumulate and concentrate toxic substances and pathogenic microorganisms within their tissue which *[possesses]* ***poses*** a human health risk. Due to the potential health threats associated with shellfish grown in polluted waters, shellfish are prohibited from being harvested for human consumption near mooring activities. Dredging activities typically disturb and degrade the habitat environment.

Motor fuels can be released into the aquatic environment via the operation of boat engines, fuel spills and bilge pumping. The effects of petroleum hydrocarbons on fish and shellfish include direct lethal toxicity, sublethal disruption of physiology, behavior, bioaccumulation, and development of an unpleasant taste to edible species. Motor fuels and exhaust often contain lead, cadmium, zinc and other heavy metals. Heavy metals have been shown to cause suppression of growth or death of eggs, embryos and larvae of hard clams. In addition, such contaminants are known to cause a variety of sublethal effects, including inhibited feeding behavior, retarded shell growth, and depression of cardiovascular function and respiration in various species of shellfish.

Boat maintenance operations can also have adverse impacts to estuarine organisms. Detergents used to wash boats can be toxic to fish and invertebrates and may contribute to elevated nutrient levels, particularly phosphorous. Toxins from various antifouling paints are harmful to shellfish and other invertebrates.

Dredging disturbs and degrades shellfish habitat by adversely altering the water quality, salinity regime, substrate characteristics, natural water circulation pattern and natural functioning of the shellfish habitat.

This rule intends to strike a balance between resource protection and recreational boating-related uses, by allowing maintenance dredging in shellfish habitats where an area has already been previously dredged and new dredging at existing public boat launching facilities and major mooring/docking facilities and major mooring/docking facilities with 25 or more dockage units. The dredging of larger marinas and boat launching facilities will allow the greatest number of boaters access to the water areas with the least amount of habitat disturbances and degradation. This is partly because the larger marinas are more likely than smaller ones to generate sufficient demand for a full service marina, and are required to provide restrooms, marine sanitation disposal device and pumpout station, as a condition for the dredging approval if they did not already have them. Dredging is allowed at larger marinas and boat launching facilities becauce their highly concentrated use pattern minimizes the overall physical space required for dockage/mooring area and channel maintenance. Additionally, direct disposal of human waste into the water is expected to be reduced at these better equipped marina facilities. The maintenance of these facilities is therefore considered acceptable and would be positive to the extent that it leads to less pollution from current boaters.

The Navesink River, Shrewsbury River and Manasquan River (upstream of the Route 35 Bridge), and St. George's Thorofare are important areas for shellfish habitat. The Navesink and Shrewsbury River's are unique in that only three estuaries within the State have commercial soft clam densities. St. Georges Thorofare is commercially and recreationally valuable area that contains a high hard clam density according to the 1985 Shellfish inventory conducted by the Division of Fish, Game and Wildlife. It is estimated to contain 6.2 million hard clams in a 107 acre area. The high abundance of hard clams, together with the fact that this waterbody is poorly flushed makes St. George's Thorofare a critical area that is sensitive to any potential pollution activities. These circumstances led to a

moratorium being placed on this waterway against the construction of any new docks. Since then the moratorium has been lifted, however, the circumstances continue to render recommendations of denial for the construction of new docks.

Federal, State and local officials have recognized the importance of these rivers as shellfish habitat and the need to protect their water quality. As a result, pollution control programs have been formed to protect these rivers. For example, the Navesink River Shellfish Protection Program represents a multi-agency pollution control program. On August 21, 1986, a Memorandum of Understanding was signed by the New Jersey Department's of Environmental Protection and Energy and Agriculture and the United States Department of Agriculture and United States Environmental Protection Agency. The memorandum serves to "..formalize our commitment to the Navesink River Water Control Shellfish Protection Program, its primary goal of improving water quality in the Navesink River watershed to a point at which the river's full shellfishery and recreational potential may be attained." Water quality monitoring during six years of implementation of pollution controls (1987-93) has shown significant reductions in bacterial contamination of the Navesink River, to the point where the potential now exists for upgrading the shellfish classification of the river to seasonally approved. The Shrewsbury River is a unique shellfish habitat in that it is only one of the three estuaries in New Jersey to have commercial densities of soft clams. Studies indicate that the Shrewsbury River is hydrologically connected to the Navesink River. As such, the Shrewsbury River has been included as part of the "Navesink River Shellfish Protection Program". In addition, the Monmouth/Ocean Alliance to Enhance the Manasquan River" was formed by Monmouth and Ocean Counties and the New Jersey Department of Environmental Protection to identify causes of shellfish water degradation and plan solutions for improved water quality and uses in the Manasquan River.

(OAL Note: The Rationale in N.J.A.C. 7:7E-3.2(k) above and in those sections of N.J.A.C. 7:7E-3 which follow are not reproduced in the Code as they are not rules in themselves. While their adopted form will appear in the adoption of these rules, the Rationale statements will continue not published in the Code.)

7:7E-3.5 Finfish migratory pathways

(a) *["]*Finfish migratory pathways*["]* are waterways (rivers, streams, creeks, bays and inlets) which can be determined to serve as passageways for diadromous fish to or from seasonal spawning areas, including juvenile anadromous fish which migrate in autumn and those listed by H.E. Zich (1977) "New Jersey Anadromous Fish Inventory" *[NJDEPE]* ***NJDEP*** Miscellaneous Report No. 41, and including those portions of the Hudson and Delaware Rivers within the coastal zone boundary.

1. Species of concern include: alewife or river herring (Alosa pseudoharengus), blueback herring (Alosa sapidissima), American shad (Alosa aspidissima), striped bass (Monroe saxatilis), Atlantic sturgeon (Acipenser oxyrhynchus), Shortnose sturgeon (Acipenser brevirostrum) and American eel (Anguilla rostrata).

(b) Development, such as dams, dikes, spillways, channelization, tide gates and intake pipes, which creates a physical barrier to the movement of fish along finfish migratory pathways is prohibited, unless acceptable mitigating measures such as fish ladders, erosion control, or oxygenation are used.

(c) Development which lowers water quality to such an extent as to interfere with the movement of fish along finfish migratory pathways or to violate State and Delaware River Basin Commission water quality standards is prohibited.

1. Mitigating measures are required for any development which would result in: lowering dissolved oxygen levels, releasing toxic chemicals, raising ambient water temperature, impinging or suffocating fish, entrainment of fish eggs, larvae or juveniles, causing siltation, or raising turbidity levels during migration periods.

(d) Water's edge development which incorporates migration access structures, such as functioning fish ladders, will be conditionally acceptable, provided that the *[NJDEPE]* ***NJDEP***, Division of Fish, Game and Wildlife approves the design of the access structure. As of January, 1994, the *[NJDEPE]* ***NJDEP*** Division of Fish, Game and Wildlife is currently evaluating anadromous fish spawning areas for potential enhancement work. This may include building of fish ladders, removal of obstructions, stocking, and other means. A development proposal shall be consistent with these Department efforts.

(e) Rationale: Striped bass are one of New Jersey's most prized sport fish and are actively sought wherever they occur in New Jersey. This species spawn in Delaware, Hudson and Maurice Rivers. American Shad, once much more numerous and an important commercial species, continue to make an annual spawning run in the Delaware and Hudson Rivers, where there is an active sport fishery. A much reduced commercial fishery exists in the Delaware Bay and River. Herrings are important forage species and spawn annually in many of New Jersey's tidal tributaries including those listed by H.E. Zich (1977) "New Jersey Anadromous Fish Inventory", NJDEP Miscellaneous Report No. 41. Herrings are fished during spring runs, for direct human consumption, garden fertilizer and for use as bait.

7:7E-3.6 Submerged vegetation ***habitat***

(a) A *["]*Submerged vegetation*["]* special area consists of *[estuarine]* water areas supporting or documented as previously supporting rooted, submerged vascular plants such as widgeon grass (Ruppia maritima), sago pondweed (Potamogeton pectinatus), horned pondweed (Zannichellia palustris) and eelgrass (Zostera marina). In New Jersey, submerged vegetation is most prevalent in the shallow portions of the Navesink, Shrewsbury, Manasquan and Metedeconk Rivers, and in Barnegat, Manahawkin and Little Egg Harbor Bays. Other submerged vegetation species in lesser quantities include, but are not limited to, the following: water weed (Elodea nuttalli), Eriocaulon parkeri, Liaeopsis chinesis, Naja flexilis, Nuphar variegatum, Potamogeton crispus, Potamogeton epihydrus, Potamogeton perfoliatus, Potomogeton pusillus, Scirpus subterminalis and Vallisneria americana. Detailed maps of the distribution of the above species for New Jersey, and a method for delineation, are available from *[DEPE]* ***DEP*** in the New Jersey Submerged Aquatic Vegetation Distribution Atlas (Final Report), February, 1980, conducted by Earth Satellite Corporation and also on "Eelgrass Inventory" maps prepared by the Division of Fish, Game and Wildlife, Bureau of Shellfisheries, 1983. If the Department is presented with clear and convincing evidence that a part of its mapped habitat lacks the physical characteristics necessary for supporting or continuing to support the documented submerged vegetation species, such a site would be excluded from the habitat definition.

(b) Regulated activities in submerged vegetation *[beds]* ***habitat*** are prohibited except for the following:

1. Trenching for utility pipelines and submarine cables in the public interest, provided there is no practicable or feasible alternative alignment, the impact area is minimized and that, following pipeline or cable installation, the disturbed area is restored to its preconstruction contours and conditions. This may include subsequent monitoring and replanting of the disturbed area if these species have not recolonized the disturbed area within three years. The use of directional drilling techniques for utility installations is strongly encouraged, rather than the use of trenching;

2. New dredging of State and Federal navigation channels provided that there is no practicable or feasible alternative to avoid the vegetation; and that impacts to the habitat area (for example dredging width, length and depth) are minimized to the maximum extent practicable. Mitigation will be required for destruction of one acre or more which possess submerged aquatic vegetation;

3. Maintenance dredging as defined at N.J.A.C. 7:7E-4.2(f) of previously authorized, existing State and Federal navigation channels and associated disposal areas provided that there is no practicable or feasible alternative to avoid the vegetation and that impacts to the habitat area are minimized to the maximum extent practicable;

4. New and maintenance dredging as defined at N.J.A.C. 7:7E-4.2(f), of previously authorized operating marinas and any necessary access channels to the expanded portion of such marinas (this exception does not include the boat basin of the expanded portion of the marina) and existing launching facilities with 25 or more

dockage, storage or trailer parking units and their associated access channels, provided the proposed areas to be dredged (such as channel length, depths and widths) are minimized to the maximum extent practicable;

5. Maintenance dredging as defined at N.J.A.C. 7:7E-4.2(f) to regain access to existing private docks, piers, boat ramps and mooring piles not associated with marinas that were previously dredged to an authorized channel and/or mooring depth, width and length, provided there is no practicable or feasible alternative on site that would avoid dredging in submerged vegetation habitat;

6. Construction of a single noncommercial dock or pier provided that:

i. There are no practicable or feasible alternatives to avoid impacts to submerged vegetation habitat at the site;

ii. The width of the structure will not exceed four feet, except for that portion of the structure adjacent to the mooring area, where the width and length may not exceed six and 20 feet, respectively;

iii. The pier shall have no more than two designated slips. No boats may be moored at a non-designated pier/dock area;

iv. No more than one pier shall be placed for every building lot and each building lot shall have a forty foot or greater frontage on the water. Where more than one lot has been assembled for the purpose of building, only one pier will be allowed;

v. No dredging shall be performed in conjunction with the use of the dock or pier;

vi. A minimum water depth of four feet at mean low water must be present in the area where the boats will be moored; and

vii. There is no alternative mooring area at the site that would have less impact on the submerged aquatic vegetation; and

7. The extension of existing piers or floating docks through submerged vegetation habitat to water at least four feet deep at mean low water, for the purpose of eliminating dredging or boating through submerged vegetation habitat, provided the width of the extended portion of the pier does not exceed four feet (except for the portion of the pier adjacent to the mooring area where the width shall not exceed six feet), there will be no increase in the number of boat moorings, and no dredging will be performed in conjunction with the use of the structure.

(c) Regulated activities in upland or water areas adjacent to submerged vegetation habitat or in submerged vegetation habitat which result in erosion or turbidity increases in the waters supporting submerged vegetation are prohibited unless mitigating measures are provided.

(d) Compensation for unavoidable, permanent significant impacts to submerged vegetation habitats, when required, shall consist of the establishment of self-sustaining habitat for the appropriate species in accordance with scientifically-documented transplanting methods. Monitoring and replanting shall be carried out biannually to demonstrate persistence of the compensatory habitat for a minimum of three years. The following must be documented for any area proposed for seagrass habitat restoration: that the area previously supported seagrass but no longer does; the specific cause(s) of seagrass elimination; and that the specific condition(s) or action(s) responsible for elimination of seagrass has since ceased. Priority will be given to in-kind restoration of seagrass habitat in as close proximity as possible to the impacted site. No compensation credit will be given for attempts to plant seagrass within unvegetated interpatch areas of existing seagrass habitat or for attempts to increase bottom coverage within existing seagrass beds (defined as an area where seagrass rhizomes overlap, or where seagrass shoots intermingle within less than one square meter).

(e) Rationale: New Jersey's estuarine waters are relatively shallow, rich in nutrients and highly productive. The submerged vegetation of these shallow habitats serve important functions as suspended sediment traps, important winter forage for migratory waterfowl, nursery areas for juvenile fin fish, bay scallops and blue crabs, and by nourishing fishery resources through primary biological productivity (synthesis of basic organic material) through detrial food webs in a similar manner to salt marsh emergent Spartina cord grasses. In addition, seagrasses absorb wave energy and root networks help stabilize silty bay bottoms. The value of seagrasses was dramatically illustrated during the 1930's when a disease epidemic virtually eliminated eelgrass form the eastern U.S. Atlantic ocean coastline. The number of finfish, shellfish, and waterfowl drastically decreased, threatening their survival. The oyster industry of the Atlantic coast was ruined. Bays became choked with silt and new mudflats were formed.

Most of the submerged vegetation species, in particular the eelgrass and widgeon grass, grow in patches which often cluster together forming a vegetative community and migrate from year to year about shoal areas. Disturbances to the substrate such as dredging usually result in permanent habitat destruction and loss. In shallow areas, propeller action may severely damage the roots and churn up the substrate and increase turbidity, damaging or destroying the plants and reducing their productivity. Other activities that can also have a negative impact on the plants and/ or habitat include wake actions, upland runoff and shading from structures.

This rule aims to protect the submerged vegetation as a resource. Areas where submerged aquatic vegetation grows or has been known to grow are identified as habitat areas which currently or potentially could support the submerged vegetation plant communities. Dredging of the habitat area is permitted for maintaining the depth of existing State and Federal channels since the navigability of these channels is essential to commerce and navigation. New and maintenance dredging to existing large marinas and public launching facilities provides the greatest number of boaters access to the water areas with the least amount of disturbance to the habitat area. Limited boating related uses are also permitted in habitat areas with greater than four feet of water depth, where impacts from boating are not likely to be destructive to the plants or their habitat environment.

7:7E-3.7 Navigation channels

(a) Navigation channels include water areas in tidal rivers and bays presently maintained by *[DEPE]* ***DEP*** or the Army Corps of Engineers and marked by US Coast Guard with buoys or stakes, as shown on NOAA/National Ocean Survey Charts: 12214, 12304, 12311, 12312, 12313, 12314, 12316, 12317, 12318, 12323, 12324, 12326, 12327, 12328, 12330, 12331, 12332, 12333, 12334, 12335, 12337, 12341, 12343, 12345, 12346, and 12363.

1. Navigation channels also include channels marked with buoys, dolphins, and stakes, and maintained by the State of New Jersey, [and] access channels and anchorages.

2. Navigation channels include all areas between the top of the channel slopes on either side.

(b) Standards relevant to navigation channels *[is]* ***are*** as follows:

1. New or maintenance dredging of existing navigation channels is conditionally acceptable providing that the condition under the new or maintenance dredging rule is met (see N.J.A.C. 7:7E-4.2(f) and (g)).

2. Development which would cause terrestrial soil and shoreline erosion and siltation in navigation channels shall utilize appropriate mitigation measures.

3. Development which would result in loss of navigability is prohibited.

4. Any construction which would extend into a navigation channel is prohibited.

5. The placement of structures within 50 feet of any authorized navigation channel is discouraged, unless it can be demonstrated that the proposed structure will not hinder navigation.

[6. All dock and pier construction must not hinder access to adjacent docks, piers, moorings or water areas.]

(c) Rationale: Navigation channels are essential for commercial and recreational surface water transportation, especially in New Jersey back bays where water depths are very shallow. Channels play an important ecological role in providing estuarine circulation and flushing routes, and migration pathways and wintering and feeding habitat for a wide diversity of finfish, shellfish and waterfowl. Navigation channels, access channels and anchorages form a network of areas that have a depth sufficient to enable marine trade to operate at the limiting depth of the channel. If one part of the system is not maintained, the entire system might be unable to function.

7:7E-3.10 Marina Moorings

(a) Marina moorings are areas of water that provide mooring, docking and boat maneuvering room as well as access to land and navigational channels for five or more recreational boats.

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

(d) New or maintenance dredging in marina mooring areas and access channels is conditionally acceptable, provided that the proposed dredging complies with the provisions applicable to new and maintenance dredging, N.J.A.C. 7:7E-4.2(f) and (g).

(e) Rationale: Continued operation of marinas is encouraged since they benefit the state by attracting tourists and associated revenues and by providing recreational opportunities to the estimated 25 percent of residents that go boating in the bays and coastal waters of the State (1977 Eagleton Institute Poll).

7:7E-3.11 Ports

(a) Ports are water areas having, or lying immediately adjacent to, concentrations of shoreside marine terminals and transfer facilities for the movement of waterborne cargo (including fluids), and including facilities for loading, unloading and temporary storage.

1. (No change.)

2. Standards for a docking facility or concentration of docks for a single industrial or manufacturing facility may be found under the General Water Area rule for Docks and Piers (commercial) (N.J.A.C. 7:7E-4.2).

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

(d) Boat ramps for recreational boating are conditionally acceptable provided the ramp complies with all Special Areas Rules (N.J.A.C. 7:7E-3) and provided it does not interfere with the port use.

(e) Docks and piers for cargo movements are encouraged.

(f) Rationale: The ports of New Jersey are components of two of the nations three largest port districts—the New York-New Jersey Port District and the Delaware Rivert Port District. The Port of Newark-Elizabeth is the nation's largest container port. Shipping is a major industry in the state as well as an important contributor to the well-being of other state industries. A set of rules aimed at encouraging the use and expansion of existing ports, while discouraging the sprawl of port uses into undeveloped areas, is therefore, an element of coastal rules.

7:7E-3.14 Wet Borrow Pits

(a) Wet borrow pits are scattered artificially created lakes that are the results of surface mining for coastal minerals extending below groundwater level to create a permanently flooded depression. This includes, but is not limited to, flooded sand, gravel and clay pits, and stone quarries. Where a wet borrow pit is also a wetland and/or wetlands buffer, Wetlands and/or Wetlands Buffers Rules shall apply. (See N.J.A.C. 7:7E-3.27 and 3.28).

(b) All proposed dredging and filling activities shall comply with any applicable Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A). In addition, such activities must receive a Water Quality Certificate pursuant to N.J.S.A. 58:10A et seq. and Section 401 of the Federal Clean Water Act if a Federal permit is required for the activities.

(c) (No change.)

(d) Surface mining is conditionally acceptable provided condition (b) above is met and the Use Rules for Mining (see N.J.A.C. 7:7E-7.8) are complied with.

(e) (No change.)

(f) Disposal of dredged material is discouraged, but may be acceptable in limited cases, provided condition (b) above is met and that:

1. The *[spoil]* ***dredged material*** is clean and non-toxic, an appropriate particle size for the site, and will not disturb groundwater flow or quality;

2. (No change.)

(g) Filling of wet borrow pits for construction is conditionally acceptable provided that:

1.-4. (No change.)

5. A program for water quality monitoring and maintenance is included with the application;

6. Recreational uses in water and water quality buffer areas minimize wildlife disturbance; and

7. All requirements of the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., are satisfied.

(h) (No change.)

(i) All proposed uses directly adjacent to wet borrow pits shall grade all banks at the immediate water's edge, except those in acceptable water access areas, to a slope not greater than 33 percent, and shall stabilize the surface and initiate succession of native vegetation adapted to water's edge conditions.

(j) Limited recreational use of wet borrow pit margin is acceptable providing that the water buffer disturbance is limited in extent and wildlife habitat disturbance is minimized.

(k) A water quality buffer area is required around the perimeter of wet borrow pits. The minimum width of this buffer area will be 100 feet where soils are coarse (sands and gravels) and 50 feet elsewhere.

(l) Rationale: The Special Area Rules for wet borrow pits are less restrictive than the rules for other lakes, ponds and reservoirs in that they allow sand and gravel extraction, dredge spoil disposal and filling, under specified conditions. This is because they are already disturbed sites. Also, they are of relatively recent origin and, typically, vegetative succession is not as far advanced as along natural lakes. Wet borrow pits, therefore, tend to be less important as wildlife habitats than natural lakes. Finally, they are not connected to the wider estuarine system by streams.

On the other hand, their separation from streams means that they are most susceptible to water quality impacts caused by runoff. The water is still, and the only water loss is through groundwater seepage and evaporation. Sediment collects quickly, enlarging marsh areas, and the eutrophic conditions that lead to sudden oxygen loss are concentrated by evaporation. Low levels of toxicity are quickly biomagnified to fatal levels. In general, these still water areas are much more sensitive to impacts of all kinds than flowing water.

Undisturbed wet borrow pits can become wildlife habitats for aquatic, amphibian and terrestrial species, offering productive edges, shallow waters, wetland areas and important breeding and migratory habitats. Proposals that include wet borrow pits as wildlife preserves are, therefore, encouraged. Low intensity recreation which takes advantage of the scenic amenities of these lakes is also desirable if wildlife disturbance is minimized.

There is a severe shortage of dredged material disposal sites in New Jersey. The filling of wet borrow pits is essentially a reverse of the mining operation which created them, and has less negative impact than filling natural depressions, provided that the spoil is clean and non-toxic and the particle size matches the neighboring natural substrates closely enough so as to not disturb groundwater movement. If the filling of wet borrow pits is designed to retain some surface water area, and to maximize land-water edges, much of the wildlife value can be preserved while providing needed spoil disposal sites.

The value of wet borrow pits as wildlife habitat may be enhanced by limited fingers of fill to enlarge the land-water interface. Filling can also create sites for waterfront housing. Since residential construction sites near surface water are much in demand, it is desirable to allow some residential and related uses, provided that housing is consistent with Location and Use Rules, water quality is maintained, and a water quality buffer is preserved along the waters edge. The buffer would not block visual or physical access to the water, but would preserve water quality and provide wildlife habitat. Medford Lakes provides an example of an attractive residential community built around wet borrow pits, but siltation and eutrophication provide evidence for the need for a water quality buffer area.

7:7E-3.15 Intertidal and Subtidal Shallows

(a) Intertidal and subtidal shallows means all permanently or twice daily submerged areas from the *[mean high water line]* ***spring high tide*** to a depth of four feet below mean low water.

(b) Development, filling, new dredging or other disturbance is discouraged but may be permitted in accordance with the acceptabili-

ty conditions found at N.J.A.C. 7:7E-4.2. Dredging is acceptable only if the following criteria are satisfied in addition to the acceptabilty conditions found at N.J.A.C. 7:7E-4.2:

1. The dredging of intertidal and subtidal shallows may be acceptable to maintain adequate water depths for any existing or new marinas with 25 or more slips or public launching facilities and existing ports.

2. Maintenance dredging of intertidal and subtidal shallows for legally constructed, existing docks other than those identified in (b)1 above, is acceptable provided the following criteria are met:

i. The depth of the proposed dredge area does not exceed four feet mean low water;

ii. The width of the access channel is the minimum width required to moor a boat at the dock; and

iii. The maintenance dredging complies with all applicable Special Water Area Rules (N.J.A.C. 7:7E-3).

3. Submerged infrastructure is conditionally acceptable, provided that:

i. There is no feasible alternative route that would not disturb intertidal and subtidal shallows;

ii. The infrastructure is buried deeply enough to avoid exposure or hazard;

iii. Directional drilling for the purpose of installation of submerged infrastructure is preferred to trenching ***where feasible***; and

iv. All trenches are backfilled to the preconstruction depth with naturally occurring sediment.

4. The filling of intertidal and subtidal shallows for beach nourishment is conditionally acceptable provided it meets the requirements found under the Filling rule (N.J.A.C. 7:7E-4.2(j)) and the Coastal Engineering rule (N.J.A.C. 7:7E-7.11(d)).

(c) If the destruction of intertidal and subtidal shallows takes place, mitigation shall be carried out at a ratio of one acre created to one acre lost. Mitigation sites shall be located within the same estuary whenever feasible. Specific filling activities acceptable under N.J.A.C. 7:7E-4.2(j)2iii(1) and 7.11(d) are exempt from this mitigation requirement.

1. Dredging activities for residential noncommercial docks will not require mitigation. Dredging activities for projects which do not meet the criteria at (b)1 and 2 above, marinas and ports will not require mitigation provided the dredged area is reduced to the minimum extent practicable (minimum being the smallest area compared to the area needed to develop the same project at another site).

(d) Rationale: Intertidal and subtidal shallows play a critical role in estuarine ecosystems. They are a land-water ecotone, or ecological edge where many material and energy exchanges between land and water take place. They are critical habitats for many benthic organisms and are critical forage areas for fishes and many migrant waterfowl. The sediments laid down in intertidal and subtidal flats contain much organic detritus from decaying land and water's edge vegetation, and the food webs in these areas are an important link in the maintenance of estuarine productivity. Preservation is, therefore, the intent of these rules, with limited exceptions to allow for needed water-dependent uses and submerged infrastructure.

7:7E-3.16 Dunes

(a) A dune is a wind or wave deposited or man-made formation of sand (mound or ridge), that lies generally parallel to, and landward of, the beach, and between the upland limit of the beach and the foot of the most inland dune slope. "Dune" includes the foredune, secondary and tertiary dune ridges, as well as man-made dunes, where they exist (see Appendix, Figure 1, incorporated herein by reference).

1. Formation of sand immediately adjacent to beaches that are stabilized by retaining structures, and/or snow fences, planted vegetation, and other measures are considered to be dunes regardless of the degree of modification of the dune by wind or wave action or disturbance by development.

2. A small mound of loose, windblown sand found in a street or on a part of a structure as a result of storm activity is not considered to be a "dune."

(b) Development is prohibited on dunes, except for development that has no practicable or feasible alternative in an area other than a dune, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. In addition, the removal of vegetation from any dune, and the excavation, bulldozing or alteration of dunes is prohibited, unless these activities are a component of a Department approved beach and dune management plan. Examples of acceptable activities are:

1. Demolition and removal of paving and structures;

2. Limited, designated access ways for pedestrian and authorized motor vehicles between public streets and the beach that provide for minimum feasible interference with the beach and dune system and are oriented so as to provide the minimum feasible threat of breaching or overtopping as a result of a storm surge or wave runup (see N.J.A.C. 7:7E-3A);

3. Limited stairs, walkways, pathways and boardwalks to permit access across dunes to beaches, in accordance with N.J.A.C. 7:7E-3A , provided they cause minimum feasible interference with the beach and dune system;

4. The planting of native vegetation to stabilize dunes in accordance with N.J.A.C. 7:7E-3A;

5. Sand fencing, either a brush type barricade or picket type, to accumulate sand and aid in dune formation in accordance with N.J.A.C. 7:7E-3A;

6. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e); and,

7. Linear development which meets the Rule on Location of Linear Development (N.J.A.C. 7:7E-6.1).

(c) The creation of dunes for the purpose of shore protection is strongly encouraged. According to the National Flood Insurance Program (NFIP) Regulations established by the Federal Emergency Management Agency (FEMA), primary frontal dunes will not be considered as effective barriers to base flood storm surges and associated wave action where the cross-sectional area of the primary frontal dune, as measured perpendicular to the shoreline and above the 100-year stillwater flood elevation and seaward of the dune crest, is equal to or less than 540 square feet. This standard represents the minimal dune volume to be considered effective in providing protection from the 100-year storm surge and associated wave action, and should represent a "design dune" goal.

(d) Rationale: Ocean and bayfront dunes are an irreplaceable physical feature of the natural environment possessing outstanding geological, recreational, scenic and protective value. Protection and preservation in a natural state is vital to this and succeeding generations of citizens of the State and the Nation. The dunes are a dynamic migrating natural phenomenon that helps protect lives and property in adjacent landward areas, and buffers barrier islands and barrier beach spits from the effects of major natural coastal hazards such as hurricanes, storms, flooding and erosion. Natural dune systems also help promote wide sandy beaches and provide important habitats for wildlife species.

Extensive destruction of dunes has taken place in this century along much of the coast. This disruption of the natural processes of the beach and dune system has led to severe erosion of some beach areas; jeopardized the safety of existing structures on and behind the remaining dunes and upland of the beaches; increased the need to manage development in shorefront areas no longer protected by dunes; interfered with the sand balance that is so essential for recreational beaches and the coastal resort economy; necessitated increased public expenditures by citizens of the entire State for shore protection structures and programs; and increased the likelihood of major losses of life and property from flooding and storm surges.

The rule encourages the natural functioning of the dune system and encourages restoration of destroyed dunes, to protect and enhance the coastal beach dune areas, and to devote these precious areas to only those limited land uses which preserve, protect and enhance the natural environment of the dynamic dune system.

7:7E-3.17 Overwash areas

(a) An *["]*overwash area*["]* is an area subject to accumulation of sediment, usually sand, that is deposited landward of the beach or dune by the rush of water over the crest of the beach berm, a dune or a structure. An overwash area may, through stabilization and vegetation, become a dune (see Appendix, Figure 1).

1. The seaward limit of the overwash area is the seaward toe of the former dune, or the landward limit of the beach, in the absence of a dune.

2. The landward limit of the overwash area is the inland limit of sediment transport.

3. Verifiable aerial photography and other appropriate sources may be used to identify the extent of overwash.

(b) Development is prohibited on overwash areas, except for development that has no prudent or feasible alternative in an area other than an overwash area, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:

1. Creation of dunes or expansion of existing dunes in accordance with N.J.A.C. 7:7E-3A;

2.-3. (No change.)

4. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e);

5. Linear development which meets the Rule on Location of Linear Development (N.J.A.C. 7:7E-6.1);

6. Removal of newly deposited overwash fans from public roads and or developed lots; and

7. Construction of street-end beach accessways along the oceanfront, provided they are oriented at an angle against the predominant northeast storm approach, are limited in width to no more than ten feet, and are defined/stabilized with sand fencing. These standards should be included in all beach and dune management plans for oceanfront locations.

(c) A development may be permitted if, by creating a dune with buffer zone or expanding an existing dune landward, the classification of the site is changed so as to significantly diminish the possibility of future overwash. In determining overwash potential, the protective capacity of newly created dunes will be evaluated in terms of the "design dune" goal discussed in N.J.A.C. 7:7E-3.16(c).

(d) A single story, beach/tourism oriented commercial development located within an already developed municipal boardwalk/commercial area of Point Pleasant Beach, Seaside Heights, Ocean City, North Wildwood and Wildwood City is conditionally acceptable provided that it meets the following conditions:

1. The site is located within an area currently used and zoned for beach related commercial use, and is landward of the boardwalk;

2.-3. (No change.)

4. The facility meets all the flood proofing requirements of the Flood Hazard Area Rule, N.J.A.C. 7:7E-3.25.

(e) Rationale: Overwash areas indicate weakness in natural and man-made shore protection. Hazard has been demonstrated, often with extensive property damage. Overwash areas are, therefore, unsuitable locations for further development, and public funds should not be used to rebuild damaged shore protection structures. However, in certain oceanfront communities where an existing municipal boardwalk (including all adjacent resort-oriented commercial establishments) is already densely developed and is the dominant tourism attraction of the community, low intensity, infill development may be permitted. At these specific locations, the gain in public use and enjoyment of the beach, ocean and boardwalk facilities outweighs the limited additional and loss in property damages. Elsewhere the return of these areas to a natural state and the formation of dunes is desirable.

Overwash is a natural shoreline movement process associated with storm and rising sea level and is one of the processes by which barrier islands migrate inland under natural conditions. In New Jersey, migration caused by overwash is usually prevented due to shore protection structures, the highly developed nature of barrier islands and post-storm clean-up practices.

A development proposed in an overwash area may, by incorporating a "design dune" and buffer area, *[the]* whose dimensions *[of which]* would be determined on a case-by-case basis, mitigate the hazard and change the classification of the site so that it is no longer an overwash area.

7:7E-3.18 Coastal High Hazard Areas

(a) Coastal high hazard areas are flood prone areas subject to high velocity waters (V zones) as delineated on the Flood Insurance Rate Maps (FIRM) prepared by the Federal Emergency Management Agency (FEMA), and areas within 25 feet of oceanfront shore protection structures, which are subject to wave run-up and overtopping. (see Appendix, Figure 2 incorporated herein by reference). The Coastal High Hazard Area extends from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The inland limit of the V zone is defined as the V zone boundary line as designated on the FIRM or the inland limit of the primary frontal dune, whichever is most landward.

(b) Residential development, including hotels and motels is prohibited in coastal high hazard areas except for single family and duplex infill developments which are conditionally acceptable provided that the standards of N.J.A.C. 7:7E- 7.2(f) are met.

(c) In general, commercial development is discouraged in the coastal high hazard areas. Beach use related commercial development in coastal high hazard areas is conditionally acceptable within areas that are already densely developed, provided that:

1.-2. (No change.)

3. The facility is open to the general public and supports beach/tourism related activities, that is, retail, amusement and food services. Lodging facilities are excluded; and

4. The facility complies with all the flood proofing requirements at N.J.A.C. 7:7E-3.25, Flood Hazard Areas.

(d) (No change.)

(e) Rationale: V zones are areas subject to high velocity waters and are further defined as areas capable of supporting a three foot high breaking wave. These areas are designated on FIRMs as zone V1-30. On many FIRMs, oceanfront*[,]* bulkheads, revetments or seawalls have been used to delineate the landward limit of the coastal high hazard area. However, wave run-up, which is the rush of water up a structure or beach that occurs on the breaking of a wave, and overtopping may also cause considerable damage behind bulkheads, revetments and seawalls, inshore of the V zone limit. Both V zone and wave run-up zone are high hazard areas where structures are vulnerable to severe storm damage. The only developments allowed by this rule are ones which are related to beach use and/or tourism and limited residential infill development. These beach use and tourism oriented developments are subject to storm damage but they enhance the public use and enjoyment of the beach and ocean.

7:7E-3.19 Erosion Hazard Areas

(a) Erosion hazard areas are shoreline areas that are eroding and/or have a history of erosion, causing them to be highly susceptible to further erosion, and damage from storms.

1. Erosion hazard areas may be identified by any one of the following characteristics:

i.-iv. (No change.)

v. Foreshore extended under boardwalk;

vi.-viii. (No change.)

ix. Cliffed bluffs **as** adjacent to beach;

x.-xii. (No change.)

2. Erosion hazard areas extend inland from the edge of a stabilized upland area to the limit of the area likely to be eroded in 30 years for one to four unit dwelling structures, and 60 years for all other structures, including developed and undeveloped areas. This distance is measured from the crest of a bluff for coastal bluff areas, the most seaward established dune crest for unvegetated dune areas, the first vegetation line from the water for established vegetated dune areas, and the landward edge of a beach or the eight foot *[(NGVD)]* ***North American Datum (NAD), 1983,*** contour line, whichever is farther inland, for non-dune areas.

i. An established, unvegetated dune is a dune that has been in place for at least two winter seasons, or has been constructed with the approval of the Department.

ii. (No change.)

3. The extent of an erosion hazard area is calculated by multiplying the projected annual erosion rate at a site by 30 for the development of one to four unit dwelling structures and by 60 for all other developments.

(b) Development is prohibited in erosion hazard areas, except for:

1. Linear development which meets the Rule on Location of Linear Development (N.J.A.C, 7:7E-6.1);

2. Shore protection activities which meet the appropriate Coastal Engineering Use Rule (N.J.A.C. 7:7E-7.11);

3. Single story, beach/tourism oriented commercial developments located within an already developed municipal boardwalk/commercial area of Point Pleasant Beach, Seaside Heights, Ocean City, North Wildwood and Wildwood City is conditionally acceptable provided that it meets the following conditions:

i. The site is located within an area currently used and zoned for beach related commercial use, and is landward of and adjacent to the boardwalk;

ii.-iii. (No change.)

iv. The facility meets all the flood proofing requirements of the Flood Hazard Areas rule;

4. Single family and duplex infill developments that meet the standards of N.J.A.C. 7:7E-7.2(f);

5. The construction of dune walkover structures and at-grade walkover pathways, in accordance with Department standards found at N.J.A.C. 7:7E-3A; and

6. Dune creation and beach maintenance activities in accordance with Department standards found at N.J.A.C. 7:7E-3A.

(c) Rationale: As a result of continuing rising sea levels, active storm induced sand movements, and offshore currents (littoral drift), most of the Atlantic coastline of New Jersey is retreating. Coastal erosion also affects the bayshores of New Jersey. The rate of retreat, or erosion, is not uniform, and varies locally depending upon the nature and magnitude of coastal processes operating within individual parts of the shoreline. Certain parts of the shoreline have a higher risk for future erosion.

Development other than shore protection measures and linear development is prohibited in these areas in order to protect public safety and prevent loss of life and property. However, in certain oceanfront communities where an existing municipal boardwalk (including all adjacent resort-oriented commercial establishments) has long been featured as the main attraction of that resort community and is already densely aligned with buildings, low intensity, infill may be permitted. At these specific locations, the gain in public use and enjoyment of the beach, ocean and boardwalk facilities outweighs the limited, potential additional loss in property damages.

The annual rate of erosion shall be calculated on a case-by-case basis by using the best available data and scientific methodology. Historical erosion rates of areas need to be analyzed to determine the particular past trend that best reflects the current shoreline processes affecting that area. The appropriate long or short term historical erosion rate of an area is then combined with other information, which may help to explain the erosion rate of at an area, to determine a projected erosion rate for the next thirty to sixty years. These factors include but are not limited to: past or on-going shore protection activities, e.g. beachfills, or groin, revetment or bulkhead constructions, past or on-going navigation channel dredging projects and past storm events.

The Program will use a computer program, entitled, "Metric Mapping Analysis of New Jersey's Historical Shoreline Data" developed in 1988 for the Program by Stephen P. Leatherman et al of the University of Maryland Coastal Mapping Group, to produce historical shoreline change maps for specific sites along the oceanfront. These maps will be used to establish the appropriate long or short term trend in shoreline changes that will most likely continue in the future for a specific site.

The projected annual erosion rate or historical shoreline change data for a specific site, excluding the Raritan Bay area, may be obtained from the Program by written request accompanied by a site plan which identifies the site by either the "state plane" coordinate system or latitude-longitude coordinates. For sites located along the Raritan Bay, the annual erosion rate can be found in Paul A. Gares, Karl F. Nordstorm and Norbert P. Psuty, Coastal Dunes: Their function, Delineation and Management, Center for Coastal and Environmental Studies, Rutgers University for NJDEP, 1979. Other appropriate sources including verifiable aerial photography, may also be consulted.

7:7E-3.21 Bay Islands

(a) Bay islands are islands or filled areas surrounded by tidal waters, wetlands, beaches or dunes, lying between the mainland and barrier islands. Such islands may be connected to the mainland or barrier island by elevated or fill supported roads (see Appendix, Figure 3, incorporated herein by reference).

1. In cases where a bay island is also a Filled Water's Edge (N.J.A.C. 7:7E-3.23), the more restrictive provisions of the two rules shall apply.

2. This rule will not apply to proposed development located in the following areas:

OCEAN COUNTY:
Bonnett Island, Stafford Township
Chadwick Beach Island, Dover Township
Channel Island, Mantoloking Borough
Osborne Island, Little Egg Harbor Township
Pelican Island, Dover/Berkeley Townships
West Point Island, Lavallette Borough

ATLANTIC COUNTY:
Chelsea Heights, Atlantic City
Venice Heights, Atlantic City
Ventnor Heights, Ventnor City

CAPE MAY COUNTY:
[Old Avalon Boulevard Island, Middle Township]
Princeton Harbor, Avalon Borough
West Wildwood, Wildwood City
West 17th Street, Ocean City

(b) On bay island sites which do not abut a paved public road and are not served by a sewerage system with adequate capacity, non-water dependent development is prohibited and water dependent development is discouraged. Water dependent development may be acceptable if there are no feasible alternatives and environmental impacts are minimized.

(c) On bay island sites which abut a paved public road and sewerage system with adequate capacity, water dependent development is conditionally acceptable, provided all other applicable Coastal Zone Management rules are complied with. New non-water dependent development is acceptable only at a Low Intensity Development as defined in N.J.A.C. 7:7E-5.6(d) except for Existing Lagoon Edges (N.J.A.C. 7:7E-3.24) where the acceptable intensity of development may be increased to Moderate.

(d) (No change.)

(e) Rationale: New Jersey's bay islands are former wetlands where upland areas have been created by past filling, particularly with dredge spoils. Many are suitable for future spoil disposal. They are adjacent to areas with high environmental sensitivity, particularly wetlands, intertidal flats, tidal waterways, shellfish beds, and endangered and threatened wildlife habitats. Development of the islands would pose a great threat to these natural resources and habitat. The majority of, if not all, bay islands are valuable wildlife habitats or have the potential to become habitat through the implementation of management techniques. Their value, in part, stems from their isolation from human activity as compared to the intense development and beach usage of oceanfront barrier islands. For example, sandy areas are used by beach nesting birds such as least tern, black skimmer, and piping plover, and vegetated areas are used by colonial nesting birds such as heron and non-colonial birds such as marsh hawk. Bay islands are also subject to flooding and by virtue of their location function as bridges between the mainland and

barrier islands. If developed, these islands would pose added storm evacuation problems. They are usually distant from public services, and therefore unsuitable for development.

The above list of Bay Islands which are exempted from the requirements of this rule was established based on a review of the physical conditions of these islands, including environmental sensitivity, accessibility, and level of existing development and infrastructure. Future development on the islands listed above does not pose a significant threat to environmental resources, nor would it adversely affect storm evacuation from the oceanfront barrier islands.

7:7E-3.22 Beaches

(a) Beaches are gently sloping areas of sand or other unconsolidated material, found on all tidal shorelines, including ocean, bay and river shorelines (see Appendix, Figure 1), that extend landward from the mean high water line to either;

1. A man-made feature generally parallel to the ocean, inlet, or bay waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except the sandy areas that extend fully under and landward of an elevated boardwalk are considered beach areas; or

2. The seaward or bayward foot of dunes, whichever is closest to the bay, inlet or ocean waters.

(b) Development is prohibited on beaches, except for development that has no prudent or feasible alternative in an area other than a beach, and that will not cause significant adverse long-term impacts to the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:

1. Demolition and removal of paving and structures;

2. Dune creation and related sand fencing and planting of vegetation for dune stabilization, in accordance with N.J.A.C. 7:7E-3A;

3.-4. (No change.)

5. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e);

6. Linear development which meets the Rule on Location of Linear Development (N.J.A.C. 7:7E-6.1);

7. Beach maintenance activities which do not adversely affect the natural functioning of the beach and dune system, and which do not preclude the development of a stable dune along the back beach area. These activities include routine cleaning, debris removal, mechanical sifting, maintenance of access ways and Department approved dune creation and maintenance activities; and

8. Post-storm beach restoration activities involving the placement of clean fill material on beaches, and the mechanical redistribution of sand along the beach profile from the lower beach to the upper beach. These post-storm activities, which are different than routine beach maintenance activities, must be carried out in accordance with the standards found at N.J.A.C. 7:7E-3A.

(c) (No change in text.)

(d) Rationale: Undeveloped beaches are vital to the New Jersey resort economy. Unrestricted access for recreational purposes is desirable so that the beaches can be enjoyed by all residents and visitors of the state. Public access will be required for any beaches obtaining state funds for shore protection purposes. Beaches are subject to coastal storms and erosion from offshore currents. Public health and safety considerations require that structures be excluded from beaches to prevent or minimize loss of life or property from storms and floods, except for some shore protection structures and linear facilities, such as pipelines, when [nonbeach] **non-beach** locations are not prudent or feasible.

7:7E-3.23 Filled Water's Edge

(a) Filled water's edge areas are existing filled areas lying between wetlands or water areas, and either the upland limit of fill, or the first paved public road or railroad landward of the adjacent water area, whichever is closer to the water. Some existing or former dredged material disposal sites and excavation fill areas are filled water's edge (see Appendix, Figure 4, incorporated herein by reference).

(b) The "waterfront portion" is defined as a contiguous area at least equal in size to the area within 100 feet of navigable water, measured from the Mean High Water Line (MHWL). This contiguous area must be accessible to a public road and occupy at least 30 percent of its perimeter along the navigable water's edge.

(c) On filled water's edge sites with direct water access, (that is, those sites without extensive inter-tidal shallows or wetlands between the upland and navigable water), development must comply with the following conditions:

1. The waterfront portion of the site shall be developed with a water dependent use (see N.J.A.C. 7:7E-1.5(c) for definitions) or left undeveloped for future water dependent uses;

2. (No change.)

3. On large filled water's edge sites, of about 10 acres or more upland acres, where water-dependent and water-oriented uses can co-exist with other types of development, a greater mix of land uses may be acceptable or even desirable. In these cases, a reduced waterfront portion, that is, less than that provided by a 100 foot setback, may be acceptable provided that non-water related uses do not adversely affect either access to or use of the waterfront portion of the site.

(d) On filled water's edge sites without direct access to navigable water, the area to be devoted to water related uses will be determined on a case-by-case basis.

(e) On filled water's edge sites with an existing or pre-existing water dependent use, that is, one existing at any time since July of 1977, development must comply with the following additional conditions:

1. For sites with an existing or pre-existing marina, development that would reduce the area currently or recently devoted to the marina is acceptable if:

i. For every two housing units proposed on the filled water's edge the existing number of boat slips in the marina mooring area (N.J.A.C. 7:7E-3.10) is increased by one and at least 75 percent of the total number of slips (existing and new) remain open to the general public. Removal of upland to create slips is acceptable;

ii. Marina services are expanded in capacity and upgraded (that is, modernized) to the maximum extent practicable; and

iii. (No change.)

2. (No change.)

(f) In waterfront areas located outside of the CAFRA zone the water dependent use may be a public walkway, provided the upland walkway right-of-way *[shall]* is at least 30 feet wide, unless there are existing onsite physical constraints which cannot be removed or altered to meet this requirement.

(g) (No change.)

(h) Along the Hudson River and in other portions of the Northern Waterfront and Delaware River Region, where water dependent uses are deemed infeasible, some part of the waterfront portion of the site may be acceptable for non-water dependent development under the following conditions:

1. The development proposal addresses, as a minimum, past use of the site as well as potential for future water dependent, commercial, transportation, recreation, and compatible maritime support services uses;

2. The developed land uses closest to the water's edge are water oriented;

3. Currently active maritime port and industrial land uses are preserved;

4. Adverse impacts on local residents and neighborhoods are mitigated to the maximum extent practicable; and

5. All other coastal rulesare met.

(i) On all filled water's edge sites, development must comply with the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11). Public access to the waterfront will not be required at single family or duplex residential lots along the waterfront*****, **which are not part of a larger development***.

(j) Rationale: The water's edge along New Jersey's shore, bays and rivers is a highly valued, yet limited, resource. Waterfront locations offer a rare combination of natural features and opportunities for waterborne commerce and recreational boating.

Though an estimated 37 percent of the state's 753 miles of shoreline along navigable waterways is filled water's edge, two-thirds of these locations are already developed. The particular requirements for an average sized marina or port facility further narrows the filled water's edge potentially suitable for such development to approximately 3 percent, or 19 miles, of the state's entire water's edge (NJDEP, Policy Assessment 1983).

Filled water's edge areas, though relatively scarce, are less environmentally sensitive than undisturbed water's edge areas. The buffering functions of the water's edge have already been lost through excavation, filling and the construction of retaining structures. The filled water's edge, therefore, provides the best opportunity for intense use of the waterfront. Accordingly, certain kinds of development are allowed up to the limit of fill.

The rule seeks to promote both the marine trades as an important sector of the state's economy and uses that enhance public access to, and use of, the water's edge. Uses that require a waterfront location in order to function (i.e., water dependent uses) and uses that serve the general public and derive economic benefits from a waterfront location (i.e., water-oriented uses) are favored over non-water related uses such as housing and offices. These non-water related uses can be situated away from the water.

Since many existing water dependent uses are being lost, or more often, constricted by housing and other non-water related uses, and since few excellent sites remain for recreational and commercial boating, it is desirable to restrict redevelopment of sites currently or recently occupied by a water dependent use. Further, preserving slips open to the general public is necessary to protect the public's common law right to use tidal waters for navigation. Although housing at the water's edge can in some situations ensure the long term viability of a marina, it generates additional boating demand, which further aggravates limited marina space. Accordingly, in defining "Slip open to the general public", slips leased only to owners of associated housing or only to residents of a certain municipality would be excluded, unless any member of the general public could join by paying a reasonable fee. Marinas warrant special attention for several reasons. They benefit the state by attracting tourists and associated revenues and by serving the estimated 25 percent of residents who go boating in New Jersey's coastal waters (1977 Eagleton Institute Poll). The vast majority of existing marinas (70%) are filled to capacity with most having waiting lists of one season or more evidence of a large unmet demand (Rogers, Golden and Halpren for New Jersey *[DEPE]* ***DEP***, Developing a Marina in New Jersey 1982). According to the New Jersey State Comprehensive Management Outdoor Recreation Plan (SCORP), boating demand will increase through 1995 leaving even more boaters without facilities, perhaps diverting large numbers to other states. Where consolidation of a marina's land based facilities is justified, the existing marinas services and boat slips must be maintained or, where possible, expanded. Upland boat storage is an exception. Upland storage for most (75%) of a marina's large boats, which cannot be easily trailored off-site, must be accommodated. However, space for only a small portion (25%) of boats that can be trailored off-site for winter storage must be retained.

Along the Hudson River and in other portions of the developed urban waterfront, potential for future water dependent and maritime support services is also of concern. On these sites economic revitalization must be balanced against the need to preserve and provide for water dependent and water-oriented uses.

7:7E-3.25 Flood Hazard Areas

(a) Flood hazard areas are the floodway and flood fringe area around rivers, creeks and streams as delineated by *[DEPE]* ***DEP*** under the Flood Hazard Control Act (N.J.S.A. 58:16A-50 et seq.), or by the Federal Emergency Management Agency (FEMA); or the flood hazard area around other coastal water bodies as defined by FEMA. They are areas subject to either tidal or fluvial flooding. Where flood hazard areas have been delineated by both *[DEPE]* ***DEP*** and FEMA, *[DEPE]* ***DEP*** delineations shall be used. Where flood hazard areas have not been delineated by *[DEPE]* ***DEP*** or FEMA, limits of the 100 year floodplain will be established by computation on a case-by-case basis. The seaward boundary shall be the mean high water line (see Appendix, Figures 6 and 7, incorporated herein by reference).

1. A complete list of streams for which the Department has delineated the flood hazard area can be found in N.J.A.C. 7:13 (Rules Governing Flood Hazard Areas).

2. (No change.)

3. Where portions of the flood hazard areas meet the definition of another Special Water's Edge type (Filled Water's Edge, Lagoon Edge, Alluvial Flood Margins, Beaches, Dunes, Overwash Areas, Erosion Hazard Areas, Coastal High Hazard Areas, Barrier Island Corridor, Bay Islands, Wetlands, Wetlands Buffer, Coastal Bluffs, and Intermittent Stream Corridors), the Special Water's Edge policies shall apply in terms of location acceptability and the flood hazard areas rule shall apply in terms of setback and flood proofing requirements.

(b) Dedication of undeveloped flood hazard areas for purposes of public open space is encouraged, especially where such areas are designated to the New Jersey Wild and Scenic Rivers System (see N.J.S.A. 13:8-45 et seq.). For the purpose of this rule, "undeveloped" means areas, including, but not limited to, lawns and farm fields, which are not covered by impervious surfaces.

(c) In undeveloped flood hazard areas, development within 100 feet of a navigable water body is prohibited, unless the development is for water dependent use or low intensity use which does not reduce the flood dissipating value of the flood hazard area or preclude water dependent use of the area. ("Navigable" and "water dependent" are defined at N.J.A.C. 7:7E-1.5(c).)

(d) Elsewhere in the undeveloped portions of the flood hazard areas development is conditionally acceptable provided that:

1.-2. (No change.)

(e) Retention and detention basins developed specifically for storm water management purposes are conditionally acceptable provided they are constructed in accordance with the Stormwater Runoff rule (N.J.A.C. 7:7E-8.7).

(f) Development in areas subject to fluvial flooding must conform with the Flood Hazard Area Control Act and rules adopted thereunder. Development in areas subject to tidal flooding must conform with applicable federal flood hazard reduction standards as found at 44 C.F.R. Part 60 and the Uniform Construction Code, N.J.S.A. 52:27D-1 et seq.

(g) In developed areas, the intensity of development shall not exceed the maximum allowed under the acceptability of development in the General Land Area Rule (N.J.A.C. 7:7E-5.2).

(h) Rationale: The goal of this rule is to reduce losses of life and property resulting from unwise development of flood hazard areas, and allow uses compatible with periodic flooding, agricultural and forestry, recreation, and fish and wildlife habitat and uses which require a water's edge location. This rule is consistent with the State Waterfront Development Law's objective of safeguarding port facilities and waterfront resources for the public's overall economic advantage. The rule will ensure that the State's waterfront is not pre-empted by uses which could function equally well at inland locations.

Flood Hazard Areas adjacent to rivers are subject to flooding in severe fluvial storms. They are also critical elements of the coastal ecosystems, providing flood storage capacity, physical and biochemical water filtration, primary productivity and wildlife habitats.

For these reasons, the preferred rule is to preserve those flood hazard corridors that are in an undeveloped state with native or adapted forest vegetation for conservation purposes and to allow limited exceptions for water dependent uses, infill and uses for which there is no feasible alternative location.

The location acceptability for a site under this rule applies only to flood hazard areas which have not been disturbed by filling. Sites subject to this rule, therefore, tend to be in a more natural state than sites subject to the Filled Water's Edge Rule. Accordingly this rule is more restrictive, discouraging development which would unnecessarily disturb vegetation, and requiring water dependency within 100 feet of a navigable water body.

7:7E-3.26 (Reserved)

7:7E-3.27 Wetlands

(a) Wetlands or wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

1. Wetlands areas are identified and mapped on the following:

i. National Wetlands Inventory Maps produced by the U.S. Fish and Wildlife Service at a scale of 1:24,000 ***(generalized locations only)***;

ii. Coastal wetland maps, pursuant to the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) prepared by the *[DEPE]* ***DEP*** at a scale of 1:2,400; and

iii. Freshwater wetland maps prepared by *[DEPE]* ***DEP*** at a scale of 1:12,000 ***(generalized locations only)***.

Note: Maps referenced in (a)1ii and iii above are available from the *[DEPE]* ***DEP*** Map and Publications sales office (609) 777-1038.

2. Generalized locations of some wetland types can be found in county soil surveys prepared by the U.S. Department of Agriculture, Soil Conservation Service.

3. The maps referenced under (a)1i, iii, and 2 above shall be useful as an indicator to assist in the preliminary determination of the presence or absence of wetlands only. They have been determined to be unreliable for the purposes of locating the actual wetlands boundary on a specific site.

4. All tidal and inland wetlands, excluding the delineated tidal wetlands defined pursuant to N.J.A.C. 7:7-2.2, shall be identified and delineated in accordance with the USEPA three-parameter approach (that is, hydrology, soils and vegetation) specified under N.J.A.C. 7:7A-1.4 of the Freshwater Wetlands Protection Act Rules.

(b) Development in wetlands defined under the Freshwater Wetlands Protection Act of 1987 is prohibited unless the development is found to be acceptable under the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A).

(c) Development of all kinds in all other wetlands not defined in (b) above is prohibited unless the Department can find that the proposed development meets the following four conditions:

1. Requires water access or is water oriented as a central purpose of the basic function of the activity (this rule applies only to development proposed on or adjacent to waterways). This means that the use must be water dependent as defined in N.J.A.C. 7:7E-1.5;

2.-4. (No change.)

(d) (No change.)

(e) No action by the Commissioner shall prohibit, restrict or impair the exercise or performance of the powers and duties conferred or imposed by law on the Department of Environmental Protection, the Natural Resource Council and the State Mosquito Control Commission in said Department, the Department of Health, or any mosquito control or other project or activity operating under or authorized by the provisions of chapter 9 of Title 26 of Revised Statutes. This rule does not supersede the authority of the State Mosquito Commission to undertake mosquito control projects authorized by chapter 9 of Title 26 of the Revised Statutes.

*[(e)]***(f)*** Development that adversely affects white cedar stands such as water table drawdown, surface and groundwater quality changes and the introduction of non-native plant species is prohibited.

*[(f)]***(g)*** For projects which require a Waterfront Development permit, the reuse of former dredged material disposal *[islands]* ***sites*** for continued dredged material disposal is conditionally acceptable provided the following criteria are met:

1. The site has been used for dredged material disposal within the past 10 years;

2. The site has existing dikes or berms in sound condition, and/or has sufficient area of previously disposed material ***within the previously disturbed disposal area*** to allow the construction of structurally sound dikes and berms;

3. There are no anticipated adverse effects on threatened or endangered species;

4. There are no colonial nesting birds present on site which would be adversely affected (seasonal restrictions may be required);

5. No wetlands regulated pursuant to the Wetlands Act of 1970 would be adversely affected;

6. The former dredged material disposal area is not subject to daily tidal innundation, and the vegetation community is limited primarily to scrub/shrub or phragmites; and

7. The required Waterfront Development permit and Water Quality Certification are obtained.

*[(g)]***(h)*** If an application to disturb or destroy wetlands meets the standards for permit approval, the Department will require the applicant to mitigate for the loss or degradation of the wetlands in accordance with the following:

1. Mitigation for the loss of wetlands subject to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., shall meet the standards of N.J.A.C. 7:7A.

2. When a permit allows the disturbance or loss of wetlands *[(see N.J.A.C. 7:7E-3.25)]* by filling or other means, this disturbance or loss shall be compensated for as specified under *[(g)6]* ***(h)9*** below unless the applicant can prove through the use of productivity models or other similar studies, that by restoring or creating a lesser area, there will be replacement of wetlands of equal ecological value. In order to demonstrate equal ecological value, the applicant shall survey and provide written documentation regarding, at a minimum, existing soil, vegetation, water quality functions, flood storage capacity, soil erosion and sediment control functions, and wildlife habitat conditions and detail how the proposed mitigation plan will replace the ecological values of the wetland to be lost or disturbed.

3. Mitigation shall be performed prior to or concurrent with activities that will permanently disturb wetlands and immediately after activities that will temporarily disturb these habitats. Applicants shall be required to obtain a secured bond, or other surety acceptable to the Department including an irrevocable letter of credit or money in escrow, that shall be sufficient to hire an independent contractor to complete and maintain the proposed mitigation should the applicant default. The performance bond for the construction of the proposed mitigation shall be posted in an amount equal to 115 percent of the estimated cost of construction of the mitigation activity. In addition, a maintenance bond to assure the success of the mitigation shall be posted in the amount equal to 30 percent of the estimated cost of construction. The performance and maintenance bonds will be reviewed annually and shall be adjusted to reflect current economic factors.

i. The performance bond or other surety will be released upon an inspection by the Department confirming completion of construction and planting of the mitigation site. The maintenance bond will be released upon the Department's confirmation that the three-year, post-planting monitoring period has been successfully completed and that no additional maintenance is required in order to meet the specifications of the approved mitigation plan.

4. Where the Department permits a mitigation surface area of less than 2:1, monitoring by the permittee at a frequency determined by the Department to be appropriate on a case-by-case basis shall be required. In such cases, additional mitigation or further remedial action shall be required at a level and within the forms determined to be appropriate on a case-by-case basis by the Department when the Department determines that a net loss of equal ecological value occurs. Under no circumstances shall the mitigation area be smaller than the disturbed area. Creation of wetlands from existing natural resources protected under the applicable Special Area Rules (N.J.A.C. 7:7E-3) is not an acceptable form of mitigation, nor is transfer of title of existing wetlands or intertidal or subtidal shallows to a government agency or conservation organization.

5. (No change in text.)

6. As a condition of every creation or enhancement plan authorized under this subsection, an applicant shall sign a Department approved conservation easement and register this restriction on the deed for the subject parcel. This restriction will provide that no regulated activities will occur in the created or enhanced wetland

area. This restriction shall be memorialized in a deed restriction meeting the Department's requirements and shall run with the land and be binding upon the applicant and the applicant's successors in interest in the premises or any part thereof. The permit will not become effective until the deed restriction is registered with the county clerk ***or Registrar of Deeds and Mortgages, if applicable***. Any regulated activities undertaken on the site before a copy of the registered restriction is submitted to the Department will be considered in violation of these rules.

i. No future development will be permitted on the mitigation site unless the Department finds that the regulated activity has no practicable alternative which would:

(1) Not involve a wetland site;

(2) Involve a wetland but would have a less adverse impact on the aquatic ecosystem;

(3) Not have other significant adverse environmental consequences, that is it shall not merely substitute other significant environmental consequences, for those attendant on the original proposal; and

(4) There is a compelling public need for the activity greater than the need to protect the mitigation site.

ii. To satisfy *[(g)6]* ***(h)6*** above, the applicant shall provide a ***copy of the recorded document or a*** receipt showing that the restriction has been registered at the county clerk's office.

7. Except for publicly funded projects, as described at *[(g)]****(h)*** 7i below, any mitigation carried out off-site shall be on private property.

i. Mitigation for publicly funded projects may be carried out on public lands provided that these lands were private lands purchased by a public agency expressly for the purpose of performing mitigation.

8. Future development of the mitigation site is prohibited and as a condition of any permit which includes creation of a mitigation site, the owner shall be required to record a conservation easement governing that site.

9. The Department distinguishes between four types of mitigation: restoration, creation, enhancement, and contribution. Depending on the circumstances under which wetlands are lost or disturbed, different types of mitigation may be required by the Department. The types of mitigation are explained below, in decreasing order of their desirability:

i. Restoration refers to actions performed on the site of a regulated activity, within six months of the commencement of the regulated activity, in order to reverse or remedy the effects of the activity on the wetland and to restore the site to preactivity condition.

(1) Restoration shall be required at a ratio of one acre created to one acre lost or disturbed. If restoration actions are performed more than six months after the commencement of the regulated activity which disturbed the wetland, these actions will no longer be considered restoration, but will be considered creation, and will be governed by the provisions of *[(g)]****(h)***9ii(3) below.

(2) If restoration actions are performed on degraded wetlands offsite, these actions will be considered enhancement and will be governed by the provisions of *[(g)]****(h)***9iii below.

ii. Creation refers to actions performed to establish wetland characteristics, habitat and functions on:

(1) A non-wetlands site; or

(2) A former wetlands site which has been filled or otherwise disturbed such that it no longer retains wetland characteristics. If the site retains wetland characteristics such that it meets the definition of a degraded wetland pursuant to N.J.A.C. 7:7A-1.4, it is not eligible for use in creation. Rather, it is only eligible for enhancement activities pursuant to *[(g)]****(h)***9iii below. If the disturbance to a formerly wetlands site is the result of a violation of the Freshwater Wetlands Protection Act and/or the Wetlands Act of 1970, the Department may, at its discretion, condition an approval of a mitigation proposal, or a permit, or both, on the resolution of the violation.

(3) Creation will be required at a ratio of two acres created to one acre lost or disturbed. Under no circumstances shall the mitigation area be smaller than the disturbed area.

(4) Creation shall not be permitted on a site that retains wetlands characteristics.

iii. Enhancement refers to actions performed to improve the characteristics, habitat and functions of an existing, degraded wetland such that the enhanced wetland will have resource values and functions similar to an undisturbed wetland. The enhancement requirement will be determined on a case-by-case basis.

iv. Contribution refers to the donation of money or land. The Department will permit the donation of land only after determining that all alternatives to the donation are not practicable or feasible, or that the permanent protection of the land will provide ecological benefits equal to or greater than those resulting from the creation of wetlands. This determination will be made in consultation with the United States Environmental Protection Agency (USEPA) for freshwater wetlands. Monies donated shall be used for the purchase of land to provide areas for wetland losses, to provide areas for restoration of degraded wetlands, and to provide areas to preserve wetlands and transition areas determined to be of critical importance, and the transfer of funds for research to enhance the practice of mitigation. If money is donated, the Department will require an amount equivalent to **the lesser of the following costs:**

(1) Purchasing and enhancing existing degraded wetlands, resulting in preservation of wetlands of equal ecological value to those which are being lost; or

(2) Purchase of property and the cost of creation of wetlands of equal ecological value to those which are being lost.

v. If the Department determines that land may be donated as part or all of a contribution to mitigate for the destruction of freshwater wetlands, the Wetlands Mitigation Council must first determine that the donated land has the potential to be a valuable component of the wetlands ecosystem.

10. All mitigation projects shall be carried out on-site to the maximum extent practicable. Mitigation of wetlands, on- site or off-site, from other existing climax habitats is not practicable and is discouraged.

i. If on-site mitigation is found to be impracticable, off-site mitigation shall be considered and implemented within the same watershed or estuary if feasible.

11. All mitigation proposals submitted to the Department shall be prepared in accordance with **N.J.A.C. 7:7E-3B.**

*[(h)]****(i)*** Rationale: The environmental values and fragility of coastal wetlands have been officially recognized in New Jersey since the passage of the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) and the passage of the Freshwater Wetlands Protection Act of 1987 (N.J.S.A. 13:9B-1 et seq.). Tidal and Freshwater Wetlands, are the most environmentally valuable land areas within the coastal zone.

Wetlands contribute to the physical stability of the coastal zone by serving as (i) a transitional area between forces of the open sea and upland areas that absorb and dissipate wind-driven storm waves and storm surges, (ii) a flood water storage area, and, (iii) a sediment and pollution trap.

Also, wetlands naturally perform the wastewater treatment process of removing phosphorous, nitrogenous and other water pollutants, unless the wetlands are stressed.

The biological productivity of New Jersey's wetlands is enormous and critical to the functioning of estuarine and marine ecosystems. The emergent cord grasses and associated algal mats convert inorganic nutrients into organic plant material through the process of photosynthesis. In this way, the primary base for estuarine and marine food webs is provided. The principal direct dietary beneficiaries of organic wetland detritus are bacteria and protozoan, which are in turn fed upon by larger invertebrates. Important finfish, shellfish, and other resources feed upon these invertebrates. New Jersey's wetlands are prime wintering habitat annually for hundreds of thousands of migratory waterfowl. Approximately two-thirds of marine finfish and shellfish are known to be estuarine, and, therefore, wetlands dependent.

Inland herbaceous wetlands, such as bogs and marshes, play an important role in regulating the quality of the water in streams that flow to the estuaries. They retard runoff and store storm waters. They are important areas for primary productivity for estuarine

systems. They are critical habitats and movement corridors for several species of plants and animals that are endangered or threatened.

They are productive habitats for other game and non-game animals, such as fur bearers and song birds. These wetlands also serve as fire breaks, and may limit the spread of forest, brush, or grass fires. They are inappropriate development sites due to poor drainage and load bearing capacity of the underlying soils.

Forested wetlands play a critical role in coastal and other ecosystems. Roots and trunks stabilize shorelines and trap sediment. They are physical and biochemical water filter areas maintaining stream water quality. High productivity, high water availability and high edge to area ratio make these areas especially productive wildlife areas.

White cedar stands, as well as other lowland swamp forests, play an important role in purifying water in coastal streams, retarding runoff, providing scenic value, and serving as a rich habitat for many and endangered plant and animal species, as well as game species, such as deer. White cedars also act as forest fire breaks. White cedar stands most commonly occur in flood plains and in the fringe areas of drainage ways and bogs, which are frequently underlain with saturated organic peat deposits. This material is particularly unsuited for development.

White cedar is New Jersey's most valuable timber species and grows in discrete stands. The wood has a long tradition of maritime and local craft uses. Unfortunately, white cedars have been eliminated from much of their previous range in New Jersey.

7:7E-3.28 Wetlands Buffers

(a) Wetlands buffer or transition area means an area of land adjacent to a wetland which minimizes adverse impacts on the wetlands or serves as an integral component of the wetlands ecosystem (see Appendix, Figure 7). Wider buffers than those noted below may be required to establish conformance with other Coastal Rules, including, but not limited to, 7:7E-3.38 and 3.39.

1. A wetlands buffer or transition area of up to 150 feet in width shall be established adjacent to all wetlands defined and regulated under the Freshwater Wetlands Protection Act. (Refer to the Freshwater Wetland Protection Act Rules, N.J.A.C. 7:7A, for further guidance).

2. For all other wetlands, including wetlands regulated under the Coastal Wetlands Act of 1970, a wetlands buffer of up to 300 feet shall be established.

(b) Subject to (a) above, all wetlands buffers (that is, transition area) associated with wetlands subject to the Freshwater Wetlands Protection Act shall be regulated in accordance with the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

(c) Development is prohibited in a wetlands buffer around all other wetlands, unless it can be demonstrated that the proposed development will not have a significant adverse impact and will cause minimum feasible adverse impact, through the use of mitigation where appropriate on the wetlands, and on the natural ecotone between the wetlands and surrounding upland. The precise geographic extent of the actual wetlands buffer required on a specific site shall be determined on a case-by-case basis using these standards.

(d) In areas of the coastal zone which are within the Hackensack Meadowlands District, the appropriate buffer width shall be determined in accordance with the requirements set forth in the Hackensack Meadowlands District Zoning Regulations.

(e) Rationale: Development adjacent to wetlands can adversely affect the wetlands through increased runoff, sedimentation, and introduction of pollutants.

The coastal zone includes a diversity of types of wetlands, of varying widths, quality and importance to the ecosystem, from large forested freshwater wetlands, to narrow strips of coastal wetlands. For this reason, the appropriate buffer necessary to protect the wetlands adjacent to proposed land disturbance must be determined on a case-by-case basis, but using a standard that requires no significant impact on, and minimum feasible disturbance to, the wetlands.

The preservation of a transitional area of native vegetation in the portion of the wetlands buffer adjacent to a wetlands and the construction of detention basins or berms if necessary to control runoff, could mitigate impacts and make development permissible in the remainder of the wetlands buffer.

Buffers that support strands of native vegetation perform the following ecological and physical functions:

1. Stabilization of soil and prevention of erosion;

2. Filtration of suspended solids (silt) to prevent their deposition on wetlands. Siltation onto wetlands can lead to undesirable changes in vegetation, e.g. from cord grass (Spartina) to reeds (Phragmites), which contribute less to the estuarine and marine food chain;

3. Water turbidity control;

4. Inhibition of pollutant introduction into wetlands soil, water and food chains. Without wetlands buffers, "urban" runoff from adjacent housing will almost always cause an increase in contaminants, such as coliform, following rain;

5. Storm water storage;

6. Formation of a barrier to floating debris, and;

7. Contribution to estuarine productivity, especially if the buffer is a forested floodplain.

As transition areas between differing vegetation communities (habitat areas), appropriately vegetated wetlands buffers function as ecotones, supporting a diversity of species and uses, and serving as wildlife movement corridors.

Wetlands buffers are used as lookout perches for raptors; nesting sites for Marsh Hawks, Black Crowned Night Heron, and Osprey; fall migration foraging stopovers for birds, including woodcock; nesting sites for Wood Ducks, Black Ducks, and Mallards; and forage routes into and out of wetlands for Raccoons, Mink, Muskrat, Fox, Deer, and others. Grassy wetlands edges serve as feeding sites for Wilson's Snipe, Ruffled Grouse, Quail and song birds.

Wetland buffer requirements may be less restrictive in areas where proposed development is considered infill, and where a majority of the area adjacent to the wetlands is developed. In these areas, the potential adverse impacts to the wetlands from additional development are generally minor. The Department will establish the required wetland buffers for these areas on a case-by-case basis, based on the existing site conditions, including but not limited to elevation, topography and vegetation.

7:7E-3.29 (Reserved)

7:7E-3.30 (Reserved)

7:7E-3.31 Coastal Bluffs

(a) A coastal bluff is a steep slope (greater than 15 percent) of consolidated (rock) or unconsolidated (sand, gravel) sediment which is adjacent to the shoreline or which is demonstrably associated with shoreline processes.

1. (No change.)

2. The landward limit of a coastal bluff is the landward limit of the area likely to be eroded within 50 years, or a point 25 feet landward of the crest of the bluff, whichever is farthest inland (see Appendix, Figures 7 and 8, incorporated herein by reference).

3. Steep slopes (N.J.A.C. 7:7E-3.34) are isolated inland areas with slopes greater than 15 percent. All steep slopes associated with shoreline processes or adjacent to the shoreline and associated wetlands, or contributing sediment to the system, will be considered coastal bluffs.

(b) Development is prohibited on coastal bluffs, except for linear development which meets the rule on Location of Linear Development (N.J.A.C. 7:7E-6.1) and shore protection activities which meet the appropriate Coastal Engineering Use rules (N.J.A.C. 7:7E-7.11).

(c) (No change.)

(d) Rationale: Coastal bluffs are most prominent in New Jersey along the Delaware River at Roebling and Florence and along the Raritan Bay at Aberdeen Township and Atlantic Highlands. They have a significant function in storm damage prevention and flood control, by eroding in response to wave action and resisting erosion caused by wind and rain runoff. Bluff erosion is also an important source of beach nourishment where the coastal bluff faces an open water body. Disturbance of coastal bluffs which undermines their

natural resistance to wind and rain erosion increases the risk of their collapse and causes cuts in the bluffs. This increases danger to structures at the top of the bluff and reduces the bluff's ability to buffer upland area from coastal storms. Vegetation helps stabilize bluffs and can reduce the rate of erosion caused by wind and rain runoff. A minimum construction setback on the stable land is required to protect life and property, and reaffirms the setback requirement of the Erosion Hazard Area rule (N.J.A.C. 7:7E-3.19).

7:7E-3.32 Intermittent Stream Corridors

(a) Intermittent stream corridors are areas including and surrounding surface water drainage channels in which there is not a permanent flow of water and which contain an area or areas with a seasonal high water table equal to or less than one foot. The inland extent of these corridors is either the inland limit of soils with a seasonal high water table depth equal to, or less than one foot, or a disturbance of 25 feet measured from the top of the channel banks, whichever is greater (see Appendix, Figures 7 and 9, incorporated herein by reference).

1. Where an intermittent stream corridor is also a wetland, the Wetlands rule (N.J.A.C. 7:7E-3.27) shall apply.

(b) Uses that promote undisturbed growth of native vegetation and wildlife habitat value are encouraged.

(c) Cutting, filling, damming, detention basins for runoff recharge, paving, structures or any other activities that would directly degrade the function of intermittent stream corridors, except for linear infrastructure for which there is no feasible alternate route, is prohibited.

(d) Intermittent streams not subject to the ebb and flow of the tide shall also comply with the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A).

(e) Rationale: Intermittent Stream Corridors are the spring areas for coastal streams. They are very susceptible to surface and subsurface disturbance. The water quality of coastal streams and estuaries depends inpart on undisturbed spring areas. They are productive areas since water is at or near the surface, and are important wildlife habitats. For these reasons the intention of the rules is preservation.

7:7E-3.33 Farmland Conservation Areas

(a) Farmland conservation areas are defined as any contiguous area of 20 acres or more (in single or multiple tracts of single or multiple ownership) with soils in the Capability Classes I, II and III or special soils for blueberries and cranberries as mapped by the United States Department of Agriculture, Soil Conservation Service, in National Cooperative Soil Surveys, which are actively farmed, or suitable for farming, unless it can be demonstrated by the applicant that new or continued use of the site for farming or farm dependent purposes is not economically feasible. Farming or farm-dependent purposes include nurseries, orchards, vegetable and fruit farming, raising grains and seed crops, silviculture (such as Christmas tree farming), floriculture (including greenhouses), dairying, grazing, livestock raising, and wholesale and retail marketing of crops, plants, animals and other related commodities.

(b) Farmland conservation areas shall be maintained and protected for open space or farming purposes. Farming or farm-dependent uses are permitted uses in farmland conservation areas. Housing is permitted only if it is an accessory use to farming. Mining is permitted only in accordance with a reclamation plan which meets the requirements of the Mining Use rule (N.J.A.C. 7:7E-7.8).

(c) Continued, renewed, or new farming is encouraged in farmland conservation areas.

(d) Rationale: Farmland conservation areas are an irreplaceable natural resource essential to the production of food and fiber, particularly in the "Garden State". Conservation of large, contiguous areas of these lands for farming serves both private and public interests, particularly in terms of ready access to locally-grown food, jobs and open space preservation.

In the coastal zone, some of the irreplaceable soil resources have already been converted to urban uses. Other areas which are of a sufficiently large scale to make farming feasible should be reserved for farming purposes, provided that farming is economically feasible.

7:7E-3.36 Historic and Archaeological Resources

(a) Historic and archaeological resources include objects, structures, shipwrecks, buildings, neighborhoods, districts, and man-made or man-modified features of the landscape and seascape, including historic and prehistoric archaeological sites, which either are on or are eligible for inclusion on the New Jersey or National Register of Historic Places.

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

(d) Scientific recording and/or removal of the historic and archaeological resources or other mitigation measures must take place if the proposed development would irreversibly and/or adversely affect historic and archaeological resources. Surveys and reports to identify and evaluate historic and archaeological resources potentially eligible for the New Jersey or National Registers shall be performed by professionals who meet the National Park Service's Professional Qualifications Standards in the applicable discipline. Professional procedures and reports shall meet the applicable Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation and the New Jersey Historic Preservation Office's professional reporting and surveying guidelines *[of the Office of New Jersey Heritage in the Division of Parks and Forestry, DEPE]*, once these guidelines are promulgated as rules, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. *[The same qualifications and performance standards shall apply to documentation, investigations, and reports prepared pursuant to (e) below. The same qualifications and performance standards shall apply to documentation, investigations, and reports prepared pursuant to (e) below.]* A description of the qualifications and performance standards is available at the Historic Preservation Office.

(e) New development in undeveloped areas near historic and archaeological resources is conditionally acceptable, provided that the design of the proposed development is compatible with the appearance of the historic and archaeological resource. For archaeological resources within the area of the undertaking, avoidance and protection is appropriate. When this is not feasible and prudent, and these resources are of value solely for the information which they contain, archaeological data recovery to mitigate the project impact will be required.

(f) *[Salvage of shipwrecks over 50 years old is discouraged, but may be permitted,]* ***Recovery of shipwrecks consistent with the protection of historic values and environmental integrity of shipwrecks and their sites may be permitted*** subject to the following conditions:

1. The proposed project is in the public interest;

2. The archaeological knowledge gained will outweigh the loss to future archaeological research and to the public of the preserved shipwreck;

3. The applicant has expertise in underwater archaeology as outlined by the Federal Requirements 36 CFR 66, pursuant to the Archaeological and Historic Preservation Act of 1974 (P.L. 93-291), and through the National Environmental Policy Act, the National Historic Preservation Act of 1966, (as amended), the Abandoned Shipwreck Act of 1987, and their respective implementing regulations and guidelines;

4. Artifacts will be recovered in an archaeologically appropriate manner;

5. Recovered artifacts will be analyzed and inventoried, and as appropriate, preserved, restored, and/or made accessible to future researchers;

6. Two copies of a professional archaeological report will be prepared for the Department giving the following information about the shipwreck and its excavation: Historic background, description of environment, salvage methodology, artifact analysis, description of techniques used in preservation of artifacts, base map, narrative and grid map on artifacts recovered, bibliography, photographs, National Register documentation and conclusions; and

7. The entire exploration and salvage effort will be in accordance with the Secretary of the Interior's 1983 Standards and Guidelines for Archaeology and Historic Preservation, and the Department of

the Interior's 1990 Abandoned Shipwreck Act Final Guidelines which are available from the Historic Preservation Office.

(g) The Department may require the submission of a cultural resource survey report if it is determined that there is a known historic or prehistoric resource in the project area, or a reasonable potential for the presence of such a resource, which may be affected by a proposed development. However, in general, such surveys will not be required for the developments and/or sites listed below:

1. Single family and duplex developments which are not part of a larger development;

2. Sites which can be documented as being previously disturbed to the extent that any archaeological resources present would have been completely destroyed;

3. Sites which are located on lands containing fill material, including Psamments soils (PN, PO, PW) or Urban Land Soils (UL, UP), as defined in the appropriate County Soil Survey; and

4. The replacement of structures and utilities, in-place and in-kind, provided that the area of previous disturbance does not increase.

(h) The ultimate decision on the requirement for a cultural resource survey will be made by the Department's Land Use Regulation Program, based on information received in response to public comments or information provided by the New Jersey Historic Preservation Office regarding the presence of known historic and prehistoric resources or the potential for their presence.

(i) Rationale: The range of historic and archaeological resources along the coast is diverse, from the oceanfront Victorian era architecture, to examples of New Jersey's maritime heritage, to colonial homes, and to American Indian sites. The public interest requires the preservation of both representative and unique examples of historic and archaeological (cultural) resources of the coast, in order to provide present and future generations with a sense of the people who lived, worked and visited the coast in the past. *[DEPE's]* ***DEP's*** Historic Preservation Office maintains an up-to-date list of properties on the New Jersey Register of Historic Places. As the State Historic Preservation Officer the Commissioner of *[DEPE]* ***DEP***, and the staff of the *[DEPE's]* ***DEP*** Historic Preservation Office advise [DEPE's]* ***DEP*** Land Use Regulation Program on the historic resources aspects of coastal decisions.

For shipwrecks and shipwreck sites, the ability of the archaeologists to appropriately retrieve and preserve artifacts is gradually improving, but remains limited. Generally, the best way to preserve historic shipwrecks is to leave them in place until retrieval and preservation techniques improve. However, when the shipwreck is threatened by destruction or when the research and/or public benefits of immediate retrieval outweigh the impacts, salvage may be approved subject to conditions developed in consultation with the Historic Preservation Office, the State Museum and other interested parties, including research and educational institutions. ***The decision to allow a project to proceed which could affect a shipwreck or shipwreck site will include consideration of a number of issues, including the recreational and educational opportunities provided by wrecks and wreck sites, their historic significance and their habitat value.*** The preservation and salvage of New Jersey's historic shipwrecks and shipwrecks sites will be consistent with the Federal Abandoned Shipwreck Act Guidelines, issued under the authority of the Abandoned Shipwreck Act (Pub. L. 100-298; 43 U.S.C. 2101-2106).

The requirement for historic and prehistoric resource surveys varies from site to site, and project to project. Therefore, the Department has established several categories of sites and projects which generally will not require such surveys. However, in an effort to ensure adequate protection of historic and of prehistoric resources, the Department may require such surveys, on a case-by-case basis. This requirement will be based on the determination that there is a known historic or prehistoric resource, or a reasonable potential for the presence of such a resource, which may be affected by the proposed development. Such a determination will be based on such factors as the presence of known cultural sites, the presence of known sites nearby, and the known presence of sites in a similar topographic setting.

7:7E-3.37 Specimen Trees

(a) Specimen trees are the largest known individual trees of each species in New Jersey. The Department's Bureau of Parks and Forestry maintains a list of these trees (see "New Jersey's Biggest Trees", published by *[NJDEPE]* ***DEP*** Division of Parks and Forestry, Summer 1991 for a listing of specimen trees). In addition, large trees approaching the diameter of the known largest tree shall be considered specimen trees. Individual trees with a circumference equal to or greater than 85 percent of the circumference of the record tree, as measured 4.5 feet above the ground surface, for a particular species shall be considered a specimen tree.

(b) Development is prohibited that would significantly reduce the amount of light reaching the crown, alter drainage patterns within the site, adversely affect the quality of water reaching the site, cause erosion or deposition of material in or directly adjacent to the site, or otherwise injure the tree. The site of the tree extends to ***the outer limit of*** the buffer area necessary to avoid adverse impacts, *[which is measured from the trunk as three times the radius of the crown of the tree]*, ***or 50 feet from the tree, whichever is greater***.

(c) Rationale: Many interested citizens have assisted *[DEPE]* ***DEP***, over decades, in locating specimen trees. This process includes reporting large trees that can be considered specimens even though they may not be the largest in New Jersey of a species. Specimen trees are an irreplaceable scientific and scenic resource. Often these trees have also been associated with historical events.

7:7E-3.38 Endangered or Threatened Wildlife or Vegetation Species Habitats

(a) Areas known to be inhabitated on a seasonal or permanent basis by or to be critical at any stage in the life cycle of any wildlife (fauna) or vegetation (flora) identified as "endangered" or "threatened" species on official Federal or State lists of endangered or threatened species, or under active consideration for State or Federal listing, are considered Special Areas. The definition also includes a sufficient buffer area to insure continued survival of the population of the species. *[DEPE's]* ***DEP's*** Division of Fish, Game and Wildlife and Division of Parks and Forestry intentionally restrict dissemination of data showing the geographic location of these species, in order to protect the species and their habitats.

1. The required threatened or endangered species habitat buffer area shall be dependent upon the range of the species and the development's anticipated impacts to the species habitat.

(b) Development of this special area is prohibited unless it can be demonstrated that endangered or threatened wildlife or vegetation species habitat would not directly or through secondary impacts on the relevant site or in the surrounding *[region]* ***area*** be adversely affected.

(c) The following wildlife species were listed as endangered on the State list in January 1984, as amended on May 6, 1985, July 20, 1987 and June 3, 1991:

FISH	
Shortnose Sturgeon[1]	Acipenser brevirostrum
AMPHIBIANS	
Tremblay's Salmander	Ambystoma tremblayi
Blue-spotted Salamander	Ambystoma laterale
Eastern Tiger Salamander	Ambystoma tigrinum tigrinum
Pine Barrens Treefrog	Hyla andersoni
Southern Gray Treefrog	Hyla chrysocelis
REPTILES	
Atlantic Hawksbill Turtle[1]	Eretmochelys imbricata
Atlantic Loggerhead Turtle[1]	Caretta caretta
Atlantic Ridley Turtle[1]	Lepidochelys kempi
Atlantic Leather-back Turtle	Dermochelys coriacea
Bog Turtle	Clemmys muhlenbergi
Timber Rattlesnake	Crotalus horridus horridus
Corn Snake	Elaphe guttata guttata

BIRDS	
Bald Eagle[1]	Haliaeetus leucocephalus
Peregrine Falcon[1]	Falco peregrinus
Cooper's Hawk	Accipter cooperii
Least Tern	Sterna albifrons
Black Skimmer[2]	Rynchops niger
Norther Harrier[2]	Circus cyaneus
Short-eared Owl[2]	Asio flamneus
Pied-billed Grebe	Podilymbus podiceps
Upland Sandpiper	Bartramia longicauda
Sedge Wren[2]	Cistothorus platensis
Henslow's Sparrow	Ammodramus henslowii
Vesper Sparrow[2]	Pooecetes gramineus
Piping Plover	Charadrius melodus
Roseate Tern	Sterna dougallii
Loggerhead Shrike	Larnius ludovicianus
Red-shouldered Hawk[2]	Buteo lineatus
MAMMALS	
Sperm Whale[1]	Physter catedon
Blue Whale[1]	Balaenopetera musculus
Fin Whale[1]	Balaenopetera physalus
Sei Whale[1]	Balaenopetera borealis
Humpback Whale[1]	Megaptera novaeangliae
Bobcat	Lynx rufus
Eastern Woodrat	Neotoma floridana
Right Black Whale	Balaena glacialis
INVERTEBRATES	
Mitchell's Satyr (butterfly)[1]	Neonympha m. mitchellii
Northeastern Beach Tiger Beetle	Cicindela d. dorsalis
American Buring Beetle[1]	Nicrophorus americanus
Dwarf Wedge Mussel[1]	Alasmidonta heterodon

(d) The following Species were listed as Threatened Species on the State list in January 1984 as amended on May 6, 1985, July 20, 1987 and June 3, 1991.

AMPHIBIANS	
Long-tailed Salamander	Eurycea longicauda
Eastern Mud Salamander	Pseudotriton montanus
REPTILES	
Wood Turtle	Clemmys insculpta
Northern Pine Snake	Pituophis m. melanoleucus
Atlantic Green Turtle[1&3]	Chelonia mydas
BIRDS	
Osprey	Paridon haliaetus
Great Blue Heron	Ardea herodias
Red-shouldered Hawk	Buteo lineatus
Red-headed Woodpecker	Melanerpes erythrocephalus
Bobolink[2]	Dolichonyx oryzivorus
Savannah Sparrow[2]	Passerculus sandwichensis
Ipswich Sparrow[2]	Passerculus sandwichensis princeps
Grasshopper Sparrow[2]	Ammodramus savannarum
Yellow-crowned Night Heron	Nyctanassa violacca
American bittern	Botaurus legtigimosos
Northern Goshawk	Accipiter gentilis
Black Rail	Laccipiter jamaicensis
Barred owl	Strix varia
Little Blue Heron[2]	Egretta caerulea
Long-eared Owl	Asio otus
Cliff Swallow[2]	Hirundo pyrrhonota

1. Also on the Federal List
2. Status designation applicable to breeding populations only
3. Does not nest regularly in New Jersey

(e) The Division of Parks and Forestry is responsible for promulgation of the official Endangered Plant Species List pursuant to N.J.S.A. 13:1B-15. The Endangered Plant Species List, N.J.A.C. 7:5C-5.1, currently contains 308 native plant species, and includes species determined by the *[DEPE]* ***DEP*** to be endangered in the State as well as plant species officially listed as Federally Endangered or Threatened or under active consideration for Federal listing as Endangered or Threatened. Because the Endangered Plant Species List is periodically revised based on new information documented by the *[DEPE]* ***DEP***, it is not published as part of this rule. To obtain the most current Endangered Plant Species List, please contact the *[NJDEPE]* ***NJDEP***, Division of Parks and Forestry, Office of Natural Land Management, CN 404, Trenton, NJ 08625.

(f) For sites located within the Pinelands National Reserve and the Pinelands Protection Area, the plant species listed in Section 6- 204 of the Pinelands Comprehensive Management Plan shall also apply (N.J.A.C.7:50-6.24).

(g) For projects which require a habitat assessment, the guidelines found at N.J.A.C. 7:7E-3C ***shall be used***.

(h) Rationale: Endangered and threatened species are organisms which are facing possible extinction in the immediate future due to loss of suitable habitat, and past overexploitation through human activities or natural causes. Extinction is an irreversible event and represents a loss to both future human use, education, research and to the interrelationship of all living creatures with the ecosystem.

7:7E-3.40 Public Open Space

(a) Public open space constitutes land areas owned or maintained by State, Federal, county and municipal agencies or private groups (such as conservation organizations and homeowner's associations) and used for or dedicated to conservation of natural resources, public recreation, visual or physical public access or, wildlife protection or management. Public open space also includes, but is not limited to, State Forests, State Parks, and State Fish and Wildlife Management Areas, lands held by the New Jersey Natural Lands Trust (N.J.S.A. 13:1B-15.119 et seq.), lands held by the New Jersey Water Supply Authority (N.J.S.A. 58:1B-1 et seq.) and designated Natural Areas (N.J.S.A. 13:1B-15.12a et seq.) within *[DEPE-owned]* ***DEP-owned*** and managed lands.

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

(d) Development within existing public open space is conditionally acceptable, provided that the development complies with the Rules on Coastal Zone Management and is consistent with the character and purpose of public open space, as described by the park master plan when such a plan exists.

(e) (No change.)

(f) All new development adjacent to public open space will be required to provide an adequate buffer area and to comply with the Buffers and Compatibility of Uses rule (N.J.A.C. 7:7E-8.13). The buffer required will be dependent upon adjacent land uses and potential conflicts between users of public open space and the proposed adjacent land use.

(g) (No change in text.)

7:7E-3.43 Special Urban Areas

(a) Special urban areas are those municipalities defined in urban aid legislation (N.J.S.A. 52:27D-178) qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. The following municipalities within the coastal zone qualify as special urban areas in 1993:

Asbury Park	Jersey City	Paulsboro
Atlantic City	Keansburg	Pennsauken
Bayonne	Kearny	Penns Grove
Bellville	Lakewood	Perth Amboy
Bridgeton	Long Branch	Pleasantville
Camden	Millville	Rahway
Carteret Borough	Mt. Holly Twp.	Salem
Commercial Twp.	Neptune Twp.	Trenton
Elizabeth	New Brunswick	West New York
Glassboro	Newark	Weehawken
Gloucester City	North Bergen	Willingboro
Gloucester Twp.	Old Bridge City	Woodbridge
Hoboken	Passaic	Woodbury

(b) Development that will help to restore the economic and social viability of special urban areas is encouraged. Development that would adversely affect the economic well being of these areas is discouraged, when an alternative which is more beneficial to the special urban areas is feasible. Development that would be of economic and social benefit and that serves the needs of local residents and neighborhoods is encouraged.

(c) Housing, hotels, motels and mixed use development, which is consistent with the Public Access to the Waterfront rule (N.J.A.C. 7:7E-8.11) and the Hudson River Waterfront Area rule (N.J.A.C. 7:7E-3.48) where applicable, including those provisions relating to fishing access as appropriate are acceptable only over large rivers where water dependent uses are demonstrated to be infeasible. These uses are conditionally acceptable on structurally sound existing pilings, or where at least one of the following criteria is met:

1. Where piers have been removed as part of the harbor clean up program, the equivalent pier area may be replaced in either the same or other nearby location;

2.-3. (No change.)

(d) Housing, hotels, motels and mixed use development are acceptable in filled water's edge areas, provided that development is consistent with the Filled Water's Edge rule (N.J.A.C. 7:7E-3.23) and public access is provided for, as required by N.J.A.C. 7:7E-8.11.

(e) Rationale: This rule helps link the Coastal Management Program with other State efforts to focus on and restore New Jersey's urban areas. The ***rule*** would be applied to State actions on major proposals, such as shopping centers, outside urban areas which could drain resources from nearby urban areas, as well as to projects both in and out of urban areas which could help stimulate social and economic activity in urban areas.

The Filled Water's Edge rule which reserves the waterfront for water dependent uses should not be strictly applied in special urban areas in all cases. Housing, hotels, motels and other commercial developments, which benefit from a waterfront location and stimulate the revitalization of a special urban area would be consistent with State coastal objectives, and urban policy. This would also be true for such development over water areas. However, new development over water areas must be limited to Large Rivers (the Delaware, Hudson and Raritan) where the existing development density is high and where danger from storm surge is minimal, must not increase the total water area covered by piers or pilings to prevent the extension of non-water dependent uses into previously undeveloped Water Areas and must not unreasonably restrict public access between the development and the waterbody. In addition, development on piers must not be detrimental to fishery resources. Public access must be allowed since the water area over which the structure is to be built is an area impressed with the public trust doctrine. To forbid access along the water's edge on decks built in conjunction with the development would be an unreasonable restraint on public access. However, it would not be unreasonable to limit night access by the general public in residential areas over the water.

7:7E-3.44 Pinelands National Reserve and Pinelands Protection Area

(a) The Pinelands National Reserve includes those lands and water areas defined in the National Parks and Recreation Act of 1978, Section 502 (P.L. 95-625), an approximately 1,000,000 acre area ranging from Monmouth County in the north, south to Cape May County and from Gloucester and Camden County on the west to the barrier islands of Island Beach State Park and Brigantine Island along the Atlantic Ocean on the east (see Appendix, Figure 10, incorporated herein by reference). The "Pinelands Area" is a slightly smaller area within the Pinelands National Reserve. It was designated for State regulation by the Pinelands Protection Act of 1979 (N.J.S.A. 13:18-1 et seq.). The Pinelands Commission adopted a Comprehensive Management Plan in November, 1980. Within the Pinelands Area, the law delineates a Preservation Area, where the plan shall "preserve an extensive and contiguous area of land in its natural state, thereby insuring the continuation of a pinelands environment . . ." (Section 8c).

1. Under the authority of the Department's Surface Water Quality Standards (N.J.A.C. *[7:9-4]* ***7:9B***), all surface waters within the boundaries of the Pinelands Area, except those waters designated as FWI, are designated "Pinelands Waters" which have special antidegradation policies, designated uses and water quality criteria (see N.J.A.C. *[7:9-4.4]* ***7:9B1-4***, *[4.5(d)6ii]* ***1.5(d)6ii***, *[4.12(b)]* ***1.12(b)***, and *[4.14(b)]* ***1.14(b)***). The Department's present Groundwater Quality Standards (N.J.A.C.7:9-6), which were adopted on March 3, 1981, and revised on February 1, 1993, identify the "Central Pine Barrens Area" as the only part of the Pinelands distinguished from the rest of the State (N.J.A.C. 7:9-6.7(c)).

2. The coastal municipalities wholly or partly within the Pinelands National Reserve Area include:

Atlantic County
- Brigantine City
- Corbin City
- Egg Harbor City*[*]*
- Egg Harbor Township
- Estell Manor Township
- Galloway Township
- Hamilton Township
- Mullica Township
- Port Republic*[*]*
- Somers Point City
- Weymouth Township

Burlington County
- Bass River Township
- Washington Township

Cape May County
- Dennis Township
- Middle Township
- Upper Township
- Woodbine Borough

Cumberland County
- Maurice River Township

Ocean County
- Barnegat Township
- Beachwood Borough
- Berkeley Township
- Dover Township
- Eagleswood Township*
- Lacey Township
- Lakehurst Borough
- Little Egg Harbor Township
- Manchester Township
- Ocean Township
- South Toms River Borough
- Stafford Township
- Tuckerton Borough

*[*Municipalities with areas in both the Pinelands Protection Area and the Coastal Zone. These areas are all within the Preservation Area of the Pinelands Protection Area (N.J.S.A. 13:18A-1 et seq.).]*

(b) Coastal development shall *[comply]* ***be consistent*** with the *[substantive provisions of the Pinelands Comprehensive Management Plan ("CMP") set forth at N.J.A.C. 7:50. Coastal development that would not comply with the substantive requirements of the CMP or is otherwise inconsistent with the]* intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.) is prohibited.

1. (No change.)

2. The ***Department's*** Land Use Regulation Program *[(formerly the Division of Coastal Resources)]* and the Pinelands Commission will ***coordinate the permit*** review *[applications for development in the Pinelands National Reserve in accordance with]* ***process through the procedure outlined in*** the February 8, 1988 Memorandum of Agreement between the two agencies and any subsequent amendments to that agreement. Copies *[of the agreement]* are available from the Environmental Regulations' Coastal/Land Planning Group at CN 423, 401 East State Street, Trenton, New Jersey 08625.

(c) Coastal activities in areas under the jurisdiction of the Pinelands Commission shall not require a freshwater wetlands permit, or be subject to transition area requirements of the Freshwater Wetlands Protection Act, except that discharge of dredged or fill materials in freshwater wetlands and/or State open waters shall require a State permit ***issued under the provisions of Section 404 of the Federal Water Pollution Control Act of 1972 as***

amended by the Clean Water Act of 1977, or* under *[the]* ***an*** individual or statewide general permit program administered by the State under the provisions of 33 USC 1344 and N.J.S.A. 13:9B-6(b).

*[(d) If sites containing freshwater wetlands are located outside of the Protection Area but within the Pinelands National Reserve, the freshwater wetlands and transition areas on those sites will be subject to the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A). In addition, pursuant to N.J.A.C. 7:7E-3.28, wider buffers may be required in the Pinelands National Reserve to conform with other coastal rules.

(e) In reviewing permit applications for conformance with the Pinelands Comprehensive Management Plan (CMP), the Department will not require strict compliance with the CMP for the following:

1. Stormwater Runoff (N.J.A.C. 7:7E-8.7); and
2. Wetland Buffers (N.J.A.C. 7:7E-3.28).]*

*[(f)]***(d)*** Rationale: The New Jersey Pinelands contain approximately 1,000,000 acres of high quality surface and groundwater resources. In response to the need to protect, preserve and enhance the unique features of the Pinelands and the significant ecological, natural, cultural, recreational, educational, agricultural and public health resources of the pinelands area, the federal government passed the National Parks and Recreation Act of 1978 (P.L. 95-625), the Governor issued Executive Order No. 71 in February 1979, and the Legislature passed the Pinelands Protection Act in June of 1979.

Prior to these actions, under Executive Order No. 56, issued on May 28, 1977, the Governor created the Pinelands Review Committee to delineate a pinelands region and develop a plan to guide State actions affecting that Region. The report of the Pinelands Review Committee, completed in February 1979, stressed the need to take strong action to manage development in the pinelands.

Because the living marine resources in the bays and estuaries of the coastal zone depend on the flow of freshwater from the pinelands, changes to the quality and quantity of the pinelands water resource caused by pollution and contamination would have a significant impact on coastal resources.

The Pinelands Protection Act (Section 22) recognized the overlap between pinelands and coastal management interests and mandated the *[DEPE]* ***DEP***, in consultation with the Pinelands Commission, review the environmental design for the coastal area prepared as required by CAFRA (see N.J.S.A. 13:19-10) which is also within the boundaries of the Pinelands National Reserve. This overlap extends from Pleasant Mills to the Garden State Parkway on both sides of the Mullica River.

*[With regard to the review of coastal permit applications for sites located in the Pinelands National Reserve, the Department will not require strict compliance with the Pinelands Comprehensive Management Plan in the areas of Stormwater Management and Wetlands Buffers. The Department has established a mechanism for protecting wetland buffers or transition areas through the Freshwater Wetlands Protection Act. The standards for establishing wetlands buffers have been developed and implemented through the FWPA, and have been found to adequately protect wetland buffer areas in the coastal zone.

In addition, the Department has developed specific standards for the design and operation of stormwater management systems in the coastal zone, based on extensive technical applications and input from a number of agencies within the Department. Department requirements for stormwater management systems have been designed to minimize impacts to surface or ground waters, in terms of water quality and flood control, through the application of specific standards for stormwater management system design and operation. These standards are more comprehensive than the Pinelands standards, in that they include priority techniques as well as specific design guidelines and specifications, rather than arbitrary setback distances.]*

*[7:7E-3.49 Urban waterfront redevelopment areas

(a) Urban waterfront redevelopment areas include previously developed urban sites, located along the tidal rivers of New Jersey outside of the defined Coastal Area, which are subject to Department jurisdiction pursuant to the Waterfront Development Law. Specifically, these areas are limited to sites located along the Arthur Kill, Hudson River, Newark Bay, and the tidal portions of the Hackensack and Passaic Rivers, and their tributaries, as well as the waterfront area on the Delaware River in Camden City. These areas include industrial sites, previously filled port areas, landfills and railroad yards.

1. In determining which urban waterfront areas have been previously developed, the Department will evaluate the existing site conditions at the time of permit application submission.

(b) For projects which involve the redevelopment of a previously developed urban waterfront site, in the geographic areas listed above, the Department's permit application review will be limited to the following Rules on Coastal Zone Management:

1. Special Areas (N.J.A.C. 7:7E-3): Out of the total of 48 Special Areas rules, only the following 11 will apply to developments located in Urban Waterfront Redevelopment Areas, upland of the mean high water line:

i. Ports (N.J.A.C. 7:7E-3.11), Filled Waters Edge (N.J.A.C. 7:7E-3.23), Flood Hazard Area (N.J.A.C. 7:7E-3.25), Wetlands (N.J.A.C. 7:7E-3.27), Wetlands Buffer (N.J.A.C. 7:7E-3.28), Historic and Archaeological Resources (N.J.A.C. 7:7E-3.36), Endangered or Threatened Wildlife or Vegetation Species Habitat (N.J.A.C. 7:7E-3.38), Special Hazard Areas (N.J.A.C. 7:7E-3.41), Special Urban Areas (N.J.A.C. 7:7E-3.43), Hackensack Meadowlands District (N.J.A.C. 7:7E-3.45), and Hudson River Waterfront Area (N.J.A.C. 7:7E-3.48).

2. Housing Use—Water Area and Water's Edge Housing (N.J.A.C. 7:7E-7.2(b));
3. Energy Use (N.J.A.C. 7:7E-7.4);
4. Port Use (N.J.A.C. 7:7E-7.9);
5. Dredge Spoil Disposal on Land (N.J.A.C. 7:7E-7.12);
6. High Rise Structures (N.J.A.C. 7:7E-7.14);
7. Stormwater Runoff (N.J.A.C. 7:7E-8.7);
8. Public Access to the Waterfront (N.J.A.C. 7:7E-8.11);

(c) Rationale: The State Development and Redevelopment Plan has identified urban revitalization as a critical statewide planning goal. While many of these urban centers have suffered decline, they still include extensive infrastructure systems, industrial uses and other valuable built assets. In addition, these areas are also home to a large labor pool that could, with appropriate investment, become among the State's most valuable human resource assets.

Therefore, this rule is intended to allow for a streamlined application and review of redevelopment projects in the urban waterfront areas defined above, with an emphasis focused on protecting Special Areas, improving surface water quality and facilitating public access to public trust lands (tidal waters of the State). In this way, the Department will concentrate its review on those activities which could result in adverse environmental impacts, while allowing more flexibility to facilitate redevelopment of these previously developed urban waterfront areas.]*

SUBCHAPTER 3A. STANDARDS FOR BEACH AND DUNE ACTIVITIES

7:7E-3A.1 Standards applicable to routine beach maintenance

(a) Routine beach maintenance includes debris removal and clean-up; mechanical sifting; maintenance of access ways; removal of sand from street ends, boardwalks/promenades and residential properties; the repair or reconstruction of existing boardwalks, gazebos and dune walkover structures; and limited sand transfers from the lower beach to the upper beach or alongshore (shore parallel). Sand transfers from the lower beach profile to the upper beach profile are specifically designed to restore berm width and elevation, to establish/enhance dunes and to repair dune scarps. Activities which preclude the development of a stable dune along the back beach are not considered to be routine beach maintenance activities, pursuant to this section. Specifically, the bulldozing of sand from the upper beach (berm) to the lower beach (beach face), for the purpose of increasing the berm width or flattening the beach profile, is not considered to be routine maintenance.

1. If the activities in (a) above are proposed to be conducted by a municipal or county agency on property owned by that governing

body, then the municipal or county engineer must certify that the activities will be conducted in accordance with these standards. The appropriate municipal or county engineer is responsible for ensuring compliance with these requirements. If these activities are proposed to be conducted on privately owned property, then the property owner is responsible for ensuring that the activities will be conducted in accordance with these standards. If these activities are proposed to be conducted on State owned properties, then the *[DEPE]* ***DEP***, Bureau of Construction and Engineering must certify that the activities will be conducted in accordance with these standards.

2. All guidelines and specifications of this section must be incorporated into any contract documents or work orders related to proposed beach and dune activities, as described in this section. The Land Use Regulation Program is available to assist in the development of specific maintenance plans for oceanfront locations, upon request.

(b) Projects involving the mechanical redistribution of sand from the lower beach profile to the upper beach profile, or alongshore, are acceptable, in accordance with the following standards:

1. The amount of sand transferred at any one time shall be limited to one foot scraping depth at the borrow zone. This borrow zone may not be rescraped until the sand volume from the previous scraping activities has been fully restored.

2. The borrow zone shall be limited to the area between the low water line and the inland limit of the berm. It is strongly recommended that a program of beach profiling be utilized to monitor the condition of the beaches and to ensure compliance with the standards of this section.

3. If the purpose of the sand transfers is to repair eroded dunes (dune scarps), all filled areas shall be stabilized with sand fencing and planted with beach grass in accordance with *[DEPE]* ***DEP*** and/or SCS standards. Fencing shall be in place within 30 days of the transfer operation, while the vegetative plantings may be installed during the appropriate seasonal planting period (October 15 through March 31, anytime the sand is not frozen).

4. There shall be no disturbance to existing dune areas.

5. In areas of documented habitat for endangered nesting shorebirds (Piping Plovers and Least Terns), no sand transfers shall take place between April 1 and August 1. The Land Use Regulation Program, in coordination with the Division of Fish, Game and Wildlife, will determine affected areas.

6. Records of all sand transfer activities shall be maintained by the property owner, beach association, governmental agency or other authority conducting the activities, and shall be available for inspection by the Department, upon request. These records shall include, but not be limited to, dates of transfer, borrow area limits, fill area limits, estimates of the amount of sand transferred, the name of the person(s) supervising the transfer activities, and the engineering certification required (if appropriate) for all sand transfer activities.

7:7E-3A.2 Standards applicable to emergency post-storm beach restoration

(a) This section on emergency post-storm beach restoration will apply to all beaches which are impacted by coastal storms with a recurrence interval equal to or exceedings a five-year storm event.

(b) Beach restoration activities, as part of an emergency post-storm recovery, include: the placement of clean fill material with grain size compatible with (or larger than) the existing beach material; the bulldozing of sand from the lower beach profile to the upper beach profile; the alongshore transfer of sand on a beach; the placement of concrete or rubble; and the placement of sand filled geotextile bags of tubes. The placement of sand filled geotextile bags or tubes is preferred to the placement of concrete, rubble or other material.

(c) The emergency post-storm beach restoration activities in (b) above should be designed and implemented as a means to restore the beaches to the pre-storm condition, or to restore the beaches to a level sufficient to provide protection from a storm event with a minimum recurrence interval of five years (five-yearstorm protection). For the purpose of this section, five-year storm protection equates to a minimum 30-foot wide berm at elevation +8 Mean Sea Level *[(NGVD)]* ***(NAD, 1983***. Restoration beyond the pre-storm beach condition ***is encouraged by the Department, but*** will not be considered "emergency post-storm beach restoration," pursuant to this section.

(d) The bulldozing of sand from the lower beach profile to the upper beach profile, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. Bulldozing is limited to the beach area landward of the low water line. Removal of material from below the low water line is considered dredging, and is not authorized pursuant to this section; and

2. The beach face cannot be graded to a slope steeper than 1:3.

(e) The longshore transfer of sand from one beach area to another, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. No disturbance to existing dune areas is permitted;

2. Sand borrow areas shall not be bulldozed to a depth which exceeds one foot;

3. The borrow areas may not be rescraped until full sand volume recovery has occurred; and

4. An adequate supply of sand is available at the borrow area site, so that the relocation of this material will not decrease the level of protection adjacent to the borrow area.

(f) The placement of sand filled geotextile bags or tubes, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. The bags or tubes shall be placed along the toe of any scarped dune, or seaward of the dune toe, and not on the dune itself; and

2. The tubes or bags should be tapered at the end of the project area, to minimize the impact to adjacent areas which are not protected by the bags/tubes.

(g) The placement of sand, gravel, rubble, concrete, or other inert material, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. All material shall be non-toxic sand, gravel, concrete, rubble, or other inert material;

2. The placement of concrete or rubble shall be temporary in nature, and is not to be used as permanent protection, unless it is part of a *[DEPE]* ***DEP*** approved, engineered design for permanent shore protection;

3. All concrete and rubble placed on the beach shall be removed within 90 days, unless the placement is part of a DEPE approved, engineered design for permanent shore protection; and

4. The use of automobiles, tires, wood debris, asphalt, appliances or other solid waste is prohibited.

7:7E-3A.3 Standards applicable to dune creation and maintenance

(a) Dune creation and maintenance includes the placement and/or repair of sand fencing (including wooden support posts), the planting and fertilization of appropriate dune vegetation, the maintenance and clearing of beach access pathways less than eight feet in width, and the construction or repair of approved dune walkover structures. Bulldozing, excavation, grading, vegetation removal or clearing, and relocation of existing dunes are not authorized pursuant to this section.

(b) All dune creation and maintenance activities should be conducted in accordance with the specifications found in Guidelines and Recommendations for Coastal Dune Restoration and Creation Projects (*[NJDEPE]* ***DEP***, 1985), and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (Soil Conservation Service, 1992). The Department will provide site specific technical assistance for dune creation and maintenance projects, upon request.

(c) All proposed dune vegetation should be limited to the following coastal species: American Beachgrass (Ammophila breviligulata), Coastal Panicgrass (Panicum amarulum), Japanese Sedge (Carex kobomugi), Bayberry (Myrica pennsylvanica), Rugosa Rose (Rosa rugosa), Beach Plum (Prunus maritima), Shore Juniper (Juniperus conferta), and Japanese Black Pine (Pinus thunbergii). Although they may not be currently available from commercial nurseries at this time, the following plant species are also well suited to the dune

environment: Seaside Goldenrod (Solidago sempervirens), Dusty Miller (Artemesia stelleriana), Beach Pea (Lathyrus japonicus), Sea Oats (Uniola paniculata), Bitter Panicgrass (Panicum amarum), and even Saltmeadow Cordgrass (Spartina patens).

1. American beachgrass is the preferred species for the stabilization of newly established dunes, and for stabilization of the primary frontal dune. Woody plant species are suitable for back dune and secondary dune environments. Herbaceous plant species are preferred as supplemental plantings for all dune areas.

2. Dune vegetation should be diversified as much as possible, in an effort to provide continuous stabilization in the event that pathogens reduce or eliminate the effectiveness of one species. A complex of associated grasses, herbaceous species and woody species is preferred to the planting of one species.

(d) The construction of elevated timber dune walkover structures shall be in accordance with the standards and specifications (or similar specifications) described in Beach Dune Walkover Structures (Florida Sea Grant, 1981). The construction of elevated dune walkover structures, particularly at muncipal street-ends and other heavily used beach access points, is preferred to the construction of pathways or walkways through the dunes.

1. Copies of the *[NJDEPE]* ***DEP*** and Florida Sea Grant reports are available from the *[NJDEPE]* ***DEP***, Land Use Regulation Program, CN 401, Trenton, NJ 08625. Copies of the Soil Conservation Service report are available directly from the Soil Conservation Service, Plant Materials Center, 1536 Route 9 North, Cape May Court House, NJ 08210.

(e) The construction of at-grade dune walkovers is acceptable only at single family and duplex residential dwellings, subject to the following conditions:

1. Only one walkover per ***residential*** building is allowed;

2. The width of the walkover must not exceed four feet;

3. The walkover shall be fenced on both sides through the use of sand fencing;

4. The use of unrolled sand fencing as a base for the walkover is preferred to the use of planks and boards. Sand fence based walkovers allow for easier seasonal removal and placement, and allow for greater growth of beachgrass, while still providing an adequate base for pedestrian traffic; and

5. Solid boardwalk type walkovers shall be elevated at least one foot above the dune, to allow for movement of sand and vegetative growth under the boardwalk structure.

(f) The controlled use of discarded natural Christmas trees for the purpose of dune stabilization is generally discouraged, but may be acceptable, in accordance with the standards set forth below. Discarded Christmas trees serve the same function as sand fencing, by trapping wind blown sand and facilitating sand deposition and dune formation. However, uncontrolled or inappropriate placement of trees will hinder the development of dunes and may present a fire hazard.

1. Only natural, coniferous trees are suitable for use in dune stabilization. The use of tree limbs, clippings, artificial trees, and other dead vegetation is prohibited;

2. Trees should be placed at least 100 feet landward of the high water line, in areas which are generally not subject to *[normal]* ***spring*** tidal *[innundation]* ***inundation*** and wave swash action;

3. The placement of trees should be oriented against the prevailing winds, in either a straight line or zig-zag formation;

4. The trees should be installed by overlapping the stump end of one tree with the pointed end of another, and then anchoring the connection point with a sufficient amount of sand to hold the trees in place;

5. Newly placed trees should be monitored to ensure that the trees remain anchored and do not become dislodged. Additional quantities of sand or wooden anchor stakes may be used to hold the trees in place until they become stabilized; and

6. All newly deposited sand should be stabilized through the planting of beachgrass, during the appropriate planting season.

7:7E-3A.4 Standards applicable to the construction of boardwalks

(a) The construction of ***oceanfront or bayfront*** boardwalks should address a number of engineering concerns related to structural support, resistance to vertical and horizontal water and wind loads, and scouring. The construction of *[timber]* boardwalks along tidal shoreline is acceptable, in accordance with the following standards:

1. All timber support piles shall be a minimum of eight inches in diameter;

2. Support piles should be driven to a depth of at least –10 feet (mean sea level), for all V-zone locations. In A-zones, the depth of penetration should be at least –five feet (mean sea level);

3. The method for insertion of piles should be a pile driver or drop hammer;

4. All support joists and timber connections should be anchored through the use of hurricane clips or metal plates; and

5. All metal fasteners, including but not limited to bolts, screws, plates, clips, anchors and connectors, shall be hot dipped galvanized.

SUBCHAPTER 3B. INFORMATION REQUIRED IN ***WETLAND*** MITIGATION PROPOSALS

7:7E-3B.1 Mitigation proposal requirements

(a) ***Mitigation proposals based on the disturbance of freshwater wetlands must also conform to the standards found at N.J.A.C. 7:7A-14.4.*** All mitigation proposals submitted to the Land Use Regulation Program shall include, but not be limited to:

1. An introduction describing the wetland mitigation proposal. The introduction should include the specific goals of the mitigation proposal and a discussion of how the mitigation proposal will satisfy those goals;

2. A description (that is, size, type, vegetation, hydrology, etc.) of the wetlands that are being destroyed or disturbed;

3. Photographs of the proposed mitigation site;

4. The names and addresses of current and proposed owner(s) of the mitigation project site;

5. A description of the existing ecosystem of the mitigation site, including a discussion of the vegetation, soils, and hydrology, wildlife and adjacent land use;

6. A discussion relative to the proposed hydrology of the mitigation site. The discussion should focus on the sources of water for the mitigation project, provide seasonal high water table information as well as the projected elevation of final grade of the mitigation project in relation to mean sea level (MSL), along with slope percent;

7. The tidal range of the mitigation site and the salinity range of adjacent inundating waters;

8. The existing soils types with soil borings to document seasonal high water tables, with a discussion relating to the created substrate of the proposed mitigation site, including a description of how the substrate of the site will be prepared, whether the pH is appropriate and any other pertinent factors;

9. A planting scheme of the proposed vegetative community depicted on the mitigation site plans, including spacing of all plantings, stock type (bare root, potted, seed), size, and the source of the plant material;

10. A copy of a deed restriction which provides that no regulated activities will occur in the mitigation area or its associated transition area and that it will remain as a natural area in perpetuity. Proof that the deed restriction has been registered with the County Clerk (or the Registrar of Deeds and Mortgages if applicable) is required within 60 days following approval of the mitigation proposal;

11. A metes and bounds description of the proposed mitigation site which forms the basis for the deed restriction. The metes and bounds description shall include the transition area;

12. The New Jersey Wetlands/Tidelands Map number(s) for the development site (and the mitigation site if it is at a different location) as well as block and lot numbers and ownership of the mitigation site;

13. The actual cost estimate of the mitigation proposal. The cost estimate should include the cost of land, site preparation, engineering costs, plantings and any other items incidental to the mitigation proposal;

14. Five folded copies of a site plan for the mitigation project which includes:

i. The project location within the region;

ii. The lot and block number of the mitigation project location;
iii. Existing and proposed elevations and grades of the mitigation site in one foot intervals; and
iv. Plan views and cross sectional views;
15. A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map showing the location of the property and its general vicinity, indicating and labeling the location of the proposed mitigation and the property boundaries, and a determination of the State Plan Coordinates for the center of the mitigation site. The accuracy of these coordinates should be within 50 feet of the actual center point. For linear mitigation projects, the applicant shall provide State Plane Coordinates for the endpoints of those projects which are 1,999 feet or less, and for those projects which are 2,000 feet and longer, additional coordinates at each 1,000 foot interval; and
16. In accordance with N.J.A.C. 7:7A-14.1, obtain a secured bond or other financial surety acceptable to the Department including an irrevocable letter of credit or money in escrow, that shall be sufficient to hire an independent contractor to complete and maintain the proposed mitigation should the permittee default. The financial surety for the construction of the mitigation project shall be posted in an amount equal to 115 percent of the estimated cost of construction. In addition, the financial surety to assure success of the mitigation shall be posted in an amount equal to 30 percent of the estimated cost of construction. The financial surety will be reviewed annually and shall be adjusted to reflect current economic factors. ***Mitigation for the loss of freshwater wetlands within the coastal zone shall comply withe the Coastal Permit Program Rules at N.J.A.C. 7:7, Rules on Coastal Zone Management at N.J.A.C. 7:7E, and Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A. Mitigation for the loss of tidal wetlands must comply with the Coastal Permit Program Rules at N.J.A.C. 7:7 and the Rules on Coastal Zone Management at N.J.A.C. 7:7E.***

SUBCHAPTER 3C. ASSESSING IMPACTS TO ENDANGERED AND THREATENED WILDLIFE SPECIES IN ENVIRONMENTAL IMPACT ASSESSMENTS

7:7E-3C.1 Performance standards
(a) Performance standards for habitat assessments are as follows:
1. Assessments of endangered or threatened wildlife should begin by contacting the New Jersey Natural Heritage Program to obtain information on the known occurrences of endangered and threatened species on and within the vicinity of the site. This is known as the "Master" species list.
2. An evaluation of habitat including examination of vegetation cover, soils, hydrology and existing land use shall be made for the site and surrounding areas. The site's vegetative analysis shall include an on-site investigation and evaluation. The surrounding areas investigation shall consist of air photos or appropriate cover maps.
3. Based on the assessment of habitat and general habitat associations of species on the "Master" list, a list of endangered, threatened, or other rare species that may be present on the site shall be developed. This is known as the potential species list. The applicant shall be able to justify excluding any species from the master list in developing the list of potential species.
4. A survey shall be performed for all species on the list of potential species unless detailed evaluation of habitat and comparison with individual species habitat requirements suggests that no suitable habitat exists on, or immediately adjacent to, the subject property. The "survey" list is therefore comprised of all species on the potential list except those for which the consultant presents convincing evidence that suitable habitat does not exist. Most of the species on the survey list will be species that could occur based on the presence of suitable habitat and/or known occurrences within the site's vicinity. No survey need be performed for species confirmed to occur on the site according to the Natural Heritage Database. In such a case, the National Heritage Database provides positive evidence to support a finding of potential negative impacts to endangered or threatened species habitats. Field studies should focus on documenting the location and extent of habitats for the confirmed species.
5. Surveys for all species on the survey list should be performed using scientific methodology appropriate for each species or species group. When surveys confirm the occurrence of any endangered or threatened species, additional habitat assessment should be performed to determine the location and extent of habitat for the confirmed species.

7:7E-3C.2 Reporting standards
(a) Reporting standards for habitat assessments are as follows:
1. The environmental impact assessment shall provide proof of correspondence with the Natural Heritage Program including copies of all correspondence with the Natural Heritage Program and, if applicable, the *[DEPE's]* ***DEP's*** Endangered and Nongame Species Programs.
2. The environmental impact assessment shall provide a description of the habitat on site and a description of the surrounding habitat.
3. The environmental impact assessment shall provide the list of potential species as described in N.J.A.C. 7:7E-3C.1(a)3. It shall provide justification for excluding any species mentioned by the New Jersey Natural Heritage Program as occurring on site or in the vicinity of the subject property. For example, the Natural Heritage Program list of species occurring in the areas may include the bog turtle. If the subject property is comprised entirely of uplands, justification for excluding the Bog Turtle from the list of potential species would be based on the lack of a suitable habitat.
4. A description of the habitat requirements for each species on the potential list shall be provided, including appropriate literature citations.
5. The environmental impact assessment shall provide the survey list of species as described in N.J.A.C. 7:7E-3C.1(a)4. The environmental impact assessment shall also provide detailed justification for excluding any species from the survey list that appears on the potential list. This justification shall consist of detailed assessment of habitat conditions on and within the vicinity of the project site in comparison with known habitat requirements of the particular species. Habitat requirements of that particular species should be obtained from review of the appropriate scientific literature and/or from the Natural Heritage Program, Endangered and Nongame Species Program, or (for wetlands species) from the *[DEPE]* ***DEP*** Land Use Regulation Program. Literature citations shall be provided.
6. The environmental impact assessment shall provide a description of the methodology used to survey for each species on the survey list. The methodology followed should be based on established acceptable techniques for the particular species and should provide the following information: best time of year to survey, best time of day, minimal time required, minimal number of sampling points, plot transacts, etc., and the minimum number of replications. The assessment should also provide literature citations for the techniques used. The assessment shall describe how the particular methodology was applied to this survey, giving the following information: surveyors names, dates and times surveys performed, number of samples, number of replications. This information shall be provided for each species surveyed or indicate when one survey covered more than one species.
7. The assessment shall provide the names and qualifications of all investigators performing habitat and/or species surveys.
8. The findings of all species surveys shall be provided whether negative or positive.
9. The assessment of potential impacts shall reflect reasonable ecological principles. That is, if any rare or endangered species or potential habitats are found to be present on or immediately adjacent to the site, the environmental impact assessment shall describe the likely affects of the proposed development on the local populations of the particular species. This evaluation should be based on habitat requirements and life history of each species, and the way in which the proposed development may alter habitat, including: vegetation,

soils, hydrology, affects on competitor, parasite, or predator species, human disturbance, etc. For example, a golf course will introduce pesticides and fertilizers into the groundwater, affecting the physical and biological characteristics of nearby streams and ponds that may serve as breeding sites for rare amphibians. The report should present detailed information, including maps, showing the location of all confirmed endangered and threatened species occurrences. The report should also include a description or maps illustrating the location and extent of suitable habitat for all species for which suitable habitat is confirmed to occur on the project site.

SUBCHAPTER 4. GENERAL WATER AREAS

7:7E-4.1 Definition

(a) General Water Areas are first divided into water and land by the same definitions used for Special Areas, N.J.A.C. 7:7E-3.1. Water and land are further subdivided into General Area types. The water's edge has no General Area types since all water's edge areas are one or more Special Area types.

(b) This subchapter defines General Water types, assigns General Water Area rules to each and summarizes the rationale and intent of the rules.

1. In many cases an area already identified as a Special Area will also fall within the definition of a General Area. In these cases, both General and Special Area rules will apply. In case of conflict between General and Special Area rules, the more specific Special Area rules shall apply.

2. General Water Areas are areas which lie below either the Spring high water line or the normal water level of non-tidal waters. Except at a time of drought or extreme low tide, these areas are permanently inundated.

3. General Water Areas are divided by volume and flushing rate into eight categories as defined below:

i. "Lakes, ponds and reservoirs" includes relatively small water bodies with no tidal influence or salinity. Many are groundwater fed, while others serve as surface aquifer recharge areas. Lakes that are the result of former mining operations are not included in this definition, but are defined at N.J.A.C. 7:7E-3.14, Wet Borrow Pits.

ii. "Large rivers" means waterways with watersheds greater than 1,000 square miles. Large Rivers are limited to the Delaware, Hudson and Raritan Rivers.

(1) The Delaware River is a tidal river from the Bridge Street Bridge in Trenton to its mouth at Delaware Bay, defined as a line between Alder Cover, Lower Alloways Creek Township and the Delaware River Basin Commission-River and Bay Memorial at Liston Point Delaware.

(2) The Hudson River is a tidal river from the New York State Line to its mouth at Upper New York Bay at the Morris Canal, Jersey City.

(3) The Raritan River is a tidal river from a point approximately 1.1 miles upstream from the Landing Lane Bridge between Piscataway and Franklin Townships to its mouth at Raritan Bay and the Arthur Kill.

iii. "Man-made harbors" means semi-enclosed or protected water areas which have been developed for boat mooring or docking.

iv. "Medium rivers, creeks and streams" means rivers, streams and creeks with a watershed of less than 1,000 square miles. This definition includes waterways such as the Hackensack, Passaic, Oldmans, Big Timber, Pennsauken, Navesink, Manasquan, Toms, Wading, Mullica, Great Egg, Maurice, Cohansey, Salem, and Rancocas (see Appendix, Figures 13c-e, incorporated herein by reference).

v. "Ocean" includes the area of the Atlantic Ocean from the marine boundary with the State of New York in the Raritan Bay and Sandy Hook Bay south to the marine boundary with the State of Delaware in Delaware Bay, near Cape May Point (see Appendix, Figure 13c).

vi. "Open bay" means a large, semi-confined estuary with a wide unrestricted inlet to the ocean and with a major river mouth discharging directly into its upper portion. Open bays are limited to the Delaware Bay, Raritan Bay, Sandy Hook Bay and Upper New York Bay (see Appendix, Figure 13b, incorporated herein by reference).

vii. "Semi-enclosed and back bay" means a partially confined estuary with direct inlet connection and some inflow of freshwater. Semi-enclosed bays differ from black bays in depth, degree of restriction of inlet and level of freshwater flow.

viii. "Tidal guts" means the waterway connection between two estuarine bodies of water. Also known as thorofares, tidal guts control the mix of salt and freshwater. Examples include the Arthur Kill and Kill Van Kull (see Appendix, Figures 13a-e, incorporated herein by reference).

7:7E-4.2 Acceptability Conditions for Uses

(a) Numerous developments or activities seek locations in New Jersey's coastal waters. Some uses involve locations both above and below the mean high water line, in both Water and Water's Edge areas. This section defines the important uses of water areas managed by the Coastal Management Program and the conditions under which those uses are acceptable. Some projects involve combinations of uses, such as retaining structures, dredging, and filling. Other uses, such as Shore Protection uses, are defined elsewhere under Use rules.

(b) Standards relevant to aquaculture are as follows:

1. Aquaculture is the use of permanently inundated water areas, whether saline or fresh, for the purpose of growing and harvesting plants or animals in a way to promote more rapid growth, reduce predation, and increase harvest rate. Oyster farming in Delaware Bay is a form of aquaculture.

2.-3. (No change.)

(c) Standards relevant to boat ramps are as follows:

1. Boat ramps are inclined planes, extending from the land into a water body for the purpose of launching a boat into the water until the water depth is sufficient to allow the boat to float. Boat ramps are most frequently paved with asphalt or concrete, or covered with metal grates.

2. The acceptability conditions for boat ramps are as follows:

i. Boat ramps are conditionally acceptable provided they meet the following conditions:

(1) There is a demonstrated need that cannot be met by existing facilities;

(2) They cause minimal practicable disturbance to intertidal flats or subaqueous vegetation;

(3) Boat ramps shall be constructed of environmentally acceptable material, such as concrete or oyster shells;

(4) Garbage cans shall be provided near the boat ramp.

ii. Public use ramps shall have priority over restricted use and private ramps.

3. (No change.)

(d) Standards relevant to docks and piers (for Cargo and commercial fisheries) are as follows:

1.-3. (No change.)

(e) Standards relevant to docks and piers (recreational) are as follows:

1. Recreational and fishing docks and piers are structures supported on pilings driven into the bottom substrate, or floating on the water surface ***or cantilevered over the water***, which are used for recreation or fishing or for the mooring of boats used for recreation or fishing, except for commercial fishing, and house boats.

2. Recreational docks and piers, including mooring piles, are conditionally acceptable in General Water Areas provided that:

i.-v. (No change.)

vi. The width of the structure shall not exceed twice the clearance between the structure and the surface of the ground below or the water surface at mean high tide (measured from the bottom of the stringers), except for floating docks. Under typical circumstances the maximum width of the structure shall be eight feet over water and six feet over marsh, wetlands and mudflats. The height of the structure over wetlands shall be a minimum of four feet regardless of width;

(1) A minimum of eight feet of open water shall be provided between any docks if the combined width of the docks over the water exceeds eight feet.

(2) Construction and placement of the dock shall be a minimum of four feet from all property lines, for docks which are perpendicular to the adjacent bulkhead or shoreline.

vii. In lagoons the structure extends no more than 20 percent of the width of the lagoon from bank to bank; and

viii. The proposed structure does not hinder navigation or access to adjacent water areas.

3. The construction of recreational docks and piers within areas designated by the Department as shellfish habitat must comply with the standards specified under the Shellfish Habitat rule (N.J.A.C. 7:7E-3.2).

4. The construction of recreational docks within submerged vegetation areas must comply the standards specified under the Submerged Vegetation rule (N.J.A.C. 7:7E-3.6).

5. Jet ski ramps are inclined floating docks which are typically attached to existing docks for the purpose of docking jet skis. Jet ski ramps shall not exceed eight feet in width.

6. For sites which have existing dock structures exceeding eight feet in width over water areas and/or wetlands, which were constructed prior to September 1978 and for which the applicant proposes to increase the coverage over the water area or wetland by increasing the number or size of boat slips, docks or piers, the existing oversized structures must be reduced to a maximum of eight feet in width. All structures proposed as part of an expansion must comply with all of the applicable Rules on Coastal Zone Management (N.J.A.C. 7:7E.).

7. All docks and pier construction must not hinder access to adjacent docks, piers, moorings or water areas.

*[7.]***8.*** Rationale: Docks and piers constructed through filling would permanently destroy most ecological value of the area filled and are consequently discouraged. Docks and piers with the maximum spacing between horizontal planking and of the minimum practicable width will allow sunlight penetration into the water and onto the bottom, thus allowing continued photosynthesis by plants underneath the structure. Also, spaced planking helps protect loosening of boards during high water levels and wave slap from underneath.

Docks and piers built on pilings will undergo ice heaving, frequently leading to structural damage, during thick ice conditions in areas with significant tidal action. Normal length pilings need to be resunk annually due to ice raising unless some type of water circulation system is installed or ice is broken up daily. Floating docks need to be removed before winter and bottom floatation needs to be serviced annually. Cantilevered docks at a height above winter ice and tidal action levels do not have these problems but have limits in load bearing capacity and must be fastened to a bulkhead.

Jet skis have been gaining popularity among New Jersey's boating public. Jet ski ramps which can accommodate the "dry" docking of these vehicles can be designed to satisfy the needs of the public while minimizing adverse impacts to the environment.

(f) Standards relevant to maintenance dredging are as follows:

1. Maintenance *[Dredging]* ***dredging*** is the removal of accumulated sediment from previously authorized and legally dredged navigation and access channels marinas, lagoons, canals or boat moorings for the purpose of maintaining an authorized water depth and width for safe navigation. In order to be considered maintenance dredging, the proposed dredge area must be limited to the same depth, length and width of the previous dredging operation. Dredging beyond those authorized dimensions is "new dredging" (see (g) *[above]* ***below***).

2. Maintenance dredging is conditionally acceptable to the authorized depth, length and width within all General Water Areas to ensure that adequate water depth is available for safe navigation, provided that:

i. An acceptable ***dredged*** material disposal site with sufficient capacity exists (see (g) below and N.J.A.C. 7:7E-7.12 for rules on dredged material disposal).

ii. Pre-dredging chemical and physical analysis of the dredged material and/or its elutriate may be required where the Department suspects contamination of sediments. Additional testing, such as bioaccumulation testing, and bioassay of sediments, may also be required. The results of these tests will be used to determine if contaminants may be resuspended at the dredging site and what methods may be needed to control their escape. The results will also be used to determine acceptability of the proposed disposal method.

iii. Turbidity concentrations (that is, suspended sediments) and other water quality parameters at, downstream, and upstream of the dredging site, and slurry water overflows shall meet applicable State Surface Water Quality Standards in N.J.A.C. 7:9-4. *[NJDEPE]* ***NJDEP*** may require the permittee to conduct biological, physical and chemical water quality monitoring before, during and after dredging and disposal operations to ensure that water quality standards will not be exceeded.

iv. If predicted water quality parameters are likely to exceed State Surface Water Quality Standards, or if pre- dredging chemical analysis of dredged material or elutriate reveals significant contamination, then the Department will work cooperatively with the applicant to fashion acceptable control measures and will impose seasonal restrictions under the specific circumstances identified below.

v. For maintenance dredging using mechanical dredges such as clamshell bucket, dragline, grab, orange peel, or ladders, deploying silt curtains at the dredging site may be required, if feasible based on site conditions. In sites at which the use of silt curtains is infeasible, dredging using closed watertight buckets or lateral digging buckets will be examined. *[NJDEPE]* ***NJDEP*** may decide not to allow mechanical dredging of highly contaminated sites even if turbidity control measures were planned.

vi. In the waterways characterized below, if the applicant for mechanical maintenance dredging cannot meet the acceptability conditions in (f)i through v above, then the Department will authorize dredging on a seasonally restricted basis only, in waterways characterized by the following:

(1) Known spawning or nursery areas of Endangered shortnose sturgeon (N.J.A.C. 7:7E-3.38);

(2) (No change.)

(3) Waterbodies downstream of known anadromous fish spawning sites, as in N.J.A.C. 7:7E-3.9, where the predicated turbidity plume will encompass the entire cross-sectional area of the water body, thus forming a potential blockage to upstream migration;

(4)-(6) (No change.)

vii. For hydraulic dredges, if the applicant cannot meet the above acceptability conditions in (f)i through v above, specific operational procedures, such as removal of cutter head, flushing of pipeline sections prior to disconnection, limitations on depth of successive cuts, etc. shall be examined. Seasonal dredging restrictions may be imposed in the following areas to prevent entrainment and mortality of aquatic organisms:

(1) Known female blue crab winter hibernation areas;

(2) Known spawning, nursery, or wintering areas of the endangered shortnose sturgeon as in N.J.A.C. 7:7E-3.38 and/or winter flounder; or

(3) Known wintering areas of adult Atlantic or shortnose sturgeon, striped bass and/or white perch.

3. To mitigate adverse impacts upon Shellfish Habitat (N.J.A.C. 7:7E-3.2) or Endangered and Threatened Wildlife or Vegetation Species Habitat (N.J.A.C. 7:7E-3.38), Finfish Migratory Pathways (N.J.A.C. 7:7E-3.5), Marine Fish and Fisheries (N.J.A.C. 7:7E-8.2) and wintering area for finfish or blue crabs, and to prevent reduction of ambient dissolved oxygen below critical levels, or the increase of turbidity or the resuspension of toxic substances above critical levels, seasonal limitations may be imposed on maintenance dredging as specifically described in this subsection.

4. Rationale: Maintenance dredging is necessary to provide access to marinas, docks, ports, and other appropriate water dependent development, but it must be carried out in such a way that Special Areas and other identified environmentally sensitive areas are not unnecessarily disturbed.

Potential water column impacts vary with each type of dredging method employed i.e., mechanical or hydraulic. Mechanical methods have been documented to release more suspended sediments at the

dredging site than hydraulic methods. Hydraulic dredging causes greater mixing of sediments with water which is an important consideration when dredging contaminated sites, since slurry water is usually released into the water body.

Previously dredged areas typically accumulate black muds high in clay and silt, detritus and other organics and if sources are present, toxic heavy metals, petroleum and other chlorinated hydrocarbons. The majority of potentially toxic contaminants are closely bound to fine grain sediment particles and may not therefore be available for uptake by aquatic organisms. This is why bioaccumulation testing is necessary. Fine grain sediments have a greater potential to create turbidity than do heavier sand sediments.

Presently available equipment and operational practices can contain or reduce off site movement of suspended particles. Efficiency and applicability of control equipment depends on hydrologic conditions at the site.

The information available on aquatic species responses and/or mortality due to dredge-induced water quality changes is incomplete. It is known however that egg and larval forms of aquatic biota are more sensitive than adult stages. American oyster eggs and larvae are known to be sensitive to turbidity levels and durations that typically occur at mechanical dredging sites. Turbidity is known to block upstream migration of striped bass. Turbidity may, therefore, block other anadromous species during spring upstream migration.

Little information exists on the resuspension of fecal bacteria in contaminated sediments. The potential exists that dredging turbidity plume could carry fecal bacteria into harvestable shellfish beds or human bathing beaches. This may result in unacceptable human health hazards.

Aquatic finfish and blue crabs which winter in New Jersey's estuarine and tidal waters are lethargic at cold water temperatures. Large scale mechanical or hydraulic dredging could entrain and kill significant numbers, since they would not be able to evacuate a dredging area.

(g) Standards relevant to new dredging are as follows:

1. (No change.)

2. Acceptability conditions for new dredging area as follows:

i. New dredging is conditionally acceptable in all General Water Areas for boat moorings, navigation channels or anchorages (docks) provided that:

(1)-(5) (No change.)

(6) Dredging will be accomplished consistent with all conditions described under the maintenance dredging provisions, (f)2(i) through vii above, as appropriate to the dredging method;

(7)-(8) (No change.)

(9) The maximum depth of the newly dredged area will not exceed that of the connecting access or navigation channel necessary for vessel passage to bay or ocean; and

(10) Dredging will have no adverse impacts on groundwater resources.

ii. To mitigate adverse impacts upon Shellfish Habitat (N.J.A.C. 7:7E-3.2), Endangered or Threatened Wildlife or Vegetation Species Habitat (N.J.A.C. 7:7E-3.38), Finfish Migratory Pathways (N.J.A.C. 7:7E-3.5), Marine Fish and Fisheries (N.J.A.C. 7:7E-8.2), spawning or wintering areas for finfish, or female blue crab wintering areas, and to prevent reduction of ambient dissolved oxygen below critical levels, or the increase of turbidity or the resuspension of toxic substances above critical levels, seasonal and/or dimensional limitations may be imposed on new dredging.

iii.-v. (No change.)

(h) Standards relevant to dredged material disposal are as follows:

1. Dredged material disposal is the discharge of sediments removed during dredging operations.

2. Acceptability conditions relevant to dredged material disposal are as follows:

i. Dredged material disposal is prohibited in tidal guts, man-made harbors, and medium rivers, creeks and streams.

ii. Dredged material disposal is discouraged in open bays, semi-enclosed and backbays where the water depth is less than six feet.

iii. Disposal of dredged materials in the ocean and bays deeper than six feet is conditionally acceptable provided that it is in conformance with the USEPA and US Army Corps of Engineers Guidelines parts 220-228 and 33 CFR, Parts 320-330 and 335-338) established under Section 404(b) of the Clean Water Act.

iv. EPA Guidelines require that consideration be given to the need for the proposed activity, the availability of alternate sites and methods of disposal that are less damaging to the environment, and applicable water quality standards. They also require that the choice of the site minimize harm to municipal water supply intakes, shellfish, fisheries, wildlife, recreation, threatened and endangered species, benthic life, wetlands and submerged vegetation, and that it be confined to the smallest practicable area.

v. (No change.)

vi. Overboard disposal of sediments less than 90 percent sand shall be acceptable in unconfined disposal sites when shallow waters preclude removal to an upland or confined site provided that: Shellfish Habitats (as defined in N.J.A.C. 7:7E-3.2) are not within 1,000 meters; disposal will not smother or cause condemnation or contamination of harvestable shellfish resources (as in N.J.A.C. 7:7E-3.2); and sediment characteristics of the dredged material and disposal site are similar. If unconfined aquatic disposal can not meet these conditions, then *[NJDEPE]* ***NJDEP*** shall impose a seasonal restriction appropriate to the resource of concern.

vii. Uncontaminated dredged sediments with 75 percent sand or greater are generally encouraged for beach nourishment.

viii. Dredged material disposal in lakes, ponds and reservoirs is prohibited.

ix. Conditions for dredged material disposal on land are indicated in N.J.A.C. 7:7E-7.12.

3. Rationale: Dredged material disposal can have significant adverse effects, such as introduction of heavy metals, burial of benthic flora and fauna and increased turbidity. Therefore, dredged material disposal is prohibited or discouraged in smaller water bodies which have lesser assimilative capacities and is conditionally acceptable in larger water bodies if in conformance with the USEPA Guidelines. Unconfined overboard (or open water) disposal, particularly of hydraulically dredged fine grain sediments, frequently forms a "fluid mud" layer along the water body bottom. Fluid muds have been documented to cause acute mortality of aquatic benthic organisms due to low oxygen levels and slow rate of consolidation. Movement of fluid muds away from an unconfined dredged material disposal site can not be controlled with silt curtains.

(i) Standards relevant to dumping (solid waste or sludge) are as follows:

1. The dumping of solid waste or sludge is the discharge of solid or semi-solid waste material from industrial or domestic sources or sewage treatment operations into a water area.

2. Acceptability conditions: The dumping of solid or semi-solid waste of any description in any General Water Area is prohibited.

3. Rationale: Dumping of solid and semi-solid waste in coastal waters would have significant adverse environmental and aesthetic effects and would be harmful to the coastal recreational economy. The existence of land sites makes coastal dumping unnecessary.

(j) Standards relevant to filling are as follows:

1. Filling is the deposition of material (sand, soil, earth, dredged material, etc.) into water areas for the purpose of raising water bottom elevations to create land areas.

2. Acceptability conditions relevant to filling are as follows:

i. Filling is prohibited in lakes, ponds, reservoirs, and open bay areas at depths greater than 18 feet, unless the filling is consistent with the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) and Regulations, N.J.A.C. 7:7A.

ii. In all other natural water areas, filling is discouraged, but limited filling may be considered for acceptability provided that:

(1)-(3) (No change.)

(4) The minimum practicable area is filled;

(5)-(7) (No change.)

iii. Filling in a man-made lagoon is discouraged unless it complies with the conditions found under (j)2ii above or the following two conditions:

(1) In those areas where two existing lawful bulkheads are not more than 75 feet apart and no limit of fill line has been

promulgated, the connecting bulkhead may not extend seaward of a straight line connecting the ends of the existing bulkheads. Compliance with the mitigation rule shall not be required in such cases.

(2) Elsewhere, the proposed retaining structure shall not extend seaward of the spring high water line.

3. In no event may regulated wetlands be filled except under the conditions of the Wetlands Special Area Rule (N.J.A.C 7:7E-3.27).

4. Filling using clean sediment of suitable particle size and composition is acceptable for beach nourishment projects (see the Coastal Engineering Use Rules N.J.A.C. 7:7E-7.11).

5. Standards relevant to the removal of unauthorized fill are as follows:

i. For filling which took place prior to September 26, 1980 (the effective date of the Rules on Coastal Zone Management, N.J.A.C. 7:7E), or prior to September 28, 1978 for areas within the coastal area defined at N.J.S.A. 13:19-4 (CAFRA), removal shall be required only if the fill has resulted in ongoing significant adverse environmental impacts, such as the blocking of an otherwise viable tidal wetland or waterbody, and its removal will alleviate the adverse impacts.

ii. For filling which took place subsequent to September 26, 1980 (or subsequent to September 28, 1978 for areas within the coastal area defined at N.J.S.A. 13:19-4), removal shall be required if it violates the acceptability conditions for filling in water areas set forth in this subsection.

6. Rationale: Filling is generally discouraged because it results in:

i. Loss of aquatic habitat including nursery areas for commercially or recreational important species.

ii. Loss of estuarine productivity since shallow estuarine water frequently has a higher biological value and is more important than deeper water.

iii. Loss of habitat important for certain wading birds and waterfowl.

iv. Loss of dissolved oxygen in the water body since the shallows facilitate oxygen transfer from air to water. Pilings and columnar support structures are often suitable for support of docks and quays when a large area is required for loading and unloading ships. The large surface would prevent light from reaching the estuarine bottom, and heavy loads would require dense pilings, thereby destroying aquatic habitat almost as completely as would fill. As surface area and load bearing requirements increase, the use of pilings can become infeasible for engineering reasons, as well as ineffective in achieving environmental objectives.

Lagoons, as a result of limited freshwater inflow, multiple dead-end branches, and deeper bottoms than adjacent bay waters, have poor circulation which causes anoxic (devoid of oxygen) and stagnant bottoms. However, the shallow water edges of lagoons have been shown by *[NJDEPE]* ***NJDEP*** (1984) to support a wide variety of finfishes and shrimp. The above rules are intended to conserve this aquatic productivity found along shallow lagoon edges, while allowing use by the property owners.

(k) Standards relevant to mooring are as follows:

1. A boat mooring is a temporary or permanently fixed or floating anchored facility in a water body for the purpose of attaching a boat.

2. Temporary or permanent boat mooring areas are conditionally acceptable in all General Water Areas provided:

i. There is a demonstrated need that cannot be satisfied by existing facilities;

ii. Adverse environmental impacts are minimized to the maximum extent practicable;

iii. The mooring area is adequately marked and is located so as not to hinder navigation. A hazard to navigation will apply to all potential impediments to navigation, including access to adjacent moorings, water areas, docks and piers.

3. Rationale: Moorings are conditionally acceptable in all General Water Areas provided impacts to Special Water Areas are minimized and they are not a hazard to navigation.

(l) Standards relevant to sand and gravel extraction are as follows:

1. Sand and gravel extraction is the removal of sand or gravel from the water bottom substrate, usually by suction dredge, for the purpose of using the sand or gravel at another location.

2. Sand and gravel extraction is prohibited in lakes, ponds and reservoirs, man-made harbors and tidal guts unless the waterbody was created by the extraction process, in which case the use is conditionally acceptable. This activity is discouraged in all ***other*** General Water Areas. In these General Water Area types, priority will be given to sand extraction for beach nourishment, and extraction is conditionally acceptable provided that:

i. (No change.)

ii. Turbidity and resuspension of toxic materials is controlled throughout the extraction operation consistent with the Department's Surface Water Quality Standards (N.J.A.C. 7:9-4);

iii.-vi. (No change.)

3. Rationale: The long-term demand for sand resources is not known, and may exceed the supply. If all envisioned beach projects in the Shore Protection Master Plan were implemented, for example, 24 million cubic yards of sand would be needed. Care must be taken, therefore so the extraction is properly managed and will not adversely affect special areas or water quality.

(m) Standards relevant to bridges are as follows:

1. A bridge is any continuous structure spanning a water body, except for an overhead transmission line.

2. Bridges are conditionally acceptable over all water area types provided that:

i. There is a demonstrated need that cannot be satisfied by existing facilities;

ii. Applicable Location and Resource Rules are satisfied, with special attention to Location Rules on Secondary Impacts and Linear Development;

iii. Pedestrian and bicycle use is provided for unless it is demonstrated to be inappropriate; and

iv. Fishing catwalks and platforms are provided to the maximum extent practicable. This shall be taken into consideration during the design phase of all proposed bridge projects.

3. Rationale: Bridge crossings over bays, rivers, streams and other water areas are often necessary to provide continuity in the transportation system and, in the case of barrier islands, to link otherwise isolated land areas. The need to replace or upgrade bridges to safely maintain a transportation system is well recognized. However, the need for new bridges to accommodate additional traffic must be clearly demonstrated to justify potential adverse environmental effects on shellfish habitat, fish spawning grounds and migratory pathways, destruction of wetlands as well as aesthetic and air quality impacts. Bridges to barrier islands, in particular, must be reviewed in accordance with the General Location rule on Secondary Impacts.

(n) Standards relevant to submerged infrastructure are as follows:

1. Submerged infrastructure includes the following:

i. Cables are solid underwater lines such as telecommunication cables or electrical transmissionon lines.

ii. Pipelines are underwater pipes laid, buried,or trenched for the purpose of transmitting liquids or gas. Examples would be crude oil, natural gas, water, petroleum products or sewage pipelines. Construction of an underwater pipeline may involve trenching, temporary trench spoil storage, and backfilling, or jetting as an alternative to trenching.

2. Submerged infrastructure is conditionally acceptable provided that it is not sited within Special Areas, unless no prudent and feasible alternate route exists. The use of directional drilling for the installation of submerged infrastructure is encouraged over the use of trenching.

i. In the case of pipelines, the following conditions shall also be met:

(1)-(2) (No change.)

(3) The conditions outlined for pipelines in the Energy Use rules (See N.J.A.C. 7:7E-7.4) are satisified.

ii. Temporary trench spoil storage and backfilling as part of pipeline trenching is acceptable provided that bottom contours are reestablished following trench spoil removal, to the orginial bottom contours, to the maximum extent practicable.

iii. In the case of cable routes, the following conditions must be met:

(1)-(2) (No change.)

3. Rationale: The installation of submerged infrastructure will disrupt the ecosystem in which it is placed and so is strongly discouraged in Special Areas which are environmentally sensitive. Installing submerged infrastructure in tidal guts is discourgaged because it will unacceptably disturb the sensitive estuarine ecology found there.

Backfilling trenches is required to minimize damage to pipelines by currents, storm waves, sea clam dredges, anchors and other marine equipment. If a pipeline is not buried deep enough to avoid uncovering by erosion, it will be susceptible to breakage when left uncovered. Pipeline damage or breakage may result in the release of the transport substances into the ocean water with potentially adverse effects to the marine environment. Bottom contours must be reestablished following trenching and backfilling to maintain a stable bottom for the marine life found there.

(o) (No change.)

(p) Standards relevent to dams and impoundments are as follows:

1. Dams and impoundments are structures that obstruct natural water flow patterns for the purpose of forming a contained volume of water. Impoundments include dikes with sluice gates and other structures to control the flow of water.

2. The construction of dams and impoundments is prohibited in all Water Areas except medium rivers, creeks, and streams, unless:

i. The structures are essential for water supply purposes or for the creation of special wildlife habitats;

ii. Adverse impacts are minimized; and

iii. The structures will not adversely affect navigation routes.

3. (No change.)

(q) Standards relevant to outfalls and intakes are as follows:

1. Outfalls and intakes are pipe openings that are located in Water Areas for the purpose of intake of water or discharge of effluent including sewage, stormwater and industrial effluents.

2. *[utfalls]* ***Outfalls*** and intakes are conditionally acceptable in most water bodies provided that the use assciated with the intake or outfall meets the Rules on Coastal Zone Management. In particular, stormwater discharge pipes shall comply with the Stormwater *[Runoff]* ***Management*** rule (N.J.A.C. 7:7E-8.7) and provide appropriate filtration methods.

3. (No change.)

(r) Standards relevant to realignment of water areas are as follows:

1. Realignment of water areas means the physical alteration or relocation of the surface configuration of any water area. This does not include the rebulkheading of a previously bulkheaded water area or the bulkheading at or above the spring high water line.

2. Realignment of naturally occurring water areas is discouraged.

3. Realignment of previously realigned water areas is conditionally acceptable, provided that it can be demonstrated that no adverse environmental impacts (that is, water quality, flood hazard, species diversity reduction/alteration) will result, and no Resource rules will be contravened by the realignment; and that a net recreational/ecological benefit will demonstrably accrue.

4. (No change.)

(s) Standards relevant to miscellaneous uses are as follows:

1. Miscellaneous includes uses of Water Areas not specifically defined in this section or addressed in the Use rules.

2. Water dependent uses of Water Areas not identified in the in the Use rules will be analyzed on a case-by-case basis to ensure that adverse impacts are minimized. Non-water dependent uses are discouraged in all Water Areas.

(t) Breakwaters (including those constructed of concrete, rubble mound and timber) are structures designed to protect shoreline areas or boat moorings by intercepting waves and reducing the wave energy which would normally impact the adjacent shoreline areas or boat mooring areas. Typically, timber breakwaters are designed and utilized to protect boat moorings, while concrete or rubble mound breakwaters are designed and utilized to protect shoreline areas which are subject to storm waves and associated erosion.

1. Timber breakwaters shall be at least 18 inches above the bottom of the waterway and shall provide a minimum of three inch spacing between planks. The individual plank width shall not exceed six inches.

2. For detached breakwaters which are not fixed directly to a dock or pier structure, marking with photocell lights and/or reflectors is required.

3. The construction of concrete or rubble mound breakwater structures must be consistent with the acceptability conditions for Structural Shore Protection (N.J.JA.C. 7:7E-7.11(e) and Filling (j) above).

4. Rationale: Breakwaters are designed to protect boat moorings and may be suitable as shore protection structures. Breakwaters may be fixed or floating, attached or detached, depending on the water depth, tidal range and wave climate. The design of a breakwater structure must consider location, height, porosity and purpose, in order for the breakwater to function without adversely affecting the movement of sediment and marine organisms or adversely affecting water circulation patterns.

SUBCHAPTER 5. GENERAL LAND AREAS

7:7E-5.1 Definition

General Land Areas include all mainland land features located upland of special water's edge areas. These Land Area rules apply in all General Land Areas, including those land areas that are also Special Areas, where both the General Land Area and Special Area rules must be complied with.

(b) *[Until such a time as this subchapter is revised through a formal rule adoption, for single family and duplex developments located on lots which are less than 6000 square feet in area, which were subdivided on or prior to July 19, 1993, and which are not part of a larger development, the]* ***The*** Department shall not apply the development intensity requirements of this subchapter ***to the construction of individual single family or duplex dwellings which are not part of a larger develoment***. In addition, the requirements of this subchapter shall not apply to linear developments, as defined in N.J.A.C. 7:7E-6.1.

7:7E-5.2 Acceptability of development in General Land Areas

(a) (No change.)

(b) Determination of the specific rule for a Land Area site is a four step process:

1.-2. (No change.)

3. Third, the Land Acceptability Table (N.J.A.C. 7:7E-5.7) for the appropriate region is consulted to determine the acceptable intensity of development of the site, given the three possible combinations of Development Potential and Environmental Sensitivity factors for the site or parts of the sites.

4. (No change.)

(c) (No change.)

7:7E-5.3 Coastal Growth Rating

(a) The coastal zone is classified into 15 different regions on the basis of the varied pattern of existing coastal development and natural and cultural resources (see Appendix, Figure 14, incorporated herein by reference). For these regions, *[NJDEPE]* ***DEP*** uses three broad regional growth strategies:

1. -3. (No change.)

(b)-(p) (No change.)

7:7E-5.4 Environmental Sensitivity Rating

(a) Environmental Sensitivity is an indication of the general suitability of a land area for development based on soils and on-site vegetation.

(b) High Environmental Sensitivity Areas are land areas with wet or high permeability moist soils or forest vegetation.

1. Wet or high permeability moist soils are soils with a depth to seasonal high water table of three feet or less, unless the soils are loamy sand or coarser in which case they are soils with a depth to seasonal high water table of four feet or less.

2. Forest vegetation is defined as an area of trees and shrubs where a majority of the trees are four inches in diameter breast height or greater.

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

(e) Rationale:

1. High Environmental Sensitivity

This ranking is given to land areas where they are particularly sensitive to impacts. Valuable resources exist where either forest vegetation or wet and high permeability moist soils are present on a proposed development site. These areas are valuable as open space, for screening, for ground and surface water purification, and as wildlife habitats. Areas of high soil percolation and shallow depth to water table are especially sensitive to ground water impacts because the rapid percolation offers little pollutant filtration and the distance to ground water is small. The loss of forest vegetation and the degradation of ground water that occurs when these areas are developed raises the level of sensitivity. Therefore, they should be left undeveloped or developed at a lower density than lands which are not of high environmental sensitivity.

2. (No change.)

3. Low Environmental Sensitivity

This ranking is given to areas where there is a relatively large distance to ground water and therefore little potential for transferring adverse impacts. All paved areas are included, because in these areas most of the adverse impacts associated with development will minimally diminish natural resources or generate new adverse impacts.

7:7E-5.5 Development Potential

(a) Development potential has three levels—High, Medium and Low—depending upon the presence or absence of certain development-oriented elements at or near the site of the proposed development, as defined in (b) through (e) below. The development potential rating applies to the entire land area portion of the site. Different sets of development potential criteria are defined in (b) through (e) below for different categories of development. Also, some of the criteria vary depending upon the regional type. If a specific set of development potential criteria is not defined for a particular category or type of development, then the Definition of Acceptable Intensity of Development rule (N.J.A.C. 7:7E-5.6) is not applicable to that type of development.

(b) The standards relating to Residential and Minor Commercial Development Potential are as follows:

1. Scope: The residential development category includes housing, including retirement communities, hotels, motels, minor commercial facilities of a neighborhood or community scale, and mixed use developments that are predominantly residential.

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

i. Roads: Direct access from the site to an existing paved public road with sufficient capacity to absorb satisfactorily the traffic likely to be generated by the proposed development.

(1) In Development Regions, direct access to either paved public roads with sufficient capacity or adequate improvements in capacity, either to be completed as part of the proposed development or otherwise approved or under construction.

ii. Sewerage: Direct access to a wastewater treatment system, including collector sewers and treatment plant, with adequate capacity to treat the sewage from the proposed development and is consistent with the current Areawide Water Quality Management Plan (208), or soils suitable for on-site sewage disposal systems that will meet applicable ground and surface water quality standards.

iii. Infill: A majority of the perimeter of the site, excludin wetlands or surface water areas or land areas abutting limited access transportation corridors (for example, Garden State Parkway, Atlantic City Expressway), is adjacent to or across a public road or railroad from land that is developed, or a majority of the land within 1,000 feet of the site, is developed, and the site is located within one half mile of the nearest existing commercial or industrial development of more than 20,000 square feet (cumulative building area). Developed land, for infill purposes for determination of high, medium, or low potential, means:

(1)-(5) (No change.)

(6) Those areas of public parks developed for active recreational use; and

(7) Transportation facilities including train stations and airfields.

3. Medium Potential sites do not meet all of the criteria for High Potential sites and do not meet any of the criteria for Low Potential sites.

4. Low Potential sites in Limited Growth or Extension Regions meet any one of the following criteria:

i. Roads: Site located more than 1,000 feet from the nearest paved public road;

ii. Sewerage: Sites located more than 1,000 feet from an adequate wastewater treatment system, and soils unsuitable for on-site sewage disposal systems; or

iii. Infill: A site located more than one-half mile from the nearest existing commercial or industrial development of more than 20,000 square feet of enclosed building area, within a single facility.

5. In Development Regions, Low Potential sites meet either of the following criteria:

i. Roads: Site located more than 1,000 feet from the nearest existing paved or proposed public road;

ii. Sewerage: Site located more than 1,000 feet from existing or approved adequate wastewater treatment system; or

iii. Infill: No requirement.

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

1. Scope: The Major Commercial and Industrial Development category includes all industrial development, warehouses, offices, manufacturing plants, wholesale and major *[regional]* shopping centers of greater than 100,000 square feet of enclosed building area, and major parking facilities of greater than 700 parking spaces.

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

i. (No change.)

ii. Sewerage: Direct access to a wastewater treatment system, including collector sewers and treatment plant, with adequate capacity to treat sewage from the proposed development, or soils suitable for on-site sewage disposal systems that will meet applicable ground and surface water quality standards.

(1) In Development Regions, where the existing sewage collection or treatment capacity is inadequate and the soils are unsuitable for septic systems, an applicant may include an agreement with a sewage authority to increase service to provide the required capacity. This will qualify the proposal for a high potential rating, provided that secondary impact analysis demonstrates that any development likely to be induced by new sewage capacity above the requirements of the proposal is acceptable.

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

3. (No change.)

4. Low Potential sites meet any one of the following criteria:

i. (No change.)

ii. Infill: A site located more than one-half mile from the nearest existing commercial or industrial development of more than 50,000 square feet of enclosed building area within a single facility.

(d) (No change.)

(e) Development Potential Rankings for energy facilities shall be determined by *[NJDEPE]* ***DEP*** Office of Energy and the Program on a case by case basis.

(f) (No change.)

SUBCHAPTER 6. GENERAL LOCATION RULES

7:7E-6.1 Rule on location of linear development

(a) A linear development, such as but not limited to a road, sewer line, ***public walkway*** or offshore pipeline, that must connect two points to function shall comply with the specific location rules to determine the most acceptable route, to the maximum extent practicable. If part of the proposed alignment of a linear development is found to be unacceptable under the specific location rules, that

alignment (perhaps not the least possible distance) may nonetheless be acceptable, provided the following conditions are met:

1.-4. (No change.)

7:7E-6.2 Basic location rule

(a) A location may be acceptable for development under the specific location ***regulations*** in N.J.A.C. 7:7E-6.1, but the *[DEPE]* ***DEP*** may reject or conditionally approve the proposed development of the location as reasonably necessary to:

1.-3. (No change.)

7:7E-6.3 Secondary impacts

(a) Secondary impacts are the effects of additional development likely to be constructed as a result of the approval of a particular proposal. Secondary impacts can also include traffic increases, increased recreational demand and any other offsite impacts generated by onsite activities which effect the site and surrounding region.

(b) Coastal development that induces further development shall demonstrate, to the maximum extent practicable, that the secondary impacts of the development will satisfy the Rules on Coastal Zone Management. The level of detail and areas of emphasis of the secondary impact analysis are expected to vary depending upon the type of development. Minor projects may not even require such an analysis. Transportation and wastewater treatment systems are the principal types of development that require a secondary impact analysis, but major industrial, energy, commercial, residential, and other projects may also require a rigorous secondary impact analysis.

1. Secondary impact analysis must include an analysis of the likely geographic extent of induced development, its relationship to the State Development and Redevelopment Plan, an assessment of likely induced point and non-point air and water quality impacts, and evaluation of the induced development in terms of all applicable Rules on Coastal Zone Management.

2. (No change.)

(c) Rationale: Further development stimulated by new development and the cumulative effects of coastal development, including development not directly managed by *[NJDEPE]* ***NJDEP*** may gradually adversely affect the coastal environment. The capacity of existing infrastructure does, however, limit the amount and geographic extent of possible additional development. Secondary impact analysis, particularly of proposed infrastructure, enables *[NJDEPE]* ***NJDEP*** to ascertain that the direct, short term effects, and the indirect or secondary effects of a proposed development will be consistent with the basic objectives of the Coastal Management Program. Secondary impact analysis enables *[NJDEPE]* ***NJDEP*** to evaluate likely cumulative impacts in the course of decision-making on specific projects.

SUBCHAPTER 7. USE RULES

7:7E-7.1 Purpose

Many types of development seek locations in the coastal zone. The second stage in the screening process of the Rules on Coastal Zone Management spells out a set of rules for particular uses of coastal resources. Use rules are rules and conditions addressed to particular kinds of development. Use rules do not preempt location rules which restrict development, unless specifically stated. In general, they introduce conditions which must be satisfied in addition to the Location rules (N.J.A.C. 7:7E-2 through 6), and the Resource rules described in the following subchapter (N.J.A.C. 7:7E-8).

7:7E-7.2 Housing Use rules

(a) (No change.)

(b) Standards relevant to water area and water's edge housing are as follows:

1. New housing or expansion of existing habitable housing is prohibited in Water Areas. Reconstruction of existing habitable structures on pilings located over water areas is conditionally acceptable except when damaged by wind, water or waves, in which case reconstruction is prohibited.

2. In special urban areas and along large rivers where water dependent uses are demonstrated to be infeasible, new housing is also acceptable on structurally sound existing pilings, or where piers have been removed as part of the harbor clean up program, the equivalent pier area may be replaced in the same or another location.

i.-ii. (No change.)

iii. New housing acceptable under this rule shall be consistent with the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11), including provisions of fishing access as appropriate.

3. Housing is conditionally acceptable in the filled water's edge, provided that it meets the requirements of the Filled Water's Edge rule (N.J.A.C. 7:7E-3.23) and the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.13). The acceptable intensity of residential development shall be determined by applying the criteria of the General Land Area rule (N.J.A.C. 7:7E-5) except on bay islands where the requirements of the Bay Island Corridor rule (N.J.A.C. 7:7E-3.21) shall apply.

4. New housing involving the stabilization of existing lagoons through revegetation, bulkheading or other means is conditionally acceptable provided that the conditions of the Existing Lagoon Edge rule (N.J.A.C. 7:7E-3.24) and the Filling rule (N.J.A.C. 7:7E-4.2(j)) are satisfied.

5. On sites with existing shore protection structures, the residential structure shall be set back a minimum of 25 feet from the oceanfront shore protection structures, and a minimum of 15 feet from shore protection structures elsewhere. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the seaward side of the revetment.

6. Water area and water's edge housing shall include a provision for boat ramps wherever feasible unless an accessible boat ramp is nearby.

7. Rationale: Housing is not water dependent on water access, and does not generally qualify for exemption to the rule of restricting non-water dependent development along water's edge. In addition to this general restriction, most of the Special Area rules contain specific restrictions that have the practical effect of discouraging or prohibiting new development, including housing, from sensitive areas.

(c) Standards relevant to floating homes are as follows:

1. A floating home is any waterborne structure designed and intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, which will remain stationary for more than 10 days.

2. Floating homes are prohibited in the coastal zone. Those floating homes registered with the New Jersey Department of Motor Vehicles prior to June 1, 1984 are not subject to this paragraph.

3. Rationale: The primary focus of a floating home is as a residence. Floating homes, therefore, are not water-dependent, and should not be permitted to pre-empt limited land's edge locations from water dependent uses such as boating. Boats which are used for navigation and serve a secondary function as houses are not considered floating homes and are not prohibited. Floating homes have an adverse impact on water quality through grey water discharges. The proliferation of houseboats in New Jersey would have a cumulative adverse effect on water quality, navigation and aesthetics.

(d) (No change.)

(e) *[Standards relevant to the development of a single family home or duplex located upland of the mean high water line are as follows:]* ***A single family home or duplex that is located upland of the mean high water line and is not part of a larger development must meet only the following:***

1. All structures and on-site improvements shall comply with the coastal Rules for Beaches, Dunes, Wetlands, Wetland Buffers, Endangered or Threatened Wildlife or Vegetation Species Habitats and Coastal Bluffs, and shall comply with other Coastal Rules by meeting the following minimum standards. Compliance with the applicable rules may require changes in a building design and/or location.

i. On sites with shore protection structures, the residential structure shall be set back, a minimum of 25 feet, from oceanfront shore protection structures, and at a minimum of 15 feet from bulkheads elsewhere. This distance is measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of a revetment.

ii. (No change.)

iii. For sites partially or completely within the erosion hazard area or coastal high hazard area, only infill developments meeting the following criteria are acceptable. A development qualifies as infill for purposes of this section if:

(1) It is shown as buildable lot on municipal records prior to July 19, 1993;

(2) The lot is served by a municipal sewer system; and

(3) A house ***or commercial building*** is located on each lot abutting the lot line, perpendicular to the shoreline, and within 100 feet of said lot line.

iv. In non-tidal areas, the lowest structural member must be at least one foot above the base flood elevation.

v. In tidal areas the following standards apply:

(1) For residential developments located within designated zones A1-30 on the community's Flood Insurance Rate Maps (FIRM), the lowest floor (including basement) must be elevated to or above the base flood elevation.

(2) For residential developments located within designated Zones V1-30 on the community's FIRM, the building must be elevated on pilings so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings) is elevanted to or above the base flood level.

(3) The house shall be constructed as close to the landward site boundary as possible, and shall not be constructed waterward of the adjacent developments.

*[vii.]***vi.*** For wooded sites, site clearing shall be limited to an area no greater than 20 feet from the footprint of the dwelling and the area deemed necessary for driveway, septic and utility line installations.

*[viii.]***vii.*** Indigenous coastal plants (as defined in Vegetation, N.J.A.C. 7:7E-8.8) *[shall]* ***are encouraged to*** be used in landscaping wherever feasible. No plastic lines shall be used in landscaped or gravel areas. All liners shall be made of filter cloth or other permeable material. The use of non-indigenous vegetation and/or lawns is discouraged.

*[ix.]***viii.*** All driveways shall be covered with permeable materials or pitched to drain all runoff onto permeable areas of the site.

2. Rationale: Single family and duplex homes are the most prevalent type of development along the developed oceanfront communities of the Jersey Coast. This rule recognizes the importance of protecting the safety of local residents from the natural shoreline changes and hazard areas, especially in the event of a storm. Developments are therefore prohibited on beaches, dunes, wetlands, coastal bluffs, *[erosio]* ***erosion*** hazard areas and coastal high hazard areas. However, in view of the extensive developments that have already occurred in some of the coastal high hazard and erosion hazard areas, infill single family or duplex homes are found to be acceptable, because their development will not alter the existing need for public expenditure in shore protection at these locations, the risk involved is reduced to a minimum in terms of the quantity and intensity of developments that will be permitted and it would allow the infill sites to be developable to the degree currently existing in that area. The use of non-indigenous vegetation and/or lawns is discouraged due to the large quantity of water and fertilizer required to sustain such vegetation.

(f) (No change.)

7:7E-7.3 Resort Recreational Use

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

(d) Standards relevant to marinas are as follows:

1. Marina means any dock, pier, bulkhead, mooring or similar structure or a collection of adjacent structures under singular or related ownership providing permanent or semi-permanent dockage to five or more vessels.

2. New marinas or expansion or renovation (including, but not limited to, dredging, bulkhead construction and reconstruction, and relocation of docks) of existing marinas for recreational boating are conditionally acceptable if:

i. The marina includes the development of an appropriate mix of dry storage areas, public launching facilities, berthing spaces, repair and maintenance facilities, and boating and hardware supply facilities, depending upon site conditions.

ii. The marina posts prominent signs indicating discharges shall not be allowed within the basin and provides restrooms and marine septic disposal facilities for wastewater disposal from boats. For marinas with dockage for 25 or more vessels or any on vessel with live-aboard arrangement, adequate and conveniently located pumpout stations shall be provided.

iii. Restrooms and at least one portable toilet emptying receptacle shall be provided at a marina. The portable toilet emptying receptacle requirement may be satisfied either by the installation of a receptacle device or by the designation of either a pumpout or restroom facility for this use; and

(1) Discharge to a municipal or regional treatment plant where practicable;

(2) Discharge to a subsurface sewerage disposal system constructed in accordance with N.J.A.C. 7:9-2 and N.J.A.C. 7:7E-4.2(t); or

(3) Discharge to a holding tank with waste being removed by a licensed septage hauler. A marina employing this method shall maintain a record of waste removal; and

iv. New marina facilities and expansions and renovation of existing marinas shall provide public access in accordance with the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11).

3.-6. (No change.)

7. (No change in text.)

8. Construction of new marinas within areas designated by the Department as shellfish habitat is prohibited. Expansions of existing marinas within shellfish habitat areas shall comply with the standards of the Shellfish Habitat rule (N.J.A.C 7:7E-3.2) and Submerged Vegetation rule (N.J.A.C. 7:7E-3.6).

9. Marinas shall comply with the design standards set forth in N.J.A.C. 7:7E-7.3A ***to the maximum extent practicable***.

10. In addition to complying with all other applicable portions of these rules, all new, expanded and renovated boat mooring facilities with five or more slips which are located on any portion of the Navesink River, Shrewsbury River or Manasquan River (upstream of the Route 35 Bridge) or the St. George's Thorofare shall meet the conditions in (d)10i through iii below. Renovation shall include complete or partial alteration of any portion of a structure, including construction, reconstruction of or relocation of existing docks, piers, moorings and bulkheads and dredging. The conditions are:

i. A pumpout facility shall be constructed and maintained at those facilities at which boats over 24 feet in length or those with onboard septic facilities (heads) shall be docked. All other facilities shall construct and maintain on site marine septic disposal facilities;

ii. No pressure treated lumber or other lumber treated with any other substance shall be used in any portion of the project***. This restriction applies only to bulkhead sheathing and planking, and dock planking, and does not apply to pilings. In addition, this restriction does not apply to any construction upland of the mean high water line***; and

iii. The applicant and/or property owner shall finance monthly sampling and testing of fecal coliform levels per milliliter of water at five locations selected by the Department in the water in which the project is located. Testing shall be performed by a State-certified laboratory and shall be conducted beginning in the first month following the mooring of vessels and monthly thereafter for two full seasons of operation (that is, May 1 through October 31)***.*** The monitoring shall occur on the day of the month selected by the Department and no advance notice of the sampling day shall be given to the property-owner. Results of the monitoring shall be provided to the Department and the property-owner in writing by the laboratory within 10 calender days after the date of sampling.

(1) The State-certified laboratory shall determine the pre-construction median level of fecal coliform in the water at each of the Department selected test sites at the applicant's expense, and advise the Department and the applicant in writing of these results within 10 calender days after the date of sampling. If any post-construction test at any single site yields fecal coliform levels which exceed the pre-construction reading at that site by 100 percent, the property

owner shall allow Department personnel access to the property during day-light hours to assess whether the operation of the project is causing or contributing to the elevated reading.

(2) In the event the Department determines in writing that the elevated readings of fecal coliform are caused, in whole or in part, by the operation of the project, the property owner shall, as a condition of the permit, cease such uses and practices as described in writing by the Department and shall implement such practices as determined by the Department in writing to be minimally necessary to reduce the levels of fecal coliform emanating from the project.

(3) In the event the Department determines that the laboratory has twice or more failed to sample in the correct location, failed to comply with commonly accepted sampling techniques and laboratory methods or has divulged the date of sampling to the applicant and/or property-owner in advance of sampling, the property owner shall immediately discontinue use of such laboratory upon receipt of written notice to this effect from the Department and shall arrange for all future sampling to be conducted by another State-certified laboratory. For every month in which sampling does not occur as a result of a change in laboratory, an extra month of sampling shall be required from the property owner during the next season of operation.

(4) If the property owner fails to arrange for water sampling as required herein without first securing the express written permission of the Department to omit sampling for that month, the property owner shall be in violation of the terms of the permit issued under these rules and the Department shall notify the property owner in writing of its intention to revoke the permit and prohibit use of the project pending final revocation of the permit in accordance with N.J.A.C. 7:7-4.11(b).

11. Rationale: Marinas are located on land at the water's edge which exists only in limited supply and which, in its natural state, is indispensable to many land and water-related activities. The rules are intended to ensure that the area devoted to marinas is efficiently utilized to keep the size of the area required to a minimum to maintain the environmental integrity of the water and water's edge areas and to preserve the scenic and natural characteristics of the area. Facilities for sail and oar boating are encouraged because such boats consume less energy, are less disturbing to wildlife and pollute less than motor boats. Facilities offering rental boats and rental slips are encouraged because they reduce the need for construction of additional mooring facilities, serve a greater number of people and afford the casual boater access to water-related recreation. Marina development which is permissible under these rules is encouraged to take place on filled water's edge lands because they are of low environmental sensitivity. Marina development within areas designated as shellfish habitat is prohibited since it would result in the condemnation or contamination of shellfish habitat and adversely affect the water quality of the water body.

The Navesink River, Shrewsbury River and Manasquan River (upstream of the Route 35 Bridge), and St. George's Thorofare are particularly important shellfish habitats. The Navesink and Shrewsbury Rivers are unique in that they are the only two estuaries within the State which have soft clams in commercially viable densities. St. Georges Thorofare contains high densities of hard clams according to the 1985 Shellfish inventory conducted by the Division of Fish, Game and Wildlife, containing approximately 6.2 million hard clams in a 107 acre area. The high abundance of hard clams, together with the fact that this water body is poorly flushed makes St. George's Thorofare critical to the shellfish industry and extremely sensitive to any potential pollution producing activity.

Federal, State and local officials have recognized the importance of these rivers as shellfish habitat and the need to protect their water quality. As a result, pollution control programs such as the Navesink River Shellfish Protection Program have been implemented to protect and enhance water quality. On August 21, 1986, a Memorandum of Understanding was signed by the New Jersey Department of Environmental Protection and Energy, the New Jersey Department of Agriculture and the United States Department of Agriculture and the United States Environmental Protection Agency. The memorandum serves to "...formalize our commitment to the Navesink River Water Control Shellfish Protection Program, [and] its primary goal of improving water quality in the Navesink River watershed to a point at which the river's full shellfishery and recreational potential may be attained." Water quality monitoring during 6 years of implementation of pollution controls on the Navesink from 1987-1993 have shown significant reductions in bacterial contamination of the Navesink River, to the point where the potential now exists for upgrading the shellfish classification of the river from "special restricted" to "seasonally approved".

The Shrewsbury River has been included in the "Navesink River Shellfish Protection Program" since it is hydrologically connected to the Navesink River and is one of only two estuaries in New Jersey with commercially viable densities of soft clams. Concern over deterioration of the water quality in the Manasquan River and its effects upon shellfish compelled Monmouth and Ocean Counties, together with *[DEPE]* **DEP***, to form the "Monmouth/Ocean Alliance to Enhance the Manasquan River." This Alliance seeks to identify causes of shellfish water degradation and plan uses which would protect and enhance water quality in the Manasquan by requiring water quality monitoring at project sites located on the above listed waterways. The Department is honoring its commitment to maintain and eventually upgrade the water quality of these rivers. Monitoring affords the Department the opportunity for early intervention and thorough investigations should the water quality be adversely affected by the operation of projects permitted under this Rule.

(e) Standards relevant to amusement piers, parks and boardwalks are as follows:

1. New amusement piers are prohibited, except in areas with privately held riparian grants, where they are discouraged. Expanded or extended amusement piers, parks, and boardwalks at the water's edge or in the water, and the on-site improvement or repair of existing amusement piers, parks and boardwalk areas are discouraged unless the proposed development meets the following conditions:

i. The amusement pier, park, or boardwalk does not reasonably conflict with aesthetic values, ocean views, or other beach uses and wildlife functions;

ii. The proposed pier expansion will not eliminate or affect the existing direct public access to the beach, unless another access point is provided immediately adjacent to the expanded pier, for each access point eliminated;

iii. The surrounding community can adequately handle the activity and uses to be generated by the proposed development;

iv. The pier expansion is constructed on pilings at the same elevation as the existing pier; and

v. The pier expansion includes a provision for public seating and viewing at the terminal end of the expansion.

2. The expansion of a pier qualifying for a General Permit under N.J.A.C. 7:7-7 is acceptable.

3. (No change in text.)

7:7E-7.3A Marina Development

*[(a) The following pertains to selection of the marina site:

1. The site should not need to be dredged or expect to need dredging in the future.

2. The site should have a total flushing time of less than four days (two or less is preferred). Sites considered for dead-end finger channels shall be considered only after this flushing capability has been demonstrated.

3. The site should be located with safe, convenient access to cruising waters. Winding channels, hazardous routes and long travel distances to water-use areas are discouraged.

4. The site must have adequate land access for autos, trucks, trailers and emergency equipment.

5. Sites with direct sewer service access are preferred.

6. For wet-slip marines, a general rule is that the land area should be one to 1.25 times the size of the water area. Deviations from this ratio must be shown to include adequate capacity for parking and other ancillary needs.

7. The boundaries of the site should be at least 1,000 feet from shellfish harvesting areas (unless a greater distance is determined appropriate pending DEPE review).

8. Wet-slip marinas shall not be constructed nor expanded in Category One waters.]*

*[(b)]**(a)* The following pertains to *[marine]* **marina** project design:

1. The following should be followed to promote water quality in the marina basin:

i. Basin depths must never exceed the depths of access channels nor the open water to which the basin is connected.

ii. Deep-draft slips shall be constructed in naturally deep portions of the site in order to minimize the need for dredging.

iii. Floating breakwaters are preferred in low-energy areas (where wavelengths are less than twice the width of the breakwater).

iv. Sharp angles are to be avoided; corners should be gently rounded, never square.

v. Basin depths should uniformly deepen toward the exit and waterway outside the basin.

vi. Entrance channels should not be located on corners.

vii. Where possible, entrance channels should be oriented in the direction of the prevailing winds to promte wind-driven circulation.

viii. Enclosed basins should include openings at opposite ends to promote circulation.

ix. Slips should be oriented parallel to currents, never broadside; this promtes circulation and reduces the load on the pier structure.

x. Fuel pumps shall include back pressure cut-off valves. Main cut-off valves shall be available both at the dock and in the upland area of the marina.

xi. Fuel docks should be sturdy using a floating design wherever possible in order to withstand significant storm affected tidal ranges.

xii. To control stormwater runoff, upland portions of the site should include water quality features such as detention basins and limit pollutants from entering the waterway.

2. Sloping rip-rap bulkheads are preferred over solid vertical structures; they better dissipate wave energy and provide a more diverse habitat for marine organisms.

3. To avoid standing waves, bulkheads should never be parallel to one another.

4. To minimize the impact on the photic zone, dock and pier widths should be minimized. In addition, the structures should stand as high above mean high water as possible and should be oriented north-south to the maximum extent practicable.

5. The distance from a parked car to a slip should never exceed 180 meters.

6. Septic systems shall be installed with a minimum setback of 100 feet and in soils with a minimum depth to the seasonal high water table of four feet or more.

7. For safety, the usable width of the entrance channel should be at least four times the beam of the widest expected vessel, or a minimum of 19 meters.

8. The marina shall provide pumpout station(s) (fixed or portable). Marinas which allow occupation of berthed vessels for a period of 72 hours or more shall provide slipside pumpout facilities.

9. The *[marine]* **marina** shall provide abundant trash receptacles along with adequate fish cleaning areas, including separate and well-marked dispensers for organic refuse.

10. Ample parking facilities shall be provided, with a minimum of 0.6 spaces per slip (the number will range from 0.6 to 2.5 spaces per slip, depending on the nature of the marina).

11. The design should include an aesthetically pleasing landscape design.

12. Maintenance areas shall be screened by proper landscaping and shall include techniques which will prevent materials from entering the water.

13. The fueling facility shall be designed to accommodate four of the largest expected vessels.

14. For safety, the turning area of the basin should be at least 2.25 times the length of the longest expected vessel.

15. Marinas shall provide restroom facilities according to the following schedule:

i. For a small marine (up to 40 boats):

(1) Men: One toilet stall, one urinal, and one washbasin.

(2) Women: Two toilet stalls and one washbasin.

ii. For a small "quality" or medium marina (40 to 80 boats):

(1) Men: One urinal, one toilet stall, one shower stall, and one washbasin.

(2) Women: Two toilet stalls, one washbasin, and one shower stall.

iii. For a large *[marine]* **marina** (over 80 boats):

(1) Add:

(A) One urinal per 30 boats (men);

(B) One toilet stall per 60 boats (men);

(C) One toilet stall per 30 boats (women);

(D) One washbasin per 30 boats (men and women);

(E) One shower stall per 60 boats (men and women).

16. For safety, comfort, and to avoid interference with commercial boating activity, marinas will be designed such that wave heights do not exceed two to four feet in the entrance channel and one to 1.5 feet in the berthing area. Such a design will assume four foot external wave conditions.

17. The marina shall develop and implement a recycling plan for solid waste as appropriate to county requirements.

*[(c)]**(b)* The following pertains to marina construction:

1. Only high-grade, slow leaching wood preservatives shall be used on pilings and other dock/pier woods.

2. If dredging is necessary, it shall be scheduled around critical life stages of marine organisms.

3. Dredging shall take place during the colder months when the dissolved oxygen levels are naturally high.

4. Erosion and sediment controls shall be in place prior to construction.

5. Where appropriate (currents under 1.5 knots), sediment curtains shall be used during *[dreding]* **dredging**.

6. Clean dredge spoil with adequate grain size shall be used for beach nourishment.

*[(d)]**(c)* The following pertains to marina operation:

1. The marina must have available adequate floating containment booms and absorbant materials in the event of hydrocarbon spills. Employees shall be trained in the deployment and proper usage of such equipment.

2. Operators shall immediately notify *[DEPE]* **DEP** and the Coast Guard of all signifiant hydrocarbon spills.

3. Operators shall take immediate action in the event of a spill, including boom deployment and spreading of absorbent materials.

4. Waste receptacles shall be emptied daily.

5. Boat maintenance shall be undertaken as far from the water as possible.

6. Restrooms shall provide both hot and cold water and shall be maintained in a sanitary, warm, dry, brightly-lit and well-ventilated condition.

7. No-discharge signs shall be posted through-out the marina basin.

7:7E-7.4 Energy Use rule

(a) General definition of energy uses: Energy uses includes facilities, plants or operations which produce, convert, distribute or store energy. Under the Department of Energy Act, the Energy Act, the term energy facility does not include an operation conducted by a retail dealer.

(b) Standards relevant to general energy facility siting procedure are as follows:

1. The acceptability of all proposed new or expanded coastal energy facilities shall be determined by the *[DEPE]* **DEP** Office of Energy (as part of the Reorganization Plan 002-1991, the Office of Energy was placed *[witin]* **within** the DEP, and responsibility for the State Energy Master Plan as well as commenting on energy policy was delegated to the Department and the Program).

2. *[DEPE's]* **DEP's** Office of Energy will determine the need for future coastal energy facilities according to three basic standards. The Office of Energy will submit an Energy Report to the Program with its determination of the need for a coastal energy facility based on three required findings:

i.-iii. (No change.)

3. The Program will determine the acceptability of coastal energy facilities using the Rules on Coastal Zone Management supported by appropriate, technically sound analyses of alternatives.

4. Rationale: The Department's Land Use Regulation Program and the Office of Energy share responsibility for carrying out the energy facility siting, planning and project review elements of the New Jersey Coastal Management Program. The State Energy Master Plan and its appendices and the Rules on Coastal Zone Management, provide a clear framework for decision-making by these two offices for the review of proposed facilities, as well as a basis for continued consultation and cooperative planning.

(c)-(h) (No change.)

(i) Standards relevant to pipelines and associated facilities are as follows:

1. Crude oil and natural gas pipelines to bring hydrocarbons from offshore New Jersey's *[coat]* ***coast*** to existing refineries, and oil and gas transmission and distribution systems and other new oil and natural gas pipelines are conditionally acceptable, subject to the following conditions and restrictions:

i. For safety and conservation of resources, the number of pipeline corridors, including trunk pipelines for natural gas and oil, shall be limited, to the maximum extent feasible, and designated following appropriate study and analysis by the *[DEPE]* ***DEP*** Office of Energy and Land Use Regulation Program, and interested Federal, State and local agencies, affected industries, and the general public;

ii. (No change.)

iii. Oil and gas pipelines are subject to the following restrictions, respectively, regarding the Central Pine Barrens and other particularly sensitive areas:

(1) Pipeline corridors for landing oil are prohibited in the Central Pine Barrens area of the Mullica River, Cedar Creek watersheds and portions of the Rancocas Creek and Toms River watersheds, defined as the 760 square mile region adopted by *[DEPE]* ***DEP*** as "critical area" for sewerage purposes and non-degradation surface and groundwater quality standards (see N.J.A.C. 7:9-4.6(i), (j), and N.J.A.C. 7:9-10.1(b) and Appendix, Figure 16 incorporated herein by reference), and discouraged in other undeveloped parts of the Pine Barrens; and

(2) Pipeline corridors for natural gas are discouraged in the Central Pine Barrens as defined above, unless the developer can demonstrate that the construction and operation of the proposed pipeline will meet the adopted non-degradation standards for water quality and cause no long-term adverse environmental impacts.

iv. Proposals to construct offshore oil and gas pipelines, originating on the Outer Continental Shelf, and all of the contemplated ancillary facilities along the pipeline route such as, for example, gas separation and dehydration facilities, gas processing plants, oil storage terminals, and oil refineries will be evaluated by the Department's Office of Energy and Land Use Regulation Program in terms of the entire pipeline corridor through the State of New Jersey and the adjacent territorial sea;

v. To preserve the recreational and resort character of the coastal areas, the following conditions and prohibitions shall apply to oil and gas pipeline-related facilities:

(1)-(2) (No change.)

(3) Offshore platforms for pumping or compressor stations are encouraged to be located out of sight of the shoreline.

vi. (No change.)

vii. Pipelines shall be buried to a depth sufficient to minimize exposure by scouring, ship groundings, anchors, fishing and clamming and other potential obstacles on the sea floor. Trenching operations shall be conducted in accordance with applicable Federal regulations.

2. (No change.)

(j) Standards relevant to gas separation and dehydration facilities are as follows:

1. (No change.)

2. Separation and dehydration facilities are discouraged in the Bay and Ocean Shore area. Such facilities that are approved shall meet all applicable air and water quality standards, and be protected by adequate visual, sound, and vegetative buffers. Separation and dehydration facilities will be reviewed as part of the overall proposed gas transportation system by the Department.

3. (No change.)

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

(m) Standards relevant to gas processing are as follows:

1. (No change.)

2. Gas processing plants proposed for locations between the offshore pipeline landfall and interstate natural gas transmission lines shall be prohibited from sites within the Bay and Ocean Shore area and shall be located the maximum distance from the shoreline. The siting of gas processing plants will be reviewed in terms of the total pipeline routing system by the Department's Office of Energy and the Program.

3. (No change.)

(n) Standards relevant to other gas-related facilities are as follows:

1. Additional facilities related to a natural gas pipeline such as metering and regulating stations, odorization plants, and block valves are conditionally acceptable in the Bay and Ocean Shore area provided they are protected by adequate visual, sound, and vegetative buffer areas; are approved by the Office of Energy and Program; and are in compliance with United States Department of Transportation regulation.

2. (No change.)

(o) Standards relevant to oil refineries and petrochemical facilities are as follows:

1. New oil refineries and petrochemical facilities are conditionally acceptable outside of the Bay and Ocean Shore area provided that: they are consistent with all applicable Location and Resource rules; there is a need for the facility as determined by the Office of Energy; and an Environmental Impact Statement determines that the facility will have no unacceptable impacts.

i.-iii. (No change.)

2. (No change.)

(p)-(q) (No change.)

(r) Standards relevant to electric generating stations are as follows:

1. New or expanded electric generating facilities (for base load, cycling, or peaking purposes) and related facilities are conditionally acceptable subject to the conditions that follow. Conversion or modification of existing generating facilities for purposes of fuel efficiency, cost reduction, or national interest are conditionally acceptable provided they meet applicable State and Federal laws and standards.

i. The construction and operation of the proposed facility shall comply with the Rules on Coastal Zone Management, with special reference to air and water quality standards and policies on marine resources and wildlife.

ii. The Office of Energy and the Program shall find the proposed location and design of the electric generating facility is the most reasonable alternative for the production of electrical power that the Office of Energy has determined is needed. The finding shall be based on a comparative evaluation by the applicant of alternative sites within the coastal zone and inland, and of alternative technologies for the transportation and conversion of energy as well as the productive use of plant residuals, including thermal discharges.

iii. (No change.)

iv. Nuclear generating stations shall be located in generally remote, rural, and low density areas, consistent with the criteria of 10 CFR 100 (United States Nuclear Regulatory Commission rules on siting nuclear generating stations) and/or any other related Federal regulations. In addition, *[NJDEPE]* ***NJDEP*** shall find that the nuclear generating facility is proposed for a location where the appropriate low population zone and population center distance are likely to be maintained around the nuclear generating facility, through techniques such as land use controls or buffer zones.

v. The construction and operation of a nuclear generating station shall not be approved unless *[DEPE]* ***DEP*** finds that the proposed method for disposal of the spent fuel to be produced by the facility will be safe, conforms to standards established by the United States Nuclear Regulatory Commission, and will effectively

remove danger to life and the environment from the radioactive waste material. This finding is required under present State law (N.J.S.A. 13:19-11) and will be made consistent with judicial decisions (see *Public Interest Research Group v. State of New Jersey,* 152 *N.J. Super.* 191 (App. Div. 1977)) and Federal law.

vi. (No change.)

2. Rationale: The siting of an electric generating station is an extraordinary event with far-reaching impacts, when compared with the typical day-to-day decisions made under the State's coastal zone management program. Such siting decisions therefore, require special scrutiny using: (a) the State's authority in its management of state-owned tidelands and submerged lands contemplated as sites for all or part of an electric generating station, (b) the State's regulatory authority, and (c) the State's influence in Federal proceedings on aspects of the siting process.

New Jersey's coastal zone, especially along Barnegat Bay and Delaware Bay, has experienced the consequences of several major siting decisions *[in the past decade]* and already has diverse mix of existing, proposed, and potential fossil fuel and nuclear generating facilities, both onshore and offshore.

[For example, in 1980 two nuclear generating units were in operation in the coastal zone: Salem Unit I on Artificial Island on the Delaware River in Salem County and at Oyster Creek near Barnegat Bay in Ocean County. Four additional nuclear generating units are under construction in the Bay and Ocean Shore Segment and have received [the construction in the Bay and Ocean Shore Segment and have received] the appropriate federal and State approvals, including Forked River on the Oyster Creek site in Ocean County, and Salem 2 and Hope Creek 1 and 2 on Artificial Inland. The Hope Creek project, which DEPE approved under CAFRA in 1975, had its genesis in a project contemplated at Newbold Island in the Delaware River, less than five miles south of Trenton. In 1973, the United States Atomic Energy Commission (the predecessor to the Nuclear Regulatory Commission), acting in accord with the view of New Jersey, recommended that Artificial Island would be a more suitable site than Newbold Island because of population density concerns. Until PSE&G decided to withdraw its proposal, New Jersey's coastal zone was also the site of two proposed floating nuclear reactors, the Atlantic Generating Station, Units 1 and 2, at a site in the Atlantic Ocean east of Little Egg Harbor. The coastal zone also includes generating stations that have used various fossil fuels depending upon the price and availability of fuel as well as upon the applicable air quality rules.]

New Jersey recognizes the interstate nature of the electric power system. Some electricity is produced in New Jersey at facilities owned partially by utilities in other states and exported to those states. New Jersey also imports electricity produced in adjacent states. In short, New Jersey is an integral part of the Pennsylvania- New Jersey-Delaware- Maryland interconnecting grid system, importing and exporting electricity from the system at different times of the day, season and year in order to generate electricity efficiently and achieve the lowest achievable cost to electricity users throughout this multi-state region.

[The need for converting some existing facilities from oil-fired to coal-fired generation is recognized by the Powerplant and Industrial Fuel Use Act of 1978 (FUA) P.L. 95-620. The FUA restricts, through mandatory and discretionary prohibitions, the use of natural gas and petroleum as primary energy sources in existing powerplants. In the FUA, the national objective to decrease dependency on imported fuel is combined with the desire to achieve self-sufficiency in a manner that minimizes environmental and social costs. These objectives are considered sufficiently flexible in their achievement as to ensure that the environmental impacts are acceptable (see Fuel Use Act, EIS April 1979, United States Department of Energy).]

New Jersey also recognizes that most electric generating facilities may not be coastal-dependent but do require access to vast quantities of cooling waters, a siting factor that, from the perspective of utilities, increases the attractiveness of coastal locations. This siting rule strikes a balance among various competing national, regional, and state interests in coastal resources, and recognizes some of the differences in the siting requirements of fossil fuel and nuclear generating stations.

The rule directs fossil fuel stations toward built up areas in order to preserve and protect particularly scenic and natural areas important to recreation and open space purposes. New Jersey has articulated this policy with a conscious recognition of the state's progress in attaining and maintaining high air quality. Given the use of appropriate control technology, coal-fired generating stations, for example, appear feasible at various coastal locations. The siting of coal-fired power plants in urban areas also promotes efficient energy use due to the proximity of power plants to load centers.

The nuclear siting rule recognizes public concern for the disposal of spent fuel, as mandated in *[1973]* ***CAFRA*** by the New Jersey Legislature in *[CAFRA]* ***in 1973 and left unchanged in the 1993 legislative amendments***.

(s) (No change.)

7:7E-7.5 Transportation Use rule

(a) Standards relevant to roads are as follows:

1. New road construction must be consistent with the Rule on Location of Linear Development and shall be limited to situations where:

i.-v. (No change.)

vi. Induced development in conflict with coastal rules would not be expected to result.

2. (No change.)

(b) Standards relevant to public transportation are as follows:

1. New and improved public transportation facilities, including bus, rail, air, boat travel, people mover systems and related parking facilities, are encouraged.

2. *[Existing rail rights-of way may not be converted to other uses, unless the Department determines that the route is not critical for public transportation, public recreational trail use, or public access reasons.]* ***Development of existing rights-of-way which would preclude either their use for public transportation or public recreation trails is discouraged.***

3. (No change.)

(c) (No change.)

(d) Standards relevant to parking facilities are as follows:

1. Parking facility standards apply to all of the following:

i. (No change.)

ii. Any parking facility and related access, of which any part of the facility or related access is located in the coastal zone; or

2. Parking lots, garages and large paved areas are conditionally acceptable, provided that they will not interfere with existing or planned mass transit services, the extent of paved surfaces is minimized, and landscaping with indigenous species is maximized.

3. Each hotel casino facility located in Atlantic City shall provide one of every five non-Absecon and non-Brigantine Island resident hotel-casino employees commuting during the daily peak hour with an intercept space. Absecon Island residents are residents of Atlantic City, Margate, Ventnor, and Longport. Brigantine Island residents are residents of the City of Brigantine. Non-Absecon and non-Brigantine Island resident employees commuting during the daily peak hour is the sum of the number of non-Absecon and non-Brigantine Island resident employees of the shift with the largest number of employees plus the number of non-Absecon and non-Brigantine Island resident employees of the next largest adjoining shift. This intercept parking space shall be located off Absecon and Brigantine islands, specifically outside of the municipal boundary of the five municipalities identified above. If off-island sites are not available, temporary use of other sites is conditionally acceptable if an applicant can demonstrate that it will be moved to an off-island site within one year.

i. Alternatives that would reduce vehicle miles travelled and peak hour employee travel demand may be substituted for the employee intercept parking space requirements for casino facilities. The Department will review proposed alternative in consultation with the Department of Transportation. The Department will approve alternatives which it determines will reduce vehicle miles travelled and peak-hour employee travel by at least as much as would result from furnishing intercept parking as described above. Acceptable alternatives include, but are not necessarily limited to, employee subsidies for bus, rail transit, van pools, and/or bicycle programs.

ii.-iii. (No change.)
4. (No change.)

7:7E-7.6 Public Facility Use rule

(a) Public facilities include a broad range of public works for production, transfer, transmission, and recovery of water, sewerage and other utilities. The presence of an adequate infrastructure makes possible future development and responds to the needs created by present development.

(b) Standards relevant to general public facilities are as follows:

1. Upgrading existing facilities to meet development and redevelopment needs in developed waterfront areas is encouraged. New or expanded public facility development (except wastewater treatment facilities) is conditionally acceptable provided that:

i.-ii. (No change.)

iii. The public facility would not generate significant secondary impacts inconsistent with the Rules on Coastal Zone Management.

2. (No change.)

(c) (No change.)

(d) Standards relevant to wastewater treatment facilities are as follows:

1. Wastewater treatment facilities (including sewer lines) are conditionally acceptable provided they are consistent with a Water Quality Management (208) Plan approved by the Office of Land and Water Planning, and comply with the following:

i. Wastewater treatment facilities shall not generate significant secondary impacts inconsistent with the Rules on Coastal Zone Management.

ii. Wastewater treatment facilities shall to the maximum extent feasible, provide for multiple use of the site, including open space and recreational use.

*[5.]***(e)*** Rationale: Public facilities provide all important public services, but can also adversely affect the coastal environment and economy if improperly located, designed, or constructed. In particular, the secondary impacts of new public facility construction and the need for the facility require scrutiny. In developed areas, some inadequate public facilities need to be upgraded and improved.

Solid Waste is a resource whose potential for recovery must be evaluated before locating new sanitary landfills. Further regional solutions to solid waste management are mandated under State law. In addition, the development of new landfills is subject to the regulation of the Department's Division of Solid Waste Management.

Wastewater treatment systems range in scale from on-site sewage disposal systems to regional treatment systems with centralized plans, major interceptors, and ocean outfalls. In the past decade considerable wastewater construction has taken place or been authorized in developing parts of the coastal zone with corresponding improvements to water quality. New wastewater treatment systems must be carefully evaluated in terms of water quality impacts and secondary impacts.

The Federal Clean Water Act encourages federally funded wastewater treatment facilities to provide for multiple use of the site. The Coastal Policies rules support and extend this Federal policy by requiring that all new wastewater treatment facilities in the coastal zone consider the feasibility of multiple use.

7:7E-7.7 Industry Use rule

(a) Industry uses include a wide variety of industrial processing, manufacturing, storage and distribution activities. Industry is defined by Standard Industrial Classification (SIC) categories 2011 to 3999, except for 2991 (petroleum refining), which is covered by Use rule N.J.A.C. 7:7E-7.4(i).

(b) Industry is encouraged in special water areas and conditionally acceptable elsewhere provided it is compatible with all applicable Location and Resource rules. Particular attention should be given to Location rules which reserve the water's edge for water dependent uses (N.J.A.C. 7:7E-3.16 and 7:7E-3.32; to Resource rule N.J.A.C. 7:7E-8.13, which requires that the use be compatible with existing uses in the area or adequate buffering be provided; and Resource rule N.J.A.C. 7:7E-8.11 which places public access requirements upon the use.

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

(g) Rationale: A strong industrial base is vital if an area is to be health and vibrant. Many of the developed parts of the coast are suffering from a declining industrial base. Land which had been productive is now vacant and in need of redevelopment. The Industrial rules encourage industry to locate in the vacant areas of the cities of the Northern and Delaware waterfronts. However, the rules recognize that a healthy waterfront will host a mix of uses. By asking waterfront industries to create public access to the water and make sites they would vacate available to the public, the rules also recognize the waterfront as a valuable public resource.

The Industrial rules address the conflicting demands and effects of industrial waterfront development. The rules recognize several factors which must be considered during the decision making process. First, water dependent industry must locate somewhere along the waterfront.

Other industry which needs water for operating or processing, some or all of the time, might also require a location near the waterfront, but landward of the water's edge. Second, as a result of environmental degradation, urban areas are suffering from unmet recreation and open space needs. Third, urban areas typically suffer from high unemployment and deteriorating tax bases. Fourth, city dwellers must be supported in their efforts to rejuvenate and revitalize their cities, making them pleasant and economically viable places to live.

7:7E-7.8 Mining Use rule

(a) New or expanded mining operations on land, and directly related development, for the extraction and/or processing of construction sand, gravel, ilmenite, glauconite, and other minerals are conditionally acceptable, provided that the following conditions are met (mining is otherwise exempted from the General Land Areas rule, but shall comply with the Special Areas, and General Water Area rules):

1. The location of mining operations, such as pits, plants, pipelines, and access roads, causes minimal practicable disturbance to significant wildlife habitats, such as wetlands and stands of mature vegetation;

2. (No change.)

3. Buffer areas are provided ***in accordance with N.J.A.C. 7:7E-8.13***, using existing vegetation and/or new vegetation and landscaping, to provide maximum feasible screening of new on-land extractive activities and related processing from roads, water bodies, marshes and recreation areas. ***The Buffers and Compatibility of Uses rule (N.J.A.C. 7:7E-8.13) provides guidance related to buffer treatment.*** A minimum buffer area of 500 feet will be required to ***existing*** residential development;

4.-6. (No change.)

7. The mineral extraction operation will not have a substantial or long lasting adverse impact on coastal resources, including local economies, after the initial adverse impact of removal of vegetation, habitat, and soils, and not including the long term irretrievable impact of use of the non-renewable mineral resource; and

8. The mine development and reclamation plan minimizes the area and time of disruption of agricultural operations and provides for storage and restoration of all Agricultural Class I, II , and III soils, so that there will be no net loss in the area covered by these soils whenever feasible. The placement of soils may be acceptable to an alternate location if a need is demonstrated, there is no net loss in the area covered by these soils and the placement is consistent with all other coastal *[policies]* ***rules***.

(b) The proposed mining, extension of existing mining or associated mining activities in freshwater wetlands or freshwater wetlands transition areas is subject to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) In addition, proposed mining extension of existing mining or associated mining activities within the 100-year floodplain is subject to the Flood Hazard Control Act (N.J.S.A. 58:16A-50 et seq.).

(c) Rationale: New Jersey's coastal zone includes important deposits and minerals. Mining these non-renewable resources is vital to certain sectors of the economy of selected regions of the coastal zone, the entire state and in some cases the nation, depending upon

the specific type of mineral. For example, the high quality silica sands of Cumberland County supply an essential raw material for New Jersey's glass industry. Other industrial sands mined and processed in Cumberland County serve as basic ingredients in the iron and steel foundry industry. Ilmenite deposits in Ocean County provide titanium dioxide which is used in paint pigment. Construction grade sands are used in virtually all construction activity.

The extraction and processing of minerals from mines on land also produces short and long term adverse environmental impacts on agriculture. For example, open-pit mining removes all vegetation and soil, destroys wildlife habitat, changes the visual quality of the landscape, and irretrievably consumes the depletable mineral resource. Many of these impacts can be ameliorated by incorporating proper, imaginative and aggressive reclamation and restoration planning into the mine development process. However, the location of mineral deposits is an unquestionably limiting factor on the location of mining operations. Reasonable balances must therefore be struck between competing and conflicting uses of lands with mineral deposits.

Depending upon the diversity and strength of a local economy, depletion of mineral deposits through extraction may lead to serious adverse long-term economic consequences, particularly if the planned reclamation does not replace the direct economic contribution of the mining industry. The nonrenewable nature of mineral resources must also be considered carefully in light of the uses of some mined minerals.

7:7E-7.9 Port Use rule

(a)-(g) (No change.)

7:7E-7.10 Commercial Facility Use rule

(a) Standards relevant to hotels and motels are as follows:

1. Hotels and *[motesl]* ***motels*** are commercial establishments, known to the public as hotels, motor-hotels, motels, or tourist courts, primarily engaged in providing lodging or lodging and meals, for the general public. Also included are hotels and motels operated by membership organizations, whether open to the general public or not.

2. New, expanded or improved hotels and motels are conditionally acceptable provided that the development complies with all Location and Resource rules and with the rule for high-rise structures and is compatible in scale, site design, and architecture with surrounding development.

3. (No change.)

4. In special urban areas, new hotel, motel, or restaurant development is acceptable in the filled water's edge and over large rivers on structurally sound pilings, provided it is consistent with rules on Filled Water's Edge (N.J.A.C. 7:7E-3.23 and Special Urban Areas (N.J.A.C. 7:7E-3.43, and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.

5. (No change.)

(b) (No change.)

(c) Standards relevant to retail trade and services are as follows:

1. *["]*Retail and trade service*["]* is a broad category including, but not limited to, establishments selling merchandise for personal and household consumption, such as food stores and clothing stores; offices; service establishments such as banks and insurance agencies; establishments such as restaurants and night clubs; and establishments for participant sports such as bowling alleys and indoor tennis courts.

2. In special urban areas, new or expanded retail trade and service establishments are conditionally acceptable in filled water's edge areas and over large rivers on structurally sound existing pilings as part of mixed use developments, provided that the development is consistent with the rule on Filled Water's Edge (N.J.A.C. 7:7E-3.23) and Special Urban Areas (N.J.A.C. 7:7E-3.43), and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.

3. Elsewhere in the coastal zone, new or expanded retail trade and service establishments are conditionally acceptable provided that the development:

i. Complies with all applicable Location and Resource *[Rules]* ***rules***;

ii. Is compatible in scale, site design, and architecture with surrounding development; and

iii. Where appropriate, utilizes the water area as the central focus of the development.

4. (No change.)

(d) (No change.)

7:7E-7.11 Coastal Engineering

(a) Coastal engineering includes a variety of structural and non-structural measures to manage water areas and the shoreline for natural effects of erosion, storms, and sediment and sand movement. Beach nourishment, sand fences, pedestrian control on dunes, stabilization of dunes, dune restoration projects, dredged material disposal and the construction of retaining structures such as bulkheads, revetments and seawalls are all examples of coastal engineering.

1. Coastal engineering standards are subject to the Location rules on General Water Areas and to the Special Area rules. These coastal engineering use rules do not apply to water dependent uses within existing ports.

(b) (No change.)

(c) Standards relevant to dune management are as follows:

1. Dune restoration, creation and maintenance projects as non-structural shore protection measures, including sand fencing, re-vegetation, additions of non-toxic appropriately sized material, control of pedestrian and vehicular traffic, are encouraged. These projects must be carried out in accordance with N.J.A.C. 7:7E-3A, Standards for Beach and Dune Activities.

2. Rationale: As documented by the *[NJDEPE]* ***NJDEP***, the Federal Emergency Management Agency and others, dunes have proven to be very effective in providing protection from coastal storm surges, wave action and flooding. Dunes have been shown to reduce the level of storm damage particularly to boardwalks, gazebos and residential oceanfront structures. Creation, restoration, enhancement and maintenance of dunes is a preferred shore protection alternative where feasible.

(d) Standards relevant to beach nourishment are as follows:

1. Beach nourishment projects, such as non-structural shore protection measures, are encouraged, provided that:

i. The particle size and type of the fill material is compatible with the existing beach material to ensure that the new material will not be removed to a greater extent than the existing material would be by normal tidal fluctuations;

ii. The elevation, width, slope, and form of proposed beach nourishment projects are compatible with the characteristics of the existing beach;

iii. The sediment deposition will not cause unacceptable shoaling in downdrift inlets and navigation channels; and

iv. Public access to the nourished beach is provided in cases where public funds are used to complete the project.

2. (No change.)

(e) Standards relevant to structural shore protection are as follows:

1. The construction of new shore protection structures or expansion or fortification of existing shore protection structures, including, but not limited to, jetties, groins, seawalls, bulkheads, and other retaining structures to retard longshore transport and/or to prevent tidal waters from reaching erodible material is acceptable only if it meets all of the following five conditions:

i. The structure is essential to protect water dependent uses or heavily used public recreation beach areas in danger from tidal waters or erosion, or the structure is essential to protect existing structures and infrastructure in developed shorefront areas in danger from erosion, or the structure is essential to mitigate, through, for example, the construction of a retained earthen berm, the projected

erosion in an erosion hazard area along a headland and provide erosion protection for a development that is otherwise acceptable under the Rules on Coastal Zone Management;

ii. The structure will not cause significant adverse impacts on local shoreline sand supply;

iii. The structure will not create net adverse shoreline sand movement downdrift, including erosion or shoaling;

iv. The structure will cause minimum feasible adverse impact to living marine and estuarine resources;

v. The structure is consistent with the State's Shore Protection Master Plan;

*[v.]****vi.*** If the proposed project requires filling of a water area it must be consistent with the General Water Area rule for Filling (N.J.A.C. 7:7E-4.2(j)) and all other relevant coastal rules.

2. Maintenance or reconstruction of an existing bulkhead is conditionally acceptable, provided it does not result in the extension of the structure or the upland by more than 18 inches in any direction. Maintenance or reconstruction of an existing bulkhead which results in extension of the structure or upland by more than 18 inches shall be considered new construction, unless it can be demonstrated that the existing bulkhead can not physically accommodate an 18 inch replacement. In such cases, the Department may allow for bulkhead replacement at a location which is as close as physically possible to the existing bulkhead sheathing. All measurements shall be made from the waterward face of the existing bulkhead sheathing to the waterward face of the new bulkhead sheathing.

3.-4. (No change.)

5. The construction of bulkheads subject to wave runup forces (V-Zones) must be designed and certified by a professional engineer to withstand the forces of wave runup, and must include a splash pad on the landward side. The splash pad must have a minimum width of 10 feet, and may be constructed of concrete, asphalt or other erosion resistant material. If a cobblestone or similar splash pad is utilized, appropriate subbase and filter cloth must be incorporated into the design. A provision for the use of rip-rap along the seaward toe of the bulkhead structure may be required on a case-by-case basis, as a means to limit the scour potential.

6. (No change in text.)

7:7E-7.12 Dredged Material Disposal on Land

(a) Dredged material disposal is the discharge of sediments, removed during dredging operations. The following rules govern Land and Water's Edge disposal only. The rule regulating dredged material disposal in Water Areas are found in N.J.A.C. 7:7E-4.2.

(b) Dredged material ***disposal*** is conditionally acceptable under the following conditions: sediments are covered with appropriate clean material that is similar in texture to surrounding soils, and the sediments will not pollute the groundwater table by seepage, degrade surface water quality, present an objectionable odor in the vicinity of the disposal area, or degrade the landscape.

1. Dredged material disposal is prohibited on wetlands unless the disposal satisfies the criteria found at N.J.A.C. 7:7E-3.27.

2. The use of uncontaminated dredged material of appropriate quality and particle size for beach nourishment is encouraged. Creation of useful materials such as bricks and lightweight aggregate from the dredged material is encouraged.

3. The use of uncontaminated dredged material for purposes such as restoring landscape, enhancing farming areas, creating recreation-oriented landfill sites, including beach protection and general land reclamation, creating marshes, capping contaminated dredged material disposal areas, and making new wildlife habitats is encouraged.

4. (No change.)

5. Dredged material disposal in wet and dry borrow pits is conditionally acceptable (see N.J.A.C. 7:7E-3.14, and 3.35).

6. If pre-dredging sediment analysis indicates contamination, then special precautions shall be imposed including but not necessarily limited to*[, These may include]* increasing retention time of water in the disposal site or rehandling basin through weir and dike design modifications, use of coagulants, ground water monitoring, or measures to prevent biological uptake by colonizing plants.

7. Dewatering releases from confined (diked) disposal sites and rehandling basins shall meet existing State Water Quality Standards (N.J.A.C. 7:9-4 through 6).

(c) Rationale: Dredged material disposal is an essential coastal land and water use that is linked inextricably to the coastal economy. Dredged material disposal could have serious impacts in the coastal environment. In the past decade, evolving state and federal policies for protection of the marine and estuarine coastal environment have sharply limited the creation of new water area dredged material disposal areas. Yet maintenance dredging must continue if inlets and navigation channels are to be maintained. This rule recognizes the importance of this use of coastal resources and the need for land disposal sites.

Use of inefficient or faulty equipment and methods in the movement of dredged material, may result in spillage of fuels, emission of toxic or noxious gases, loss of dredged materials, and noise and vibrations. These cause water pollution, air pollution and discomfort both for the crews and for the human population along the disposal route and nearby areas.

Therefore, due investigation is required prior to approval of dredge material disposal on land. Further, every precaution should be taken to ensure that the placement of dredge material does not endanger the coastal natural resources.

7:7E-7.13 National Defense Facility Use rule

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

SUBCHAPTER 8. RESOURCE RULES

7:7E-8.1 Purpose

(a) The third step in the screening process of the Rules on Coastal Zone Management involves a review of a proposed development in terms of its effects on various resources of the built and natural environment of the coastal zone, both at the proposed site as well as in its surrounding region. These rules serve as standards to which proposed development must adhere.

(b) In addition to the standards addressed in this subchapter, proposed development must also adhere to applicable site development standards administered by other State and local agencies. These include, but are not limited to, standards adopted by local Soil Conservation Districts or municipalities pursuant to the Soil and Sediment Control Act (N.J.S.A. 4:24-39 et seq.); Barrier Free Design Requirements promulgated by the New Jersey Department of Community Affairs pursuant to N.J.S.A. 52:32.1 et seq. and N.J.S.A. 52:27D-123 and N.J.A.C. 5:23-3.2 and 5:23-3.14, the Municipal Land Use Law, N.J.S.A. 40:55D- 1 et seq.; the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. and its implementing regulations set forth at N.J.A.C. 7:7A.

7:7E-8.2 Marine Fish and Fisheries

7:7E-8.3 (Reserved)

7:7E-8.5 Surface Water Use

(a) Surface water is the water in lakes, ponds, streams, rivers, bogs, wetlands, bays, and ocean that is visible on land.

(b) Coastal development shall demonstrate that the anticipated surface water demand of the facility will not exceed the capacity, including phased planned increases, of the local potable water supply system or reserve capacity and that construction of the facility will not cause unacceptable surface water disturbances, such as drawdown, bottom scour, or alteration of flow patterns.

1. Coastal development shall conform with all applicable *[DEPE]* ***DEP*** and, in the Delaware River Area, the Delaware River Basin Commission, requirements for surface water diversions.

(c) (No change.)

7:7E-8.6 Groundwater Use

(a) Groundwater is all water within the soil and subsurface strata that is not at the surface of the land. It includes water within the earth that supplies wells and springs.

(b) Coastal development shall demonstrate, to the maximum extent practicable, that the anticipated groundwater withdrawal demand of the development, alone and in conjunction with other

groundwater diversions proposed or existing in the region, will not cause salinity intrusions into the groundwaters of the zone, will not degrade groundwater quality, will not significantly lower the water table or piezometric surface, or significantly decrease the base flow of adjacent water sources. Groundwater withdrawals shall not exceed the aquifer's safe yield.

1. Coastal development shall conform with all applicable *[DEPE]* ***DEP*** and, in the Delaware River Basin, Delaware River Basin Commission requirements for groundwater withdrawal and water diversions.

(c) Rationale: Groundwater is a primary source of water for drinking and industrial use. In some areas of the coastal zone, especially areas in Essex, Middlesex, Monmouth, Salem, Camden, and Cape May Counties, excessive amounts of groundwater are being withdrawn. The problem stems from the overpumping of groundwater, industrial, agricultural and municipal landfill leakage into groundwater and reduction of aquifer recharge caused by increased development and population. This has led to a progressive lowering of the water table or piezometric surface, altered groundwater flow patterns, changed groundwater recharge/discharge relationships which may in turn result in increasing salt water intrusion into the groundwaters, damaging the base flow conditions of streams, and well closing due to contamination.

7:7E-8.7 Stormwater *[Runoff]* ***Management***

(a) Stormwater runoff is the flow of water on the surface of the ground, resulting from *[preciptation]* ***precipitation***.

(b) Coastal development shall employ a site design which, to the extent feasible, minimizes the amount of impervious coverage on a project site*[,]*** **. In addition, the development*** *[and]* shall use the best available technology to minimize the amount of stormwater generated, minimize the rate and volume of off-site stormwater runoff, maintain existing on-site infiltration, simulate natural drainage systems and minimize the discharge of pollutants to ground or surface waters. Consistent with the provisions of the *[stormwater runoff]* ***Stormwater Management*** rule, the overall goal of the post-construction stormwater management system design shall be the reduction from the predevelopment level of ***total*** suspended solids ***(TSS)*** and soluble contaminants ***in the stormwater*** .

1. Non-structural management practices, including, but not limited to, cluster land use development, minimum site disturbance, open space acquisition, use of sheet flow from streets and parking areas, and the protection of wetlands, steep slopes and vegetation shall be incorporated into project designs. These non-structural management practices shall be utilized, unless it is demonstrated that these practices are not feasible, from an engineering perspective, on a particular site.

2. In determining the appropriate stormwater management system design for a particular project, the existing physical site conditions must be carefully considered. Slopes, depth to seasonal high water table, soil type and texture, watershed area, and property areas are all critical to the selection of a suitable stormwater management technique or combination of techniques.

(c) Standards relevant to stormwater management system design are as follows:

1. All stormwater management systems shall be designed in accordance with this section*[.]*** **, and shall be consistent with the Standards for Soil Erosion and Sediment Control in New Jersey (N.J.A.C. 2:90).*** The use of control techniques not specifically listed in this section will be evaluated on a case-by-case basis, and may be permitted in conjunction with the techniques discussed in this section. Alternative techniques may be acceptable, provided that it can be demonstrated that they satisfy the design standards of this section. Complete justification for selection of a particular stormwater management technique, including the engineering basis for exclusion of Department's preferred techniques, shall be provided as part of a complete permit application submission.

2. The following apply to ***development proposed in*** tidal areas:

i. The construction of stormwater outfalls into tidal waters *[must include]* ***may require*** the incorporation of a tide *[flex]* ***check or similar*** valve*[, if the bottom elevation of the outfall is within one foot of the mean high water elevation]* ***depending on the physical conditions of the site, including, but not limited to, land elevation, drainage area, bulkhead elevation, tidal elevation and 100-year flood elevation***.

ii. Because tidal flooding is the result of higher than normal tides, the 100-year tidal flood elevation *[will]* ***is*** not *[be]* affected by development. Therefore, development activities that are located along or adjacent to tidal water bodies and segments of tidal water bodies, as specified below, *[shall]* ***are*** not *[be]* required to comply with the flood control requirements of *[this section]* ***(c)3 below***. These affected tidal waters include:

(1) Atlantic Ocean;

(2) All water bodies named on the U.S. Geological Survey 7.5' topographic maps as "bays," "canals," "coves," "guts," "harbors," "inlets," "sounds," "thorofares," and "channels," except for the portion of the Delaware River near Camden called "Back Channel";

(3) All man-made lagoons and canals discharging into the water bodies listed in *[this subparagraph]* ***(c)2ii(2) above***;

(4) All sections of the "Intracoastal Waterway";

(5) Arthur Kill (entire reach); Hackensack River (Newark Bay to the Pulaski Skyway); Hudson River; Manasquan River (Atlantic Ocean to Route 70); Metedeconk River (Barnegat Bay to Route 70); Navesink River (Shrewsbury River to Coopers Bridge); Passaic River (Newark Bay to the Pulaski Skyway); Raritan River (Raritan Bay to the New Jersey Turnpike); Shark River (Atlantic Ocean to confluence with Laurel Gully Brook; Shrewsbury River (Sandy Hook Bay to Seven Bridge Road); Waretown Creek (Atlantic Ocean to Route 9); Whale Brook (Raritan Bay to Route 35); Wreck Pond (Atlantic Ocean to Route 71); and

(6) Along watercourses not specifically identified in (c)2ii(1) through (5) above, that flow into tidal water bodies listed above, the reach between the mouth and either the first bridge or culvert upstream or the point upstream where the regulatory flood (as per N.J.A.C. 7:13) exceeds the 100-year tidal elevation, whichever is closest to the mouth.

3. The following apply to flood control ***design***:

i. If a regional stormwater management plan has been developed for the watershed, the applicant shall meet the flood control requirement of the *[Stormwater Runoff]* ***Stormwater Management*** rule by conforming to the regional management plan. If no regional stormwater management plan has been developed then the applicant shall design the stormwater system so that the post-development peak runoff rate for the two year storm event is 50 percent of the pre-development peak runoff rate and the post-development peak runoff rates for the 10- and 100-year storm events are 75 percent of the pre-development peak runoff rate.

ii. The design storms used to achieve the required level of site runoff control described in (c)*[2]*** **3*i above shall be defined as either the 24-hour storm using the rainfall distribution recommended by the U.S. ***Department of Agriculture*** Soil Conservation Service *[(USSCS)]*, or as the total rainfall uniformly distributed throughout the critical storm duration as determined by the *[USSCS]* Modified Rational Method *[("Standards for Soil Erosion and Sediment Control in New Jersey," April, 1978)]* ***(T.J. Mulvaney, 1851, On the Use of Self-registering Rain and Flood Gages in Making Observations of the Relations of Rainfall and Flood Discharges in a Given Catchment, Proc. Inst. Civil Engineering, Ireland, vol. 4, pp. 18-31)***. A 20 acre drainage area limit shall be used for the Modified Rational Method unless otherwise approved by the Department.

iii. For the purposes of computing runoff, all lands in the site shall be assumed, prior to development, to be in good hydrologic condition if the lands are pastures, lawns or parks, with good cover if the lands are woods, or with conservation treatment if the land is cultivated, regardless of conditions existing at the time of computation. For lands to be considered cultivated, *[it]* ***they must*** *[shall]* have been used for such purposes ***without interruption*** for a period of at least *[10]* ***5*** years prior to the time of computation. If such use has not occurred or cannot be satisfactorily documented, woods shall be assumed to be the *[redeveloped]* ***predeveloped*** land condition. In computing pre-development

runoff, all significant land features, such as ponds, depressions or hedgerows which increase the ponding factors shall be accounted for.

*[vi.]**vi.* Plans and calculations shall be provided to show that the discharge will not cause erosion along the flow path between the outfall and the receiving waterbody. All stormwater discharge paths shall be stabilized in accordance with the criteria in N.J.A.C. *[7:13-3.3]***2.90, Standards for Soil Erosion and Sediment Control in New Jersey***.

4. The following apply to water quality control ***design***:

i. The water quality control standard shall be the maximum feasible reduction of the *[average annual]* total suspended solids (TSS) loading after construction has been completed, ***up to and including the water quality design storm.*** *[and the removal of oil, grease and other soluble contaminants through vegetative filtration, wherever possible. Under no circumstances shall the average annual pre-development total suspended solids (TSS) discharged off-site be increased after construction has been completed and the removal of oil and grease through vegetative filtration has been effected wherever possible.]* ***At a minimum, post-construction loadings of TSS shall match the predevelopment loadings of TSS for the water quality design storm.***

[ii. The water quality requirement for detention will require prolonged detention of a small design storm which is a one-year frequency 24-hour storm using the rainfall distribution recommended for New Jersey by the Soil Conservation Service, or a storm of 1.25 inches of rainfall in two hours. Provisions shall be made for the small design storm to be retained and released so as to evacuate 90 percent or less in 18 hours in the case of residential developments, and 36 hours in the case of other developments. This is usually accomplished by a small outlet at the lowest level of detention storage, with a large outlet or outlets above the level sufficient to control the small design storm. If the above requirement would result in a pipe smaller than three inches in diameter, the period of detention shall be waived so that three inches will be the minimum pipe size used. The retention time shall be considered a brim-drawdown time, and therefore begin at the time of peak storage.]

(d) ***Stormwater management is vital to protecting and improving New Jersey's water quality, and control techniques, and information about their effectiveness in different situations are evolving. The Department has prepared the following hierarchy of stormwater management techniques based on its experience to date. The goal of the hierarchy is to avoid the use of techniques that have not been successful in previous similar situations and to guide permit applicants toward techniques that are likely to be successful. At the same time, the Department is open to innovative proposals or additional information that may help better manage stormwater on a particular site or in a particular region. For each of the techniques identified in this rule, the Department has included conditions that shall be considered, but the Department recognizes that this is an evolving technology and will evaluate individual proposals on a case by case basis.*** The Land Use Regulation Program has assigned to the following stormwater management techniques*[,]* a hierarchy of preferences for use in project design*[. These options are]* categorized as ***either*** *["Encouraged,"]* "Conditionally Acceptable" *[and]* ***or*** "Discouraged." If an applicant cannot make maximum use of *[a preferred]* ***"Conditionally Acceptable"*** stormwater management technique***s***, based on physical or engineering constraints, the *[Program may accept]* ***Department encourages the use of a*** *[some]* combination of techniques. If use of a particular technique on a property can be designed to meet a majority of that technique's normal requirements, *[than]* ***then*** an applicant may still be required to use that stormwater management technique, if use of that technique on that property remains environmentally preferable to alternative techniques. In addition, none of the techniques listed in this section may be constructed "on-stream" ***unless the stormwater management system is part of a Department-approved regional stormwater plan.***

1. *[Encouraged: The following list represents the preferred stormwater management techniques established by the Program. The incorporation of these methods into project design is strongly encouraged, because these techniques have been determined to provide the best water quality and flood control.]* ***Conditionally Acceptable: The following list represents the stormwater management techniques which may be incorporated subject to the specified conditions. The six "Conditionally Acceptable" techniques in this section are not listed in any order of Department preference, and shall be equally evaluated on a case-by-case basis.***

i. The use of newly *[created artificial]* ***constructed*** wetlands is *[encouraged]* ***conditionally acceptable***, provided that the following *[design]* conditions are satisfied:

(1) The water depth in the wetlands is less than one foot (six inches is optimal), with the exception of the 25 percent area discussed at (d)1i(6) below;

(2) The perimeter of the water area shall be graded to form a 10 to 20 foot wide shallow bench for aquatic emergents, for at least half of the water area perimeter;

(3) The surface area of the wetland shall constitute about two to three percent of the total area of the contributing watershed;

(4) Wetland vegetation shall be commercial wetland plant stock (either live plants or dormant rhizomes), as opposed to transplants or seeding;

(5) At least two primary native or non-aggressive exotic wetlands species, which are hardy and rapid colonizers, shall be planted over about 30 percent of the total shallow water area. Each primary species shall be planted in three or four monospecific stands, with individual plants about two to three feet apart. Up to three secondary wetland species, that are not as aggressive in colonizing a pond, shall be randomly distributed in clumps around the perimeter of the wetlands;

(6) If a basin is exclusively designed to act as a shallow wetland, at least 25 percent of the total surface area of the inundated area shall be reserved for open water areas that are two or more feet deep, to provide habitat for waterfowl and marsh birds*[.]***;***

(7) The use of native fish stocks in *[artificial]* ***constructed*** wetlands is encouraged, as a means to control mosquitos; *[and]*

(8) The use of a clay liner in the system design may be required, depending on site conditions***,*** in order to ensure adequate hydrology in the system*[.]***; and***

(9) The surface and drainage shall be sufficient so that the inflow of dry weather flow into the wetlands will be large enough to sustain sufficient water during dry periods and prevent stagnation.

ii. The use of wet ponds/retention basins is *[encouraged]* ***conditionally acceptable***, provided that the following *[design]* conditions are satisfied:

(1) The ratio of permanent pool or basin volume to the runoff volume for the water quality storm runoff shall be greater than three to one;

(2) The pool must be shallow enough to avoid thermal stratification, and deep enough to minimize algal blooms and resuspension of decomposing organics and other previously deposited materials;

(3) The *[surface and drainage area shall be sufficient]* ***pond shall be designed*** so that the inflow of dry weather flow ***either from the contributing drainage area or ground water base flow,*** into the wet pond will be large enough to sustain sufficient water during *[the summer]* ***dry*** periods and prevent stagnation;

(4) Wet ponds shall be configured so as to promote maximum sedimentation;

(5) The use of native fish stocks in wet ponds is strongly encouraged, as a means to control mosquitos; and

(6) The use of a clay liner in the system design may be required, depending on site conditions***,*** *[in order]* to ensure adequate hydrology in the system.

iii. The use of detention basins is *[encouraged]* ***conditionally acceptable***, *[to provide storage of stormwater and to control the introduction of sediments and pollutants to ground and surface waters,]* provided that the following *[design]* conditions are satisfied:

(1) *[The use of artificial wetlands a retention basin has been thoroughly explored and has been determined to be infeasible, based on engineering criteria;]* ***The water quality design for detention***

will require prolonged detention of the water quality design storm which is a one-year frequency 24-hour storm using the rainfall distribution recommended for New Jersey by the U.S. Department of Agriculture, Soil Conservation Service, or a storm of 1.25 inches of rainfall in two hours. Provisions shall be made for the water quality design storm to be retained and released so as to evacuate 90 percent or less in 18 hours in the case of residential developments, and 36 hours in the case of other developments. This is usually accomplished by a small outlet orifice at the lowest level of detention storage, with a large outlet or outlets above the level sufficient to control the water quality design storm. The minimum allowable orifice diameter shall be three inches. If the above detention time requirement would result in a pipe smaller than three inches in diameter, then additional methods shall be employed to remove the TSS prior to discharge into the basin. The retention time shall be considered brim-drawdown time, and therefore begin at the time of peak storage;*

[(2) The design standards for water quality control and flood control, as described in (c) above, must be satisfied;]

*[(3)]***(2) The bottom of the basin shall be at an elevation above the seasonal high water table.*** *[There shall be]* ***Where possible,*** at least three feet of vertical separation between the bottom of the basin and the seasonal high water table ***shall be provided to promote infiltration. If the seasonal high water table is one foot or less below the bottom of the basin, then the use of constructed wetlands or a wet pond shall be considered***;

*[(4)]***(3)*** Native and non-aggressive exotic vegetation for use in detention basins shall be the approved species as determined by the appropriate Soil Conservation District; and

*[(5)]***(4)*** All low-flow channels shall be constructed of rip-rap *[or]**,* grass paver blocks ***or similar material that will allow for the growth of vegetation. The use of underdrains below the low flow channel will be allowed if necessary to dry out the soil to allow vehicular access for maintenance, such as tractors to cut the vegetation***.

[2. Conditionally Acceptable: The following list represents the stormwater management techniques which may be incorporated into project design, provided that it can be documented that the use of the "Encouraged" techniques listed in (d)1 above has been maximized or shown to be infeasible for engineering reasons. These techniques are designed to facilitate the infiltration of stormwater into the soil. However, these systems are susceptible to failure as a result of inadequate depth to seasonal high water table, improper soil texture and inadequate long-term maintenance of the systems.]

*[i.]***iv.*** The use of vegetated swales is conditionally acceptable, provided that the following conditions are satisfied:

[(1) The use of other "Encouraged" stormwater management techniques, as described in (d)1 above, has been maximized, or can be documented as infeasible. Complete justification for the exclusion of the "Encouraged" techniques must be provided as part of the permit application submission;]

[(2) There shall be at least three feet of vertical separation between the bottom of the swale and the seasonal high water table;]

(1) The bottom of the swale shall be above the elevation of the seasonal high water table;

(2) Swales shall be used in conjunction with other stormwater management techniques (detention basins, wet ponds, constructed wetlands, underground infiltration) as internal conveyances within a stormwater collection system, receiving only overland flow (that is, as replacements for curb and gutter flow or on highway medians);*

[(3) The soil texture shall be sand, loamy sand or sandy loam, as defined by the U.S. Department of Agriculture;]

*[(4)]***(3)*** The use of vegetative swales shall be limited to low intensity developments, as defined in N.J.A.C. 7:7E-5***, unless combined with other stormwater management techniques***;

(4) Swales accepting concentrated discharges from pipes at the end of the stormwater system will not be accepted for water quality treatment unless there are no other viable methods available to remove the TSS prior to discharge and the length of the swale is the maximum achievable in relation to the site conditions;

(5) The swales shall be designed to provide *[a]* ***the maximum feasible*** vegetation contact time *[of a minimum of]* ***ranging from*** five ***to 20*** minutes ***where feasible,*** for the water quality storm;

(6) The slope of the swale shall not be less than 0.5 percent *[(preferably 1% or higher)]* ***nor greater than 5 percent***;

(7) *[The swale shall be designed so the depth of flow does not exceed three inches for the water quality storm]* ***Vegetated swales shall only be used where the expected velocity of flow does not exceed 1.5 feet per second***;

(8) The use of rip-rap, ***or other stabilization material that will allow vegetative growth,*** in conjunction with appropriate vegetation, may be incorporated into the design of the swale, if a stable condition using vegetation alone cannot be achieved;

(9) Vegetation for use in the swales shall include native *[woody]* species, ***of sufficient height to extend above the expected elevation of the water quality design storm in the swale*** and shall be *[consistent]* ***coordinated*** with the *[approved vegetation species as determined by the]* local Soil Conservation District ***to determine the suitability for use on the site***; and

(10) In addition to the standards in (d)2i(1) through (9) above, all swales must be designed in accordance with the *[Soil Conservation District]* "Standards for Soil Erosion and Sediment Control in New Jersey," N.J.A.C. 2:90.

*[ii.]***v.*** The use of infiltration basins is conditionally acceptable, provided that the following conditions are satisfied:

[(1) The use of other "Encouraged" stormwater management techniques, as described in (d)1 above, has been maximized, or can be documented as infeasible. Complete justification for the exclusion of the "Encouraged" techniques must be provided as part of the permit application submission;]

*[(2)]***(1)*** There shall be at least three feet of vertical separation between the bottom of the proposed infiltration basin and the seasonal high water table;

*[(3)]***(2)*** The soil texture shall be sand, loamy sand or sandy loam, as defined by the U.S. Department of Agriculture;

*[(4)]***(3)*** No topsoil may be placed in the basin bottoms;

*[(5)]***(4)*** The basin bottom shall be scarified after the basin is formed, after which no other construction within the basin may occur;

*[(6)]***(5)*** All of the water quality storm shall be stored and recharged within 72 hours of the storm; and

*[(7)]***(6)*** There is an adequate back-up drainage system provided, in the event that the infiltration capacity of the infiltration basin fails.

vi. The use of perforated pipe for the purpose of underground recharge of stormwater is conditionally acceptable, provided the following conditions are satisfied:

(1) The soil texture shall be sand, loamy sand or sandy loam, as defined by the U.S. Department of Agriculture;

(2) Runoff shall be filtered through a basin and/or vegetated swale, to enhance water quality, prior to discharge into a perforated pipe system;

(3) There shall be at least three feet of vertical separation between the bottom of the perforated pipe trench and the seasonal high water table;

(4) All underground recharge pipes shall be 360 degree perforated;

(5) The required pipe size shall be determined based on the peak discharge for the required post-development design storm; and

(6) In addition to the standards set forth above, all underground infiltration systems shall be designed in accordance with the "Standards for Soil Erosion and Sediment Control in New Jersey," N.J.A.C. 2:90.*

*[3.]***2.*** Discouraged: The following list represents techniques which are not likely to be approved, unless it can be clearly documented that the use of other *["Encouraged" or]* "Conditionally Acceptable" techniques has been maximized or is infeasible for engineering reasons.

i. Underground storage ***is not effective and*** cannot be utilized as a means to provide water quality treatment of stormwater. Under-

ground storage for the purpose of controlling stormwater volume is discouraged, but may be acceptable in limited cases, provided that the following conditions are satisfied:

(1) The use of other *["Encouraged" or]* "Conditionally Acceptable" stormwater management techniques, as described in (d)1 *[and 2]* above, has been maximized, or can be documented as infeasible. Complete justification for the exclusion of *["Encouraged" or]* "Conditionally Acceptable" techniques must be provided as part of the permit application submission; and

(2) Water quality treatment shall be provided*[,]* prior to stormwater discharge to the underground storage system.

ii. The use of sediment traps and oil/grease separators is generally discouraged ***because they have proven ineffective***, but ***they*** may be acceptable in limited cases, provided that the following conditions *[can be]* ***are*** satisfied:

(1) The use of other *["Encouraged" or]* "Conditionally Acceptable" techniques, as described in (d)1 *[and 2]* above, has been maximized, or can be documented as infeasible. Complete justification for the exclusion of *["Encouraged" or]* "Conditionally Acceptable" techniques must be provided as part of the permit application submission;

(2) The use of sediment traps and oil/grease separators shall be limited to drainage areas less than 0.1 acre in size; ***and***

(3) For drainage areas greater than 0.1 acre in size, the use of sediment traps and oil/grease separators shall be combined with other stormwater management techniques as described in this subsection.

iii. The use of porous asphalt pavement is discouraged, due to the problems associated with continued maintenance and functioning of these types of infiltration systems. As set forth in this subparagraph, the surface of porous asphalt pavement shall be cleaned regularly to avoid becoming clogged by fine grained material. Porous pavement does not include gravel, crushed shell or paver blocks (non-grout). The use of porous pavement may be acceptable in limited cases, provided that the following conditions are satisfied:

(1) The use of other *["Encouraged" or]* "Conditionally Acceptable" techniques, as described in (d)1 *[and 2]* above, has been maximized, or can be documented as infeasible. Complete justification for the exclusion of *["Encouraged" or]* "Conditionally Acceptable" techniques must be provided as part of the permit application submission;

(2) The soil texture shall be sand, loamy sand or sandy loam, as defined by the U.S. Department of Agriculture;

(3) The use of porous asphalt pavement shall be limited to light traffic areas only, such as parking areas;

(4) The areas of porous asphalt pavement shall be adequately buffered, through vegetative screening, to avoid adjacent sources of aeolian sand and silt;

(5) The *[use of porous asphalt pavement]* ***application*** shall include a strict maintenance schedule, ***which may be required*** to include, but not be limited to, vacuum sweeping on a weekly basis and high pressure water washing of the pavement on a monthly basis;

(6) The *[use of]* ***paving uses no*** asphalt sealers *[is prohibited]*; and

(7) The use of sand during periods of snow is prohibited on porous asphalt areas.

*[iv. The use of perforated pipe for the purpose of underground recharge of stormwater is discouraged, due to the problems associated with maintenance and long-term infiltration functioning of this type of system, and the potential to directly contaminate groundwater. However, the use of perforated pipe may be acceptable in limited cases, provided that the following conditions are satisfied:

(1) The use of other "Encouraged" or "Conditionally Acceptable" techniques, as described in (d)1 and 2 above, has been maximized or can be documented as infeasible. Complete justification for the exclusion of "Encouraged" and "Conditionally Acceptable" techniques must be provided as part of the permit application submission;

(2) The soil texture shall be sand, loamy sand or sandy loam, as defined by the U.S. Department of Agriculture; and

(3) Runoff shall be filtered through a basin and/or vegetated swale, to enhance water quality, prior to discharge into a perforated pipe system.]*

(e) The species and quantity of native or non-invasive exotic vegetation used as part of a stormwater management system design shall be consistent with the standards and specifications of the local Soil Conservation District. In general, the use of vegetation shall be limited to low maintenance native species, shall be pest resistant, and shall be drought or water tolerant, depending on the specific application. The use of native *[woody]* species is encouraged for all vegetated swales.

*[(fe)]***(f)*** Standards relevant to stormwater management system maintenance are as follows:

1. The long-term maintenance of stormwater management systems is a critical factor in the ongoing functioning of these systems. In cases where these existing systems have failed, the most common cause is inadequate maintenance of the system. Therefore, the following maintenance requirements shall be included as part of all stormwater management plans; shall be specifically identified on the site plans and in a stormwater system maintenance report for any proposed project; and, if required by the Program, shall be recorded with the deed for the property in question:

i. *[all]* ***All*** information regarding the long-term maintenance of proposed stormwater management systems*[, which information]* shall be provided as part of the initial permit application submission*[, and the]***;***

ii. The party or parties responsible for long-term maintenance of the system shall be clearly designated, and documentation of the assumption of this responsibility shall be provided as part of the permit application submission*[.]***;***

iii. All maintenance records shall be written, maintained and provided to the Department upon request;

*[i.]****iv.*** Maintenance of detention basins shall include, but not be limited to, the following activities:

(1) Visual inspection of all components of the stormwater management system at least twice each year;

(2) Removal of silt, soil, litter and other debris from all catch basins, inlets and drainage pipes, on a twice-yearly basis;

(3) Maintenance, including grass cutting, and replacement (if necessary) of all landscape vegetation within the basins, at least once each year;

(4) Removal of silt from within the basins at least once each year, or more frequently if noticeable buildup occurs, for disposal in an acceptable location; and

(5) The basin bottoms shall be aerated at least once each year, and shall be scraped and replanted at least once every five years, to prevent the sealing of the basin bottom by silt deposits.

*[ii.]****v.*** Maintenance of *[artificial]* ***constructed*** wetlands shall include, but not be limited to, the following:

(1) Visual inspection of all components of the system at least once every six months;

(2) Removal of silt, litter and other debris from all catch basins, inlets and drainage pipes at least once every six months, or as required;

(3) Vegetation harvesting at least once each year; ***and***

(4) The approval of a stormwater management system which involves *[the creation of artificial]* ***newly constructed*** wetlands on an upland site will automatically include the issuance of a Freshwater Wetlands General Permit 1 for maintenance of the wetlands, which shall be renewed ***by the permittee*** every five years.

***vi. Maintenance of wet ponds/retention basins shall include, but not be limited to, annual monitoring of water quality, dissolved oxygen, vegetative growth and fish population.**

vii. Maintenance of infiltration facilities shall include, but not be limited to:

(1) Annual tilling operation to maintain infiltration capacity, with revegetation as necessary; and

(2) Sediment removal shall be followed by retilling, at a time when the facility is thoroughly dry.

viii. Maintenance of swales, including, but not limited to, removal of grass clippings and leaves, shall be performed so that the facilities remain in working order.

ix. Maintenance of underground perforated pipe infiltration systems shall include, but not be limited to:

(1) Visual inspection of all system components at least twice each year;

(2) Vacuuming of all storm sewer inlets once every six months (frequency of vacuuming may be adjusted if first year maintenance records indicate that sediment and debris accumulation is insignificant; and

(3) Reverse flushing and vacuuming shall be required if system inspections indicate significant accumulation of sediment in the pipes.*

*[(f)]***(g)*** Rationale: Stormwater runoff is a natural process of surface hydrology, whereby precipitation flows on the surface of the ground into a surface water body or into the soil through infiltration. Development changes this process as the volume and rate of runoff increase in response to changes in the natural landscape, including grading, paving and construction. Unless managed properly, the stormwater runoff generated by buildings and paved surfaces has the potential to adversely affect the coastal environment in several ways: increased erosion; increased flooding in streams; destruction of flood plain vegetation; contamination of ground and surface waters through the introduction of pollutants and sediment; increased turbidity in surface waters; and decreased aquatic productivity.

The two primary objectives in designing a stormwater management system are water quality control and flood/erosion control. Many of the concerns related to water quality control and flood/erosion control *[should]* ***can best*** be addressed during the site planning and design phase of a development. Non-structural management practices, including land use, site design and source controls for nonpoint source pollution control shall be used in the planning of a project, unless it *[dcan]* ***can*** be demonstrated that these practices are infeasible on a particular site. Changes in land use can often reduce the scope and cost of required detention provisions by means of appropriate changes in runoff coefficients.

In order to reduce the potential for adverse impacts from stormwater runoff, a minimum disturbance and minimum maintenance goal should apply to landscaping on a proposed project site. Where practical, clearing or site grading should only occur on land required for the structure and any related utilities, drives, walks and active recreational facilities. Where land disturbance is necessary and existing vegetation is proposed to be removed, alternative landscaping including ground coverings, shade trees and shrubbery should be utilized. Native plant species should be established, and lawns should be avoided where conditions are poor or indicate problems with turf establishment and maintenance.

As a design guideline, the Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA) have established a threshold of 80% reduction of the average annual total suspended solids (TSS) loading after construction has been completed. The removal of 80% of TSS is assumed to control to some degree heavy metals, phosphorous and other pollutants. In some cases, local conditions such as steep slopes may preclude the attainment of this goal. However, the design of stormwater management systems shall include adequate provisions, as described in this rule, to satisfy the 80% TSS reduction goal.

The requirements of this section have been established to conform with the New Jersey Surface Water Quality Standards (N.J.A.C. 7:9-4 et seq.). Certain guidelines and standards discussed in this section have been previously developed and discussed in *[a report]* ***reports*** titled "Controlling Urban Runoff: A Practical Manual For Planning And Designing Urban BMP's", written by Thomas Schueler, Metropolitan Washington Council of Governments, dated 1987***, and "A Current Assessment of Urban Best Management Practices; Techniques for Reducing Non-Point Source Pollution in the Coastal Zone", written by Thomas Schueler, et al., Metropolitan Washington Council of Governments, dated March 1992***. Further information and details may be found in *[that report]* ***these reports***.

7:7E-8.9 (Reserved)

7:7E-8.11 Public Access to the Waterfront

(a) Public access to the waterfront is the ability of all members of the community at large to pass physically and visually to, from and along the ocean shore and other waterfronts.

(b) Coastal development adjacent to all coastal waters, including both natural and developed waterfront areas, shall provide permanent perpendicular and linear access to the waterfront to the maximum extent practicable, including both visual and physical access. Development that limits public access and the diversity of the waterfront experiences is discouraged.

1. All development adjacent to water shall, to the maximum extent practicable, provide, within its site boundary, a linear waterfront strip accessible to the public. If there is a linear waterfront accessway on either side of the site and the continuation of which is not feasible within the boundaries of the site, a pathway around the site connecting to the adjacent parts, or potential parts of the waterfront path system in adjacent parcels shall be provided.

2. Municipalities that do not currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection funding.

3. Public access must be clearly marked, provide parking where appropriate, be designed to encourage the public to take advantage of the waterfront setting, and must be barrier free where practicable.

4. A fee for access, including parking where appropriate, to or use of publicly owned waterfront facilities shall be no greater than that which is required to operate and maintain the facility and must not discriminate between residents and non-residents except that municipalities may set a fee schedule that charges up to twice as much to non-residents for use of marinas and boat launching facilities for which local funds provided 50 percent or more of the costs.

5.-8. (No change.)

9. Developments elsewhere in the coastal zone shall conform with any adopted municipal, county or regional waterfront access plan, provided the plan is consistent with the Rules on Coastal Zone Management.

10.-12. (No change.)

13. For developments which reduce existing on-street parking that is used by the public for access to the waterfront, mitigation for the loss of these public parking areas is required at a minimum of 1:1 within the proposed development site or other location within 250 feet of the proposed project site.

(c) At sites proposed for the construction of single family or duplex residential *[lots]* ***dwellings***, which are not part of a larger development, public access to the waterfront is not required as a condition of the coastal permit.

(d) Rationale: New Jersey's coastal waters and adjacent shorelands are a valuable limited public resource. they are protected by New Jersey's Shore Protection Program and patrolled by the New Jersey Marine Police which are both financed by all State residents.

Existing development often blocks the waters from public view and/or makes physical access to the waterfront difficult or impossible. In addition, private ownership of land immediately inland from publicly owned tidelands often limits public access to those lands and the waters which flow over them. This has limited access to and enjoyment of public resources by citizens who, through taxes, support their protection and maintenance.

The Public Trust Doctrine, which was enunciated by the New Jersey Supreme Court in Neptune v. Avon-by-the-Sea 61 NJ 296 (1972) and reaffirmed and expanded in Van Ness v. Borough of Deal 78 NJ 174 (1978) requires that tidal water bodies be accessible to the general public for navigation, fishing and recreation. The New Jersey Supreme Court, in Matthews v. Bay Head Improvement Association has extended the public right established by these cases to beaches which, though privately owned, are leased to an improvement association and are operated in a public manner. The most significant aspect of the decision is that is was not based entirely on the quasi-public nature of the Bay Head Improvement Association, but on the unique importance of the public's right of access to the shore, regardless of ownership. The Court said "recognizing the increasing demand for our State's beaches and the dynamic

nature of the Public Trust Doctrine, we find that the public must be given both access to and use of privately-owned dry sand areas as reasonably necessary. While the public's rights in private beaches are not co-extensive with the rights enjoyed in municipal beaches, private landowners may not in all instances prevent the public from exercising its rights under the Public Trust Doctrine. The public must be afforded reasonable access to the foreshore as well as a suitable area for recreation on the dry sand." *[DEPE]* ***DEP***, therefore, has an obligation to ensure that the common law right is not abridged. This obligation remains even after the State has conveyed tidelands to a private owner.

The Public Trust Doctrine requires that access be provided to publicly funded shore protection structures and that such structures not be used to impede access. The New Jersey Supreme Court in Borough of Neptune v. Avon-by-the-Sea 61 NJ 296 (1972) held that:

. . . at least where the upland sand area is owned by a municipality a political subdivision and creature of the state and dedicated to public beach purposes, a modern court must take the view that the Public Trust Doctrine dictates that the beach and the ocean waters must be open to all on equal terms and without preference and that any contrary state or municipal action is impermissible. (61 N.J. at 308-309, emphasis added).

Such structures, when located on wet sand beaches, tidally-flowed or formerly tidally-flowed lands are subject to the Public Trust Doctrine. Once built, most publicly funded shore protection structures become municipal property and are, therefore, subject to the Doctrine in the same manner as municipally owned beaches. The developed waterfront, due to its past industrial utilization, has been closed to the people that live adjacent to the waterfront. *[DEPE]* ***DEP*** intends to promote a horizontal network of open space at the water which could be visualized as a narrow strip used for walking, jogging, bicycling, sitting or viewing, which is contiguous, even if the path must detour around existing or proposed industry due to security needs or the lack of pre-existing access. These linear walkways will connect future and existing waterfront parks, open space areas, and commercial activities. The goal of the rule is the piecing together of a system that will provide continuous linkages and access along the entire waterfront.

7:7E-8.12 Scenic Resources and Design

(a) Scenic resources include the views of the natural and/or built landscape.

(b) Large-scale elements of building and site design are defined as the elements that compose the developed landscape such as size, geometry, massing, height and bulk structures.

(c) (No change.)

(d) In all areas, except the Northern Waterfront region, the Delaware River Region and Atlantic City, new coastal development adjacent to a bay or ocean or bayfront or oceanfront, beach, dune or boardwalk and higher than 15 feet in height measured from the existing grade of the site or boardwalk shall:

1. Provide an open view corridor perpendicular to the water's edge in the amount of 30 percent of the frontage along the waterfront where an open view currently exists; and

2. Be separated from either the beach, dune, boardwalk, or waterfront, whichever is further inland, by a distance of equal to two times the height of the structure. However, exceptions may be made for infill sites within existing commercial areas along a public boardwalk where the proposed use is commercial and where the set-back requirement is visually incompatible with the existing character of the area.

(e) Rationale: A project which is of a scale and location that has significant effect on *[he]* ***the*** scenic resources of a region is considered to have a regional impact and to be of State concern. This rule, applies only to development***s*** which by their singular or collective size, location and design could have a significant adverse effect on the scenic resources of the coastal zone. Restoration of areas of low scenic quality, such as abandoned port facilities and blighted urban areas, through large-scale new construction and design that is compatible with the surrounding region***,*** is also encouraged by this rule. Specific issues of concern include those addressed by the rules on Historic and Archaeological Resources, High Rise Structure, Public Access, and Buffers and Compatibility of Uses.

7:7E-8.13 Buffers and Compatibility of Uses

(a) Buffers are natural or man-made areas, structures, or objects that serve to separate distinct uses or areas. Compatibility of uses is the ability for uses to exist together without aesthetic or functional conflicts.

(b) Development shall be compatible with adjacent land uses to the maximum extent practicable.

1. Development that is likely to adversely affect adjacent areas, particularly Special Areas (N.J.A.C. 7:7E-3.1 through 3.48) or residential or recreation uses, ***is prohibited unless the impact is mitigated by an adequate buffer***. *[shall include a buffer in accordance with (b)3 below.]* ***The purpose, width and type of the required buffer shall vary depending upon the type and degree of impact and the type of adjacent area to be affected by the development, and shall be determined on a case-by-case basis.***

2. The rule regarding wetland buffers is found at N.J.A.C. 7:7E-3.28.

*[3. Subject to (b)1 above, proposed developments shall provide appropriate buffers as established in the buffer matrix below in this paragraph. These buffers may be modified or waived if strict application would result in an extraordinary hardship which is not the result of any action or inaction by the applicant. An extraordinary hardship shall be deemed to exist when strict application of these requirements would result in an inability to have a beneficial use of the property. If such a hardship is deemed to exist, any modification shall be limited to the minimum relief necessary to allow a beneficial use.

i. The buffer matrix is as follows:

(1) In order to calculate the required buffer distance for proposed developments, the buffer matrix shown below shall be utilized. This matrix allows for the input of several variables, and the output of a buffer distance that will be required as part of a project design. The use of this matrix should be applied to all projects, with the exception of single family or duplex developments which are not part of a larger development. The Transportation matrix will apply only to new road construction. In addition, the Department may vary the buffer requirements for projects in proximity to open space or conservation uses.

(2) For small-scale projects, the Program may allow for a reduced buffer, in cases where physical constraints preclude the application of the required buffer as determined by the matrix, and when it can be demonstrated that there will be no adverse impact to existing adjacent land uses.

(3) In cases where the site adjacent to the proposed development is undeveloped, the currently zoned use of that site will be used in the matrix.

ii. The following procedure shall be used in applying the buffer matrix:

(1) Determine the existing land use adjacent to each property boundary of the proposed development site;

(2) Determine whether the proposed development site adjacent to each property line is forested or non-forested. For the purpose of this section, forested means an area of trees and shrubs where a majority of the trees are four inches in diameter breast height (dbh) or greater;

(3) Identify the proposed use of the development, adjacent to each property line, for which the CAFRA permit is being sought;

(4) Determine the appropriate matrix table (I through V) for the existing land use adjacent to the proposed development site; and

(5) Given the information in (b)3ii(1), (2) and (3) above, and the appropriate matrix table, establish the required buffer distance from the property boundary of the proposed development site.

BUFFER MATRIX TABLE

I. Existing Residential Use Adjacent to Development Site

Proposed Use	Minimum Buffer Distance From Property Line	
	Forested Site	Non-forested Site
Residential	25 feet	50 feet
Commercial	50 feet	75 feet
Industrial	100 feet	175 feet
Public Development	0 feet	75 feet
Transportation	100 feet	175 feet

II. Existing Commercial Use Adjacent to Development Site

Proposed Use	Minimum Buffer Distance From Property Line	
	Forested Site	Non-forested Site
Residential	50 feet	75 feet
Commercial	20 feet	20 feet
Industrial	20 feet	20 feet
Public Development	5 feet	50 feet
Transportation	20 feet	20 feet

III. Existing Industrial Use Adjacent to Development Site

Proposed Use	Minimum Buffer Distance From Property Line	
	Forested Site	Non-forested Site
Residential	100 feet	150 feet
Commercial	30 feet	50 feet
Industrial	20 feet	20 feet
Public Development	5 feet	100 feet
Transportation	20 feet	30 feet

IV. Existing Public Facility Adjacent to Development Site

Proposed Use	Minimum Buffer Distance From Property Line	
	Forested Site	Non-forested Site
Residential	50 feet	75 feet
Commercial	25 feet	50 feet
Industrial	75 feet	100 feet
Public Development	0 feet	20 feet
Transportation	50 feet	75 feet

V. Existing Public Open Space Adjacent to Development Site

Proposed Use	Minimum Buffer Distance From Property Line	
	Forested Site	Non-forested Site
Residential	100 feet	150 feet
Commercial	150 feet	200 feet
Industrial	200 feet	300 feet
Public Development	150 feet	200 feet
Transportation	150 feet	200 feet]*

*[4.]***3.*** The following apply to buffer treatment

*[1.]***i.*** All buffer areas shall be planted with appropriate vegetative species, either through primary planting or supplemental planting. This landscaping shall include use of mixed, native vegetative species, with sufficient size and density to create a solid visual screen within five years from the date of planting.

ii. Buffer areas which are forested may require supplemental vegetative plantings to ensure that acceptable visual and physical separation is achieved.

iii. Buffer areas which are non-forested will require dense vegetative plantings with mixed evergreen and deciduous trees and shrubs. Evergreens must be at least eight feet tall at time of planting; deciduous trees must be at least three inches caliper, balled and burlapped; shrubs must be at least three to four *[inches]* ***feet*** in height.

(c) Rationale: The juxtaposition of different uses may cause various problems. An activity may cause people to experience noise, dust, fumes, odors, or other undesirable effects. Examples of possible incompatible uses include factories or expressways next to housing, residential developments next to farms and residential, commercial or industrial development adjacent to wetlands or endangered or threatened wildlife or vegetation species habitat. Vegetated buffer areas between uses can overcome, or at least ameliorate, many of these problems especially if earthen berms are included. Buffers can benefit users of both areas. Where farms operate near a residential area, for example, a buffer can protect residents from of the noise and smell of farming, while protecting the farmers from the imposition of local regulations controlling hours in which machinery can be used.

Buffers serve several important functions, including maintenance of wildlife habitat, water purification, open space and recreation, and control of runoff. Buffers may include fences, landscaped berms, and vegetated natural areas.

7:7E-8.14 Traffic

(a) Traffic is the movement of vehicles, pedestrians or ships along a route.

(b) Coastal development shall be designed, located and operated in a manner to cause the least possible disturbance to traffic systems.

1. Alternative means of transportation, that is, public and private mass transportation facilities and services, shall be considered and, wherever feasible, incorporated into the design and management of a proposed development, to reduce the number of individual vehicle trips generated as a result of the facility. Examples of alternative means or transportation include: van pooling, staggered working hours and installation of ancillary public transportation facilities such as bus shelters.

(c) When the level of service of traffic systems is disturbed by approved development, the necessary design modifications or funding contribution toward an area wide traffic improvement shall be prepared and implemented in conjunction with the coastal development, the satisfaction of the New Jersey Department of Transportation and any regional agencies.

(d) Any development that causes a location on a roadway to operate in excess of capacity Level D is discouraged. A developer shall undertake mitigation or other corrective measures as may be necessary so that the traffic levels at any affected intersection remain at capacity Level D or better. A developer may, by incorporating design modification or by contributing to the cost of traffic improvements, be able to address traffic problems resulting from the development, in which case development would be conditionally acceptable. Determinations of traffic levels which will be generated will be made by the New Jersey Department of Transportation.

(e) Coastal development shall provide sufficient on-site and/or off-site parking for its own use at a ratio of two spaces per residential unit. In general, on street parking spaces along public roads cannot be credited as part of off-site parking provided for a project. All off-site parking facilities must be located in either in areas within reasonable walking distance to the development or areas identified by any local or regional transportation plans as suitable locations. All off-site parking facilities must also comply with N.J.A.C. 7:7E-7.5(d), the Parking Facility rule, where applicable.

(f) (No change.)

7:7E-8.15 (Reserved)

7:7E-8.16 (Reserved)

7:7E-8.21 Subsurface sewage disposal systems

*[1.]***(a)*** Subsurface sewage disposal system means a system for disposal of sanitary sewage into the ground which is designed and constructed to treat sanitary sewage in a manner that will retain most of the settleable solids in a septic tank and to discharge the liquid effluent to a disposal field.

*[2.]***(b)*** Acceptability conditions for subsurface sewage disposal systems are as follows:

*[i.]***1.*** Construction of the subsurface sewage disposal system is acceptable provided it meets all the provisions of the standards for Individual Subsurface Sewage Disposal Systems (N.J.A.C. 7:9A) and receives approval from the appropriate administrative authority;

*[ii.]***2.*** For areas subject to tidal flooding, the bottom elevation of the disposal bed must be at or above the 10 year flood elevation as determined by the Federal Emergency Management Agency Flood Insurance Study Reports;

*[iii.]***3.*** Construction of subsurface sewage disposal systems *[is prohibited in V-zones as delineated on the Flood Insurance Rate Maps (FIRM)]* ***must comply with all applicable standards of the National Flood Insurance Program Regulations (44 CFR 60)*** prepared by the Federal Emergency Management Agency (FEMA).

*[3.]***(c)*** Rationale: The subsurface sewage disposal system regulations provide standards for the proper location, design, construction, installation, alteration, operation and maintenance of individual subsurface disposal systems. These regulations serve to protect public health and safety and environment, potable water supplies, and safeguard fish and aquatic life while preserving their ecological values, In areas subject to tidal flooding subsurface sewage disposal systems constructed below the 10-year flood elevation are susceptible to failure during flooding events. Furthermore, construction of subsurface sewage disposal systems within coastal high hazard areas (V-zones) is prohibited in accordance with the National Flood Insurance Program Regulations.

APPENDIX

OAL NOTE: Figures 1 through 16 adopted herein forming the Appendix to N.J.A.C. 7:7E were not reproducible in the New Jersey Register. They may be reviewed by contacting the Office of Administrative Law, Rules and Publications, CN 049, Trenton, N.J. 08625, or DEPE.

(a)

FISH AND GAME COUNCIL

Notice of Administrative Correction
Fish Code
Special Regulation Trout Fishing Areas—Seasonal Trout Conservation Areas
N.J.A.C. 7:25-6.5

Take notice that the Department of Environmental Protection and Energy has discovered that the current text of N.J.A.C. 7:25-6.5(b)1 through 5 is in error, in that it does not conform to the text as originally adopted (see 19 N.J.R. 1385(a) and 20 N.J.R. 72(a)). The errors are the result of an inadvertent replacement of the correct text with the text of former N.J.A.C. 7:25-6.4 in updating the New Jersey Administrative Code to reflect the subchapter amendments creating the 1990-91 Fish Code (see 11-20-89 Code update). This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

7:25-6.5 Special Regulation Trout Fishing Areas—Seasonal Trout Conservation Areas

(a) (No change.)

(b) The following shall apply to the Seasonal Trout Conservation Areas designated at (a) above:

[1. Van Campen Brook is open to fishing year-round.]

[2.]**1.** No bait or lures of any kind may be used except artificial lures and flies[. Authority: N.J.S.A. 23:5-11; 23:5-15.1];

2. A person shall not have in possession while fishing any natural bait, live or preserved;

3. A person shall not have in possession, while fishing, any substance, either as a natural or synthetic compound, that contains a concentration of bait scent or such scent enhanced bait[.];

[4. No person shall have in possession while fishing any natural bait, live or preserved.]

[5.]**4.** [No] **A** person [may] **shall not** kill or have in possession while fishing any trout less than [ten] **15** inches in total length[.];

[6.]**5.** [No] **A** person [may] **shall not** have in possession while fishing[,] any more than one dead, creeled or otherwise appropriated trout, except that additional trout may be caught provided they are returned to the water immediately and unharmed[.]; **and**

6. Size limits and creel limits on species other than trout are in accordance with Statewide regulations.

HUMAN SERVICES
(b)

DIVISION OF MENTAL HEALTH AND HOSPITALS
Clinical Case Management Standards
Adopted New Rules: N.J.A.C. 10:37C

Proposed: November 1, 1993 at 25 N.J.R. 4845(a).
Adopted: June 7, 1994 by William Waldman, Commissioner, Department of Human Services.
Filed: June 10, 1994 as R.1994 d.336, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:9A-10.

Effective Date: July 18, 1994.
Expiration Date: July 18, 1999.

Summary of Public Comments and Agency Responses:

The Department received public comments from the Department of the Public Advocate (DPA), the Department of Corrections (DCA), the New Jersey Psychiatric Rehabilitation Association (NJPRA), Ocean Mental Health Services, Inc. (OCEAN), the New Jersey Association for Clinical Case Management (NJACCM), Connections in St. Mary's Hospital (SMH) and Jean Paashaus. Their comments and the Department's responses are provided below.

COMMENT: OCEAN and NJACCM commented that N.J.A.C. 10:37C-2.3(a)4 should be revised to allow a period of 30 days following admission for completion of the initial risk assessment.

RESPONSE: Upon further review, the Department agrees that a 30 day period is more appropriate for completion of the initial risk assessment, since the client population frequently does not come in to the CC . service provider's office and additional time is needed to reach out to the client and assure that there is ample opportunity to access services. This requirement is also consistent with the rules promulgated by the New Jersey Division of Medical Assistance and Health Services. The proposal at N.J.A.C. 10:37C-2.3(a)4 has been amended accordingly.

COMMENT: SMH commented that a definition of "wait list" is needed and that there should be a standardized method for assigning risk level.

RESPONSE: The term "wait for service" is utilized at N.J.A.C. 10:37C-2.1(a)6 and a definition of that term has been added in the definition section at N.J.A.C. 10:37C-1.2. The Department has developed and distributed a standardized risk assessment scale as a model which may be used by all PAs. The general use of the risk assessment scale is consistent with the rules promulgated by the N.J. Division of Medical Assistance, at 10:73-2.9(a).

COMMENT: NJACCM and NJPRA opined that N.J.A.C. 10:37C-2.2(b)2 arbitrarily requires discharge after a six month period without regard to whether there is a continuing clinical need for the services.

RESPONSE: The Department believes that N.J.A.C. 10:37C-2.2(b)2 provides appropriate criteria that allows for services to be made available for those most in need. The Department believes that in most cases, if a client has remained at low risk for six months, and has had no record of crisis service use, hospitalization or involvement with the criminal justice system for a six month period, the client may be safely terminated. However, the clinical needs of clients remains the paramount operational principal. Accordingly, N.J.A.C. 10:37C-2.2(b)2 has been amended to include the following sentence: "On an exceptional basis, where there is clinical justification for continuing services to a client who meets the termination criteria, the PA may continue such services and shall clearly document the reasons in the client record."

COMMENT: NJACCM commented that N.J.A.C. 10:37C-2.2(b)5 should be revised to include the client leaving the service area and inability to locate clients as additional discharge criteria.

RESPONSE: The Department agrees with these suggestions and N.J.A.C. 10:37C-2.2(b) has been amended to include the additional discharge criteria that the client leaves the service area and that the client cannot be located after repeated efforts to do so. The Department has made these changes because a service area may be smaller than, or larger than, a county and because reaching out to a client, via repeated efforts, is consistent with the purpose of the clinical case management program.

COMMENT: NJACCM opined that the requirement at N.J.A.C. 10:37C-2.3(a)6 for assessments to be updated periodically, based on the availability of client information, is duplication of effort and should be deleted. NJACCM stated that agencies must update information on a continuing basis which is incorporated into the progress notes and service plans.

RESPONSE: The Department believes that it is essential to require agencies to document the most up to date information available in each client's clinical record. The last sentence of the proposal at N.J.A.C. 10:37C-2.3(a)6 has been deleted and replaced as follows: "New information pertaining to the assessment shall be documented in the clinical record as it occurs." This change has been made in order to make clear that updates should be placed in the record as soon as the information is available. The record is then a dynamic, and more accurate, representation of the client.

COMMENT: OCEAN commented that N.J.A.C. 10:37C-2.3(a)8 should be revised so that intensity of services would be based on each client's mental health and non-mental health needs, not their risk level.

RESPONSE: The Department believes that the risk assessment that is conducted to determine a patient's risk level already includes an evaluation of mental health and non-mental health needs. N.J.A.C. 10:37C-2.3(a)8 already requires that the intensity of services be based on the client's assessed risk status and needs.

COMMENT: OCEAN and NJPRA questioned the appropriateness of the options permitted for academic qualifications, namely master's, bachelor's and associate's degrees, for clinical case managers contained in N.J.A.C. 10:37C-2.4(e).

RESPONSE: The Department believes that the required qualifications in the proposal are appropriate. Recognizing recruitment difficulties, the rules provide flexibility with regard to academic qualifications without compromising the need for staff to demonstrate the important skills of developing and maintaining supportive relationships and negotiating for needed services. The "direct care" requirement for the case manager with an Associate's degree is more specific to working with the target population than the requirements for a Bachelor's degree in a related field. The Associate's degree must be in a direct care field specific to working with people with severe mental illness.

COMMENT: DOC stated that several parole officials and supervisors have reported difficulties due to limited access to community mental health services for parolees. DOC requested that individuals who have been incarcerated and either exhibit mental illness or have histories of mental illness receive priority for clinical case management services.

RESPONSE: As currently written, the rules do not exclude inmates ready for release who meet the admission criteria. Eligibility for CCM services is based upon the clinical needs of individuals. An individual's involvement with the correctional system, or any other service system, should, therefore, neither categorically render the individual eligible for service, nor categorically garner priority status for the individual. To the extent, however, that an inmate being released may have particularly compelling, and unaddressed, clinical needs, these rules permit provide agencies to prioritize that individual for services.

COMMENT: Jean Paashaus commented that the proposal's definition of "advocacy" should encompass more than merely "assisting the client in receiving all benefits to which he or she is entitled by working toward the removal of barriers to receiving needed services" and include other forms of advocacy.

RESPONSE: The Department believes that other forms of advocacy may be appropriate, or even necessary, for some individuals with mental illness and, in many cases, are also currently available to such individuals. N.J.A.C. 10:37C-2.3(a)1 stipulates that the PA shall provide both client and system advocacy. In addition, N.J.A.C. 10:37C-2.4(D)6 and 7 stipulate that the Clinical Case Manager supervisor identify system resource gaps and actively participate in the area's System Review Committee.

COMMENT: DPA commented that, within N.J.A.C. 10:37C-2.2, no priority was given to clients who have been conditionally discharged by the court and ordered to receive specific community services, such as clinical case management services.

RESPONSE: The Department recognizes that clients ordered by the court to receive clinical case management services must receive those services. The prioritization proposed in N.J.A.C. 10:37C-2.2 was not intended to be concerned with such court ordered situations but was intended to prioritize situations where services were not judicially mandated.

COMMENT: DPA commented that the proposal needs to state that clients need to either consent to receiving clinical case management services or, at a minimum, that such services are not to be forced onto an objecting client. DPA recommended that the proposal be revised to reflect that clients have the right to refuse case management services and to establish the criteria and procedures under which this right can be exercised.

RESPONSE: N.J.A.C. 10:37C-2.2(b)4 states that when a client refuses repeated offers of service, discharge from service is the indicated action. However, the Department believes that clarification is needed that client refusal of repeated initial offers of services also shall result in an end to such initial offers of service. To support the importance of this concern, the Department has changed the proposal at N.J.A.C. 10:37C-2.1(a) to require PAs to have written policies and procedures that include the client's right to refuse repeated offers of initial service, as well as to refuse repeated offers of service after initial acceptance of service, as is provided in N.J.A.C. 10:37C-2.2(b)4.

COMMENT: DPA commented that N.J.A.C. 10:37C-2.3(a)11 permits provider agencies to maintain contact and follow-up with other service providers without detailing the prevailing limitation imposed on such communications by the law relating to confidentiality.

RESPONSE: The Department agrees that reference to the statutory parameters for such communications between service providers should be added and has included language on adoption which incorporates a reference to the confidentiality of records, at N.J.A.C. 10:37-6.79, which applies to all mental health services provided by the Division.

COMMENT: DPA commented that the proposal fails to, and should, describe what role the clinical case manager assumes when someone who is on conditional discharge status becomes non-compliant with the court order or deteriorates clinically.

RESPONSE: Although N.J.S.A. 30:4-27.6 and R. 4:74-7(h)1 provide legal requirements for community mental health agencies regarding conditionally discharged clients, neither prescribes a specific role for clinical case managers as employees of those agencies. The Department recognizes that the agencies must comply with those legal provisions but does not believe it is necessary or desirable to dictate to agencies what role, if any, clinical case managers themselves must have in the satisfaction of those responsibilities.

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 37C
CLINICAL CASE MANAGEMENT

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS.

10:37C-1.1 Scope and purpose

(a) The rules in this chapter shall apply to all Division-Funded clinical case management (CCM) services.

(b) The purpose of CCM services is to assist clients 18 years of age or older in gaining access to needed medical, social, educational, and other services. Within the continuum of community mental health case management, CCM services have the capability to offer the most comprehensive range of services to enrolled clients and provide varying degrees of service intensity based on the clients' changing needs. These rules provide a description of the clients for whom the services are targeted, services to be provided, the requirements and responsibilities of the PAs and their staff, and the procedures required to provide the services.

10:37C-1.2 Definitions

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

"Advocacy" means the ongoing process of assisting the client in receiving all benefits to which he or she is entitled by working toward the removal of barriers to receiving needed services.

"Assessment" means the ongoing process of identifying and reviewing a client's strengths, deficits, and needs based upon input from the client, significant others, family members and health professionals. The assessment process continues throughout the entire length of service and the assessments are updated periodically based upon the availability of client information.

"Clinical case management" (CCM) means the provision of individualized clinical support services for a client who needs consistent contact to help that client maintain stability and to assist the client in accessing or receiving needed services. Provided primarily offsite, CCM services include, but are not limited to, assessment, service planning, service coordination, service linkage, ongoing monitoring, ongoing support services and advocacy.

"Division" means the Division of Mental Health and Hospitals in the Department of Human Services.

"Ongoing monitoring" means the ongoing review of the client's status and needs and the routine follow-up with the client's service providers to assess if services are provided as planned and if they meet the client's needs.

"Ongoing support services" means the provision of face-to-face individualized clinical support services for a client who needs such contact.

"Provider agency" (PA) means a public or private organization which has a contract with the Division to provide CCM services.

"Risk assessment" means an assessment that concludes with the assignment of a risk category.

"Risk category" means the three levels of CCM involvement, based upon assessed risk of hospitalization, functional level and willingness or ability to access needed services. The three risk categories are: high-risk, or intensive case management; at-risk, or supportive case management; and low-risk, or maintainance level case management.

"Service coordination" means communication among multiple service providers regarding services offered to clients, and the use of communicated information in CCM service planning.

"Service linkage" means the referral to and enrollment with other appropriate service providers to address the needs identified in the assessment.

"Service planning" means the process of organizing the outcomes of the assessment in collaboration with the client, significant others, potential service providers, including providers of medication monitoring, and others as designated, to formulate a written service plan that addresses the client's needs, planned services to address these needs, and plans to motivate the client to utilize services. The service planning process shall continue throughout the client's receipt of CCM services.

"Wait for service* means the wait experienced by clients who have been screened by the CCM program and meet admission criteria but are not immediately admitted.

SUBCHAPTER 2. PROGRAM OPERATION

10:37C-2.1 Written policies and procedures

(a) The PA shall develop and implement written policies and procedures to ensure that the services provided comply with the rules in this chapter.

1. The PA shall have written and implemented policies and procedures which support the concept of offsite, community-based service provision and intensive outreach to clients in their own environment.

2. The PA shall have written and implemented policies and procedures requiring the assessment of risk and methods of identifying risk. Such assessment shall be used to prioritize and plan CCM services. Such policies and procedures shall have been approved by the Division.

3. The PA shall have written and implemented policies and procedures regarding the use of mental health and other community services by clients appropriate for such services. Particular emphasis shall be placed, in this regard, on liaison services, screening center services and short term care facility services.

4. The PA shall have written policies and procedures to monitor the CCM services provided and describe how these are integrated with the overall agency QA plan.

5. The PA shall have written policies and procedures to assure that there is client input into all aspects of the program and that there is individualized client goal setting. Policies should emphasize accommodating client preferences, whenever possible ***and shall acknowledge the client's right to refuse repeated offers of initial service***.

6. The PA shall have written policies and procedures to monitor each client's wait for service and the prioritization of clients for service.

10:37C-2.2 Population priorities

(a) The PA shall give priority to providing services to clients most in need of the services because they suffer from a serious mental illness, pose a risk to their own welfare in the absence of such services and exhibit two of the following criteria:

1. The client has repeated admissions to inpatient services. Priority will be given to persons with two or more admissions to inpatient psychiatric services within a 12 month period, or two or more uses of emergency/screening services within a 30 day period;

2. The client participates in mental health services, but is not receiving additional services which meet the individual's multiple needs, and requires extensive service coordination (for example, individuals who are dually diagnosed as mentally ill and chemical abusing or children involved with DYFS and school systems);

3. The client has a recent history of being a danger to self or others within a time period of three months;

4. The client has a history of resistence or non-compliance in use of medication, resulting in a pattern of decompensation and hospitalization;

5. The client is in another service system and in need of assessment and possible treatment prior to linkage to case management (for example, residential, drug and alcohol programs, or shelters for homeless); or

6. The client resides with family, in a boarding home, or other residential setting and is not receiving needed mental health services.

(b) The PA's discharge criteria shall include at least one of the following:

1. The client has been successfully engaged in needed mental health and non-mental health services; or

2. The client is low risk and has remained at the same low risk status for six months and has had no record of crisis services use, hospitalization or involvement with the criminal justice system for the previous six months; ***on an exceptional basis, where there is clinical justification for continued services to a client who meets this termination criteria, the PA shall clearly document the reasons in the client record;*** or

3. Agreement between the client and the PA that CCM services are no longer of benefit to the client; or

4. The client refuses repeated offers of service; or

5. The client leaves the county ***or service area*** and the PA makes attempts to engage the client with the receiving county*[.]* ***or appropriate PA; or**

6. The client cannot be located after repeated efforts by the PA to do so.*

10:37C-2.3 Service requirements

(a) The PA shall provide services that assist clients to reach and maintain their individual optimal level of functioning in the community.

1. The PA shall provide the following concrete services to enrolled clients: assessment, support, service planning, service monitoring, risk assessment, support to family or significant others, coordination and integration of services in the client's support system, client and system advocacy, service linkage and education.

2. The intake and initial assessment process shall identify the factors that result in the client's admission to or the rationale for non-admission to the CCM services.

3. Face-to-face clinical support contacts shall be provided primarily offsite, at the client's location, including, but not limited to,

hospitals, homes, boarding homes, shelters, jails, neighborhood restaurants and streets, based on functional level and risk of hospitalization of the client. Such support shall be available on a crisis basis as needed.

4. A preliminary service plan shall be entered in each client's record within 10 working days of their admission to CCM services which provides a basis for clinical intervention. The initial risk assessment shall be completed within *[the same time period]* ***30 days of a client's admission to CCM services***.

5. The service plan addressing the client's functional level, resources, skills and supports shall be completed and implemented within three months of the first community contact. Based on a comprehensive assessment, the service plan shall document specific strategies to engage the client and proposed clinical interventions.

6. The comprehensive assessment, which shall address the following aspects of the client's life: physical health, finances, family, legal, functional skills, mental health and non-mental health needs, client's choices and goals, reason for referral, client's natural support system, overall resources and previous history, and when available, information from current and prior service providers. The assessment process shall continue throughout the entire length of service. *[Assessments shall be updated periodically, based upon the availability of client information.]* ***New information pertaining to the assessment shall be documented in the clinical record as it occurs.***

7. Service plans shall be updated every 90 days during the first year of service and every six months thereafter.

8. The intensity of service shall be based on the client's assessed risk status and needs. The PA shall develop and implement procedures so that the assigned status reflects the client's current condition.

9. The service planning process shall address client relationships with family, significant others and pertinent service providers.

10. Record documentation shall reflect that the efforts or referrals of the PA link clients to mental health or non-mental health programs as appropriate.

11. The PA shall maintain contact and follow-up with other service providers ***as permitted by N.J.A.C. 10:37-6.79 and*** as needed to effect linkage and to make adjustments in service provision that may be indicated by such information.

12. The PA shall assist the client in receiving all concrete services and benefits to which he or she is entitled.

13. The PA shall advocate for enrolled clients within the mental health and non-mental health systems to enhance access to existing services.

10:37C-2.4 Staff requirements, qualifications and duties

(a) The PA shall employ sufficient numbers of qualified staff to provide required services.

(b) The PA shall develop a written description and rationale for the PA's caseload size. The rationale shall include consideration of geographic and service area variables, program design, nature of referrals, type of population, age, and outcome expectations.

(c) The CCM supervisor shall have a master's degree, or the equivalent, in social work, psychology, counseling or a related field; three years postgraduate work experience in a related field; and supervisory experience. A bachelor's degree in a related field plus three years experience as a clinical case manager may be substituted for the above requirements provided such an individual is actively enrolled in a master's degree granting program in social work, psychology, counseling or a related field.

(d) The CCM supervisor shall be responsible for the following:

1. Service availability through regular staff scheduling or provision of on-call or other back-up services, as appropriate;

2. Adequate levels of clinical staff supervision, skill development, and support;

3. Organization of the CCM staff to assure continuity of services, range of available staff skills, including skills with mentally ill chemical abusers, and sufficient staff backup;

4. Development and appropriate documentation of the various CCM functions;

5. Active participation in the Quality Assurance activities;

6. Identifying system resource gaps in service delivery;

7. Active participation in the area's System Review Committee;

8. Appropriate completion of and monitoring of affiliation agreements with other mental health, social and health service providers;

9. Participation of the PA in the local mental health, health, and human services planning activities, and identification of resource gaps in these areas;

10. Documentation of staff training and development activities; and

11. All other activities necessary to access or directly provide client support services.

(e) The clinical case managers shall have a master's degree in social work, psychology, counseling, or a related field with clinical training; or a bachelor's degree in a related field and two years relevant experiences, (two additional years of relevant experience may be substituted for a bachelor's degree) or an associate's degree in a direct care field (including, but not limited to, psychosocial rehabilitation or nursing of the seriously mentally ill) and two years of relevant experience.

(f) The duties of the clinical case manager shall include the following:

1. Responsibility to establish and maintain the ongoing therapeutic relationship;

2. Provision of intensive community-based services to maximize the client's access to services and ability to function adequately and integrate into the community;

3. Development and implementation of a treatment plan and completion of other documentation as required;

4. Facilitation of access to appropriate services, including transportation to services, and activities as necessary and application for and receipt of all applicable public entitlements;

5. Facilitation of the client's service linkage in the community mental health and non-mental health systems through provision of ongoing individualized clinical support and monitoring;

6. Coordination and integration of services from multiple providers until the client is discharged from the CCM services. This responsibility may include coordination of meetings of the client's service providers in the community;

7. Monitoring of service delivery to meet a client's changing needs and advocacy as necessary;

8. Identification of client resource gaps and problems of service delivery; and

9. Provision of direct service support to the client's natural support system, including family, friends, employers and self-help groups.

10:37C-2.5 Service coordination

(a) The PA shall coordinate CCM services with other community mental health and non-mental health programs.

1. The PA shall develop written affiliation agreements where necessary to facilitate access to services.

2. The PA shall provide service coordination for all clients served. Evidence of service coordination shall be reflected in the clinical record.

3. PA staff shall participate in the System Review Committee meetings and activities and so document.

4. The PA shall define and refer problems which are systemic and cannot be resolved at the agency level to the System Review Committee by an identified process.

10:37C-2.6 Records

(a) The PA shall maintain individual records in an up-to-date organized manner. The records shall contain all relevant client information and shall be maintained to preserve confidentiality. The records shall contain the following:

1. An intake summary;

2. An assessment;

3. A service plan; and

4. Progress notes.

(b) Services shall be related to documented client needs and stated through clear goals, objectives and interventions.

(c) The service plan shall:

1. Relate to the comprehensive assessments;

2. Contain goals and timeframed and measurable objectives, which shall be stated in behavioral and measurable terms;
3. Delineate specific interventions to implement objectives and reach goals;
4. Be based on the client's expressed goals;
5. Identify and address all resource needs of the client as contained in the assessments;
6. Be completed and implemented within three months of the first community contact;
7. Reflect changes in service provision and be updated every three months for the first year and every six months thereafter;
8. Identify the staff person or other party responsible for implementation of interventions; and
9. Be properly authenticated with a signature, date, and title of the clinical case manager, and approved and signed by the CCM supervisor.

(d) Attempts shall be made to have the client sign the service plan to indicate client's involvement in the development or revision of the service plan. If the client is unwilling to participate or if such participation is clinically contra-indicated, it shall be so documented.

(e) When the client consents, the service plan shall include family involvement, or if clinically contra-indicated, family non-involvement.

(f) Progress notes shall reflect the client's course of treatment, as follows:

1. A summary of services shall be documented for each face-to-face contact;
2. Progress notes shall make reference to the service plan and reflect client's status, interventions provided, client's response to interventions, and change in service provision;
3. Progress notes shall reflect any significant event that impacts on the client's status or service provision;
4. Progress notes shall reflect collateral contacts and communication with persons other than the client on behalf of the client which impact on the client's status or service provision; and
5. Progress notes shall be properly authenticated with a signature, date and title at the end of each entry.

(g) A discharge summary shall be completed for all clients, as follows:

1. The discharge summary shall be completed within 15 working days of discharge.
2. The discharge summary shall include the following:
i. Presenting problem at admission;
ii. Client's status and diagnosis at discharge;
iii. Client's clinical course of treatment;
iv. Client's response to treatment, including where possible client's self assessment of progress and further program needs;
v. Medication prescribed at discharge, including dosage, frequency, prescribing physician and adverse reactions, if known; and
vi. Recommendations, plans or linkages for further services.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Sussex County Water Quality Management (WQM) Plan. The amendment proposal has been submitted by the Sussex County Department of Planning and Development. This amendment would adopt a Wastewater Management Plan (WMP) for Hampton Township. The WMP proposes the following: (1) expansion of the sewer service area to the "Big N" Shopping Center sewage treatment plant (STP) to include additional properties within an area zoned highway commercial/manufacturing/industrial, with wastewater flows to the STP not to exceed the existing permitted capacity of 20,000 gallons per day (discharge to a tributary to the Paulins Kill River); and, (2) a new STP discharging to ground water to serve 65 additional mobile homes, and a small commercial development, at the Carriage Acres Mobile Home Park (projected wastewater flow is 15,000 gallons per day [gpd]). The WMP also delineates the service areas to the Hampton Commons STP (discharge to a tributary of the Paulins Kill River), Kittatinny Regional High School STP (discharge to the West Branch of the Paulins Kill River), McKeown Elementary School STP (discharge to ground water), and the general ground water discharge service areas for facilities with design capacities of less than 20,000 gpd (with a restriction of gpd/acre based on watershed and geologic formation).

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Sussex County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the Sussex County Department of Planning and Development, Division of Environmental Resource Planning, County Administration Building, P.O. Box 709, Newton, New Jersey 07860; and the NJDEPE, Office of 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 either the Office of Land and Water Planning at (609) 633-1179 or the Sussex County Department of Planning and Development at (201) 579-0500.

The Sussex County Board of Chosen Freeholders will hold a **public meeting** on the proposed Sussex County WQM Plan amendment at which time all interested persons may appear and shall be given an opportunity to be heard. The public meeting will be held on Wednesday, August 24, 1994 at 6:00 P.M. in the Freeholder Meeting Room, County Administration Building, Plotts Road, Newton, New Jersey. Interested persons may submit written comments on the amendment to Mr. George Krauss, Sussex County Department of Planning and Development, at the address cited above, with a copy sent to Dr. Daniel J. Van Abs, Office of Land and Water Planning, at the NJDEPE address cited above. All comments must be submitted within 15 days following the public meeting. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Sussex County Board of Chosen Freeholders with respect to the amendment request. In addition, if the amendment is adopted by Sussex County, the NJDEPE must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEPE during its review. Sussex County and the NJDEPE thereafter may approve and adopt this amendment without further notice.

INSURANCE

(b)

THE COMMISSIONER

Public Notice

List of Municipalities Requiring Payment of Liens by Companies Writing Fire Insurance

Take notice that Andrew J. Karpinski, Commissioner of Insurance, in accordance with the provisions of N.J.S.A. 17:36-9, announces the publication of New Jersey municipalities that have adopted ordinances pursuant to the aforementioned statute. Those municipalities which have adopted said ordinances since the previous date of publication shall be designated by asterisk.

LIST OF MUNICIPALITIES REQUIRING PAYMENT OF LIENS BY COMPANIES WRITING FIRE INSURANCE

The following is a list of municipalities that have passed an ordinance requiring companies writing fire insurance on risks located in that municipality to pay unpaid liens out of any claimed payments in excess of $2,500.

	Date Filed with the Department of Insurance
Aberdeen Township of 07747 (Monmouth County)	September 8, 1980
Absecon, City of 08201 (Atlantic County)	July 5, 1983
Alloway, Township of 08079 (Salem County)	December 20, 1984
Asbury Park, City of 07712 (Monmouth County)	May 25, 1979
Atlantic City, City of 08401 (Atlantic County)	March 19, 1979
Barrington, Borough of 08007 (Camden County)	September 17, 1982
Bayonne, City of 07002 (Hudson County)	March 12, 1979
Belmar, Borough of 07719 (Monmouth County)	March 5, 1982
Berkeley, Township of 08721 (Ocean County)	May 22, 1979
Berlin, Borough of 08009 (Camden County)	October 18, 1979
Berlin, Township of 08091 (Camden County)	March 20, 1980
Bloomfield, Town of 07003 (Essex County)	March 26, 1979
Branchburg, Township of 08876 (Somerset County)	December 15, 1992
Brick, Township of 08723 (Ocean County)	May 2, 1980
Bridgeton, City of 08302 (Cumberland County)	April 30, 1979
Brigantine, City of 08203 (Atlantic County)	October 14, 1982
Buena, Borough of 08341 (Atlantic County)	November 1, 1982
Burlington, City of 08016 (Burlington County)	December 9, 1986
Butler, Borough of 07405 (Morris County)	November 14, 1980
Byram, Township of 07860 (Sussex County)	October 9, 1980
Camden, City of 08101 (Camden County)	May 4, 1979
Cape May, City of 08204 (Cape May County)	May 22, 1979
Carneys Point, Township of 08069 (Salem County)	July 2, 1979
Cedar Grove, Township of 07009 (Essex County)	August 10, 1979
Chatham, Township of 07928 (Morris County)	June 4, 1986
Cinnaminson, Township of 08077 (Burlington County)	August 30, 1979
Clinton, Township of 08801 (Hunterdon County)	December 10, 1981
Delaware, Township of 08557 (Hunterdon County)	October 15, 1992
Delran, Township of 08075 (Burlington County)	August 30, 1979
Dover, Town of 07801 (Morris County)	April 16, 1980
Dover, Township of 08753 (Ocean County)	September 26, 1979
East Orange, City of 07019 (Essex County)	February 20, 1979
East Windsor, Township of 08520 (Mercer County)	December 23, 1991
Eatontown, Borough of 07724 (Monmouth County)	March 23, 1979
Edgewater Park, Township of 08010 (Burlington County)	July 24, 1979
Egg Harbor, Township of 08221 (Atlantic County)	September 24, 1979
Egg Harbor, City of 08215 (Atlantic County)	May 21, 1981
Elizabeth, City of 07201 (Union County)	April 30, 1979
Elmer, Borough of 08318 (Salem County)	November 19, 1991
Ewing, Township of 08618 (Mercer County)	November 10, 1981

Fairfield, Township of 07006 (Essex County) August 21, 1980
Fair View, Borough of 07022 (Bergen County) September 5, 1979
Fanwood, Borough of 07023 (Union County) June 29, 1979
Farmingdale, Borough of 07727 (Union County) May 18, 1981
Florham Park, Borough of 07932 (Morris County) April 25, 1979
Fort Lee, Borough of 07024 (Bergen County) August 27, 1979
Franklin, Township of 07826 (Somerset County) June 20, 1980
Gloucester, City of 08030 (Camden County) January 24, 1989
Fredon, Township of 07860 (Sussex County) October 28, 1980
Freehold, Township of 07728 (Monmouth County) October 8, 1992
Green, Township of 07821 (Sussex County) July 20, 1982
Hackensack, City of 07602 (Bergen County) April 22, 1980
Hamilton, Township of 08330 (Atlantic County) November 18, 1982
Hammonton, Town of 08037 (Atlantic County) August 3, 1979
Hanover, Township of 07981 (Morris County) January 7, 1986
Hightstown, Borough of 08520 (Mercer County) September 3, 1980
Hillside, Township of 07205 (Union County) June 4, 1979
Hoboken, City of 07030 (Hudson County) October 15, 1979
Holland, Township of 08848 (Hunterdon County) June 1, 1992
Holmdel, Township of 07733 (Monmouth County) October 20, 1987
Hopewell, Township of 08302 (Cumberland County) September 26, 1979
Howell, Township of 07731 (Monmouth County) March 23, 1979
Irvington, Town of 07111 (Essex County) March 20, 1979
Irvington, Township of 07111 (Essex County) July 1, 1985
Jackson, Township of 08257 (Ocean County) March 7, 1979
Jamesburg, Borough of 08831 (Middlesex County) March 2, 1983
Jefferson, Township of 07981 (Morris County) April 19, 1983
Jersey City, City of 07302 (Hudson County) February 23, 1979
Keansburg, Township of 07734 (Monmouth County) April 5, 1984
Kearny, Town of 07032 (Hudson County) August 26, 1980
Keyport, Borough of 07735 (Monmouth County) August 15, 1979
Kinnelon, Borough of 07405 (Morris County) June 4, 1986
Lacey, Township of 08731 (Ocean County) August 18, 1981
Lavallette, Borough of 08735 (Ocean County) December 11, 1979
Lawrence, Township of 08648 (Mercer County) April 24, 1979
Little Silver, Borough of 07739 (Monmouth County) April 5, 1984
Logan, Township of 08096 (Gloucester County) January 2, 1990
Long Branch, City of 07740 (Monmouth County) December 4, 1987
Lopatcong, Township of 08865 (Warren County) August 30, 1979
Lower, Township of 08024 (Cape May County) June 5, 1979
Manchester, Township of 08733 (Ocean County) September 21, 1982
Mannington, Township of 08079 (Salem County) May 17, 1979
Maple Shade, Township of 08052 (Burlington County) July 18, 1980
Maplewood, Township of 07040 (Essex County) April 4, 1979
Matawan, Borough of 07747 (Monmouth County) June 19, 1981
Maurice River, Township of 08332 (Cumberland County) September 26, 1980
Medford Lakes, Borough of 08055 (Burlington County) February 3, 1992
Mendham, Township of 07949 (Morris County) January 16, 1985
Millburn, Township of 07041 (Essex County) May 19, 1981
Millville, City of 08332 (Cumberland County) April 10, 1979
Millstone, Township of 07726 (Monmouth County) January 14, 1988
Montclair, Town of 07042 (Essex County) April 5, 1979
Mount Holly, Township of 08060 (Burlington County) January 29, 1980
Mount Laurel, Township of 08054 (Burlington County) May 27, 1980
Neptune, Township of 07753 (Monmouth County) January 4, 1982
Neptune City, Borough of 07712 (Monmouth County) December 2, 1982
Newark, City of 07102 (Essex County) March 16, 1979
New Brunswick, City of 08903 (Middlesex County) January 30, 1986
North Plainfield, Borough of 07060 (Somerset County) July 1, 1985
North Wildwood, City of 08260 (Cape May County) August 24, 1979
Ocean, Township of 07755 (Monmouth County) November 27, 1979
Ocean, Township of 08758 (Ocean County) May 29, 1985
Orange, City of 07050 (Essex County) July 2, 1979
Passaic, City of 07055 (Passaic County) September 4, 1980
Paterson, City of 07050 (Passaic County) February 16, 1979
Paulsboro, Borough of 08066 (Gloucester County) May 7, 1981
Pemberton, Township of 08057 (Burlington County) August 9, 1993
Penns Grove, Borough of 08069 (Salem County) July 9, 1979
Phillipsburg, Town of 08865 (Warren County) July 13, 1979
Pine Hill, Borough of 08021 (Camden County) March 2, 1982
Piscataway, Township of 08854 (Middlesex County) March 20, 1981
Pittsgrove, Township of 08318 (Salem County) January 8, 1993
Plainfield, City of 07061 (Union County) April 5, 1979
Pleasantville, City of 08232 (Atlantic County) December 27, 1979
Plumsted, Township of 08533 (Ocean County) November 16, 1992
Pohatcong, Township of 08865 (Warren County) July 20, 1979
Princeton, Borough of 08540 (Mercer County) July 16, 1980
Princeton, Township of 08540 (Mercer County) September 25, 1980
Rahway, City of 07065 (Union County) December 18, 1979
Randolph, Township of 07801 (Morris County) May 10, 1979
Readington, Township of 08889 (Hunterdon County) June 23, 1980
Red Bank, Borough of 07701 (Monmouth County) September 9, 1980
Riverside, Township of 08075 (Burlington County) May 10, 1979
Roosevelt, Borough of 08555 (Monmouth County) March 3, 1992
Roselle, Borough of 07203 (Union County) August 8, 1979
Roselle Park, Borough of 07204 (Union County) March 5, 1981
Runnemede, Borough of 08078 (Camden County) May 6, 1982
Salem, City of 08079 (Salem County) June 20, 1979
Sayreville, Borough of 08872 (Middlesex County) September 19, 1979
Scotch Plains, Township of 07076 (Union County) August 22, 1979
Sea Bright, Borough of 07760 (Monmouth County) April 10, 1979
Sea Girt, Borough of 07762 (Monmouth County) March 12, 1991
Seaside Heights, Borough of 08751 (Ocean County) June 21, 1991
Secaucus, Town of 07094 (Hudson County) March 5, 1980
Somerdale, Borough of 08083 (Camden County) July 28, 1982
Somers Point, City of 08244 (Atlantic County) June 3, 1993
Somerville, Borough of 08876 (Somerset County) March 23, 1979
South Amboy, City of 08879 (Middlesex County) July 12, 1984
South Harrison, Township of 08039 (Gloucester County) December 29, 1988
South Orange Village, Township of 07079 (Essex County) August 19, 1980
South Plainfield, Borough of 07080 (Middlesex County) September 26, 1980
South River, Borough of 08882 (Middlesex County) March 16, 1979
Spotswood, Borough of 08884 (Middlesex County) June 19, 1981
Stafford, Township of 08050 (Ocean County) May 2, 1985
Sussex, Borough of 07461 (Sussex County) October 24, 1979
Tenafly, Borough of 07670 (Bergen County) June 17, 1980
Tewsbury, Township of 08833 (Hunterdon County) August 21, 1992
Tinton Falls, Township of 07724 (Monmouth County) June 20, 1980
Trenton, City of 08608 (Mercer County) June 12, 1980
Tuckerton, Borough of 08087 (Ocean County) February 2, 1989
Union City, City of 07087 (Hudson County) April 23, 1979
Upper Deerfield, Township of 08302 (Cumberland County) May 19, 1989
Upper Pittsgrove, Township of 08318 (Salem County) October 15, 1979
Ventnor City, City of 08401 (Atlantic County) March 30, 1982
Verona, Borough of, Township of 07044 (Essex County) February 23, 1984
Victory Gardens, Borough of 07801 (Morris County) August 15, 1979
Vineland, City of 08360 (Cumberland County) July 6, 1979
Washington, Borough of 07882 (Warren County) June 24, 1986
Washington, Township of 08214 (Burlington County) March 12, 1979
Washington, Township of 07853 (Morris County) May 30, 1979
Waterford, Township of 08004 (Camden County) July 9, 1984
Wayne, Township of 07470 (Passaic County) October 6, 1986
Weehawken, Township of 07087 (Hudson County) August 14, 1986
Wenonah, Borough of 08090 (Gloucester County) July 1, 1985
West Deptford, Township of 08086 (Gloucester County) November 14, 1988

Westfield, Town of 07090 (Union County)	July 15, 1992
Westhampton, Township of 08060 (Burlington County)	June 4, 1979
West New York, Town of 07093 (Hudson County)	March 16, 1979
Westville, Borough of 08093 (Gloucester County)	March 18, 1988
West Orange, Town of 07052 (Essex County)	February 26, 1979
Westwood, Borough of 07675 (Bergen County)	November 28, 1991
Wildwood, City of 08260 (Cape May County)	December 5, 1984
Willingboro, Township of 08046 (Burlington County)	April 17, 1980
Winslow, Township of 08037 (Camden County)	November 13, 1980
Woodbury, City of 08086 (Gloucester County)	January 7, 1986
Woodlynne, Borough of 08107 (Camden County)	June 7, 1982
Woodridge, Borough of 07075 (Bergen County)	July 9, 1984
Woodstown, Borough of 08079 (Salem County)	September 8, 1983
Woolwich, Township of 08085 (Gloucester County)*	March 28, 1994

(a)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD

Notice of Receipt of and Action on Petition for Rulemaking
N.J.A.C. 11:21-1.1, Exhibit G

Petitioner: New Jersey Optometric Association.

Take notice that the New Jersey Small Employer Health Benefits Program ("SEH") Board received a petition for rulemaking on March 2, 1994 concerning N.J.A.C. 11:21-1.1, Exhibit G, the small employer health benefits HMO policy form, Section V(b), "Specialist Doctor Benefits."

The petitioner requests that the SEH Board amend the list of "Specialist Doctor Benefits" to specifically name optometry as a covered specialist benefit for reimbursement under the standard HMO policy form.

Notice of Action on Petition for Rulemaking

The petition has been considered by the SEH Board, pursuant to law, and the SEH Board has decided to refer the matter to the SEH Board's Policy Forms Committee for further deliberations in accordance with N.J.A.C. 11:21-18.3(c)3, to conclude on July 29, 1994. The SEH Board will take final action upon a recommendation from the committee.

The SEH Board first considered the issue of expressly including optometry in the list of Specialist Doctor Benefits on the standard HMO policy form when it was raised in a comment to the proposed rule. Upon final adoption of the rule, the SEH Board did not believe it was necessary to list optometry because the list of Specialist Doctor Benefits is not exclusive, rather, section V(b) of the standard HMO policy form specifically states that "[s]ervices include, but are not limited to, the following" and proceeds to list examples of the most common specialist services. Optometry is not listed in the exclusions in section IV of the standard HMO policy form. Furthermore, the form's definition of "covered services" lists the criteria used to determine whether a service will be covered by the carrier. It is clear from those criteria that medically necessary services performed by a licensed optometrist, upon referral by the primary care physician, would be covered. The SEH Board responded to this effect in its responses to public comments in the SEH Board's final rule promulgating the standard HMO policy form. (25 N.J.R. 5257)

The SEH Board's goal is to make the standard policy forms as clear as possible. Therefore, the Board's Committee will further consider the petition in light of all specialty services not expressly named in the standard HMO policy form, including optometry, to determine if a clarification is necessary. When the committee's recommendation has been considered by the SEH Board and a final decision has been made, the decision will be mailed to the petitioner and published in a future New Jersey Register.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 11:21-18.3(b).

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Notice of Tax Rate
Petroleum Products Gross Receipts Tax
July 1, 1994–December 31, 1994

This notice is to advise petroleum products gross receipts taxpayers that for the period July 1, 1994 through December 31, 1994 the applicable tax rate for fuel oils, aviation fuels, and motor fuels, as converted to a cents per gallon rate pursuant to N.J.S.A. 54:15B-3 will be $0.04 per gallon. The rate is effective for tax due for months ending during that period, and this rate remains unchanged from the per gallon rate effective during the prior six month period.

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 6, 1994 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1994 d.1 means the first rule filed for 1994.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT MAY 16, 1994

NEXT UPDATE: SUPPLEMENT JUNE 20, 1994

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
25 N.J.R. 3051 and 3276	July 19, 1993	26 N.J.R. 521 and 878	February 7, 1994
25 N.J.R. 3277 and 3582	August 2, 1993	26 N.J.R. 879 and 1178	February 22, 1994
25 N.J.R. 3583 and 3884	August 16, 1993	26 N.J.R. 1179 and 1272	March 7, 1994
25 N.J.R. 3885 and 4360	September 7, 1993	26 N.J.R. 1273 and 1416	March 21, 1994
25 N.J.R. 4361 and 4540	September 20, 1993	26 N.J.R. 1417 and 1554	April 4, 1994
25 N.J.R. 4541 and 4694	October 4, 1993	26 N.J.R. 1555 and 1738	April 18, 1994
25 N.J.R. 4695 and 4812	October 18, 1993	26 N.J.R. 1739 and 1904	May 2, 1994
25 N.J.R. 4813 and 4980	November 1, 1993	26 N.J.R. 1905 and 2166	May 16, 1994
25 N.J.R. 4981 and 5382	November 15, 1993	26 N.J.R. 2167 and 2510	June 6, 1994
25 N.J.R. 5383 and 5728	December 6, 1993	26 N.J.R. 2511 and 2692	June 20, 1994
25 N.J.R. 5729 and 6084	December 20, 1993	26 N.J.R. 2693 and 2828	July 5, 1994
26 N.J.R. 1 and 280	January 3, 1994	26 N.J.R. 2829 and 3102	July 18, 1994
26 N.J.R. 281 and 520	January 18, 1994		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-11.1	Subpoenas	26 N.J.R. 1276(a)	R.1994 d.293	26 N.J.R. 2255(a)
1:10-1.1, 14.2, 14.3	Family Development hearings: reproposal	26 N.J.R. 1744(b)		
1:12	Department of Labor hearings	26 N.J.R. 2174(a)		
1:12A	Department of Labor hearings	26 N.J.R. 2174(a)		
1:13A-11.1	Subpoenas	26 N.J.R. 1276(a)	R.1994 d.293	26 N.J.R. 2255(a)
1:14-10	BRC ratemaking hearings: discovery	26 N.J.R. 3(a)		
1:14-10	BRC ratemaking hearings: extension of comment period regarding discovery process	26 N.J.R. 883(a)		
1:14-10	Board of Regulatory Commissioners ratemaking hearings: discovery	26 N.J.R. 2513(a)		
	Most recent update to Title 1: TRANSMITTAL 1994-2 (supplement April 18, 1994)			
AGRICULTURE—TITLE 2				
2:3	Livestock and poultry importation	26 N.J.R. 1908(a)		
2:5	Quarantines and embargoes on animals	26 N.J.R. 1908(b)		
2:6	Animal health: biologics for diagnostic or therapeutic purposes	25 N.J.R. 4985(a)		
2:32-2.1, 2.7, 2.9, 2.27	Sire Stakes Program conditions	26 N.J.R. 1181(a)	R.1994 d.271	26 N.J.R. 2256(a)
2:33	Agricultural fairs	26 N.J.R. 285(a)		
2:69-1.11	Commercial values of primary plant nutrients	26 N.J.R. 1560(a)	R.1994 d.312	26 N.J.R. 2568(a)
2:76	Agriculture Development Committee	26 N.J.R. 1419(a)		
2:76-6.11	Farmland Preservation Program: correction to proposal and extension of comment period regarding acquisition of development easements	25 N.J.R. 4697(a)		
	Most recent update to Title 2: TRANSMITTAL 1994-3 (supplement May 16, 1994)			
BANKING—TITLE 3				
3:1-2.17, 2.25, 2.26	Closing of branch offices	26 N.J.R. 883(b)	R.1994 d.318	26 N.J.R. 2779(a)
3:1-6.6	Department examination charges	26 N.J.R. 1560(b)		
3:1-12.2	Multiple party deposit accounts: administrative correction	———	———	26 N.J.R. 2568(b)
3:4-3	Banking institutions: sale of alternative investments	25 N.J.R. 5733(a)		
3:6-15.2	Disqualification of savings bank directors	25 N.J.R. 3586(b)		
3:11	Investments	26 N.J.R. 1909(a)	R.1994 d.377	26 N.J.R. 2892(a)
3:11-7.11	Disqualification of bank directors	25 N.J.R. 3586(b)		
3:13-5	Mutual holding companies	26 N.J.R. 1213(a)	R.1994 d.373	26 N.J.R. 2892(b)
3:22	Insurance premium finance companies	26 N.J.R. 2697(a)		
3:32-3	Mutual holding companies	26 N.J.R. 1213(a)	R.1994 d.373	26 N.J.R. 2892(b)
3:38-5.3	Mortgage referrals by real estate agents	26 N.J.R. 6(a)		
3:38-5.3	Mortgage referrals by real estate agents: extension of comment period	26 N.J.R. 884(a)		
3:41-12	Cemetery Board: service contractors and service contracts	26 N.J.R. 6(b)		
	Most recent update to Title 3: TRANSMITTAL 1994-3 (supplement May 16, 1994)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)			

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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4A:1-2.3	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:2-2.3	Sexual harassment; discrimination complaints	26 N.J.R. 1182(a)		
4A:2-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-4.6	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:4-2.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:4-2.9	Make-up examinations	26 N.J.R. 1183(a)	R.1994 d.285	26 N.J.R. 2256(a)
4A:4-2.15, 5.2	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:4-4.8	Non-selection of eligible in same rank	26 N.J.R. 2697(b)		
4A:6-1.1, 1.8, 1.10, 1.21A	Family and medical leave	26 N.J.R. 1183(b)		
4A:6-1.2, 1.3, 1.5, 1.23, 2.4	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
4A:6-4.2	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:7-1.3, 3.3	Sexual harassment; discrimination complaints	26 N.J.R. 1182(a)		
4A:8-2.1	Layoff rights	26 N.J.R. 2182(a)		
4A:8-2.4	Voluntary furlough program for State employees	26 N.J.R. 2179(a)		
	Most recent update to Title 4A: TRANSMITTAL 1994-3 (supplement May 16, 1994)			
COMMUNITY AFFAIRS—TITLE 5				
5:15	Emergency shelters for the homeless	26 N.J.R. 1421(a)	R.1994 d.324	26 N.J.R. 2779(b)
5:18-2.12, 2.21, App. 3-A	Uniform Fire Code: cigarette lighters	26 N.J.R. 2182(b)		
5:23-1.4	Uniform Construction Code: administrative change	_____	_____	26 N.J.R. 2779(c)
5:23-2.5	Uniform Construction Code: increase in dwelling size	26 N.J.R. 1910(a)		
5:23-2.23, 4.20	UCC: testing of blackflow preventers	26 N.J.R. 1911(a)		
5:23-3.4, 3.20A	Indoor air quality subcode	25 N.J.R. 5918(a)		
5:23-3.14, 7	Uniform Construction Code: Barrier Free Subcode	26 N.J.R. 2698(a)		
5:23-4.4, 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)	R.1994 d.323	26 N.J.R. 2780(a)
5:23-5.19	UCC: elevator inspector HHS requirements	26 N.J.R. 1912(a)		
5:23-8.10	Asbestos Hazard Abatement Subcode: asbestos safety technician	26 N.J.R. 2183(a)		
5:23-10.1, 10.3, 10.4	Radon Hazard Subcode: schools and residential buildings in tier one areas	26 N.J.R. 2704(a)		
5:25-2.5	New home warranties and builder registration: denial of registration	26 N.J.R. 1913(a)		
5:25A-1.3, 2.1, 2.5, 2.6	FRT plywood roof sheathing failures: alternative claim procedures	26 N.J.R. 2706(a)		
5:34-7.2, 7.5, 7.6, 7.8, 7.9	Local government finance: renewal of registration of Cooperative Purchasing System	26 N.J.R. 2707(a)		
5:37	Municipal, county and authority employees deferred compensation plans	26 N.J.R. 2708(a)		
5:60	Displaced Homemaker Programs: eligibility for grants-in-aid	26 N.J.R. 1622(b)	R.1994 d.311	26 N.J.R. 2568(c)
5:80-3.2	Housing and Mortgage Finance Agency: return on equity for housing project sponsors	26 N.J.R. 1186(a)		
5:80-5.10	Housing and Mortgage Finance Agency: prepayment of project mortgage	26 N.J.R. 1187(a)		
5:80-8	Housing and Mortgage Finance Agency: occupancy income requirements	26 N.J.R. 8(a)	R.1994 d.300	26 N.J.R. 2569(a)
5:80-9.14, 9.15	Housing and Mortgage Finance Agency: rent increases for projects without Federal rent subsidies and for low/market rate projects	26 N.J.R. 1188(a)	R.1994 d.301	26 N.J.R. 2570(a)
5:80-23.7, 23.9	Housing Incentive Note Purchase Program: fees; subordinate financing	26 N.J.R. 9(a)	R.1994 d.302	26 N.J.R. 2571(a)
5:80-29	Housing and Mortgage Finance Agency: investment of housing project funds	25 N.J.R. 4830(a)	R.1994 d.303	26 N.J.R. 2572(a)
5:91-1.3, 14	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)	R.1994 d.290	26 N.J.R. 2300(a)
5:92-1.1, 1.3	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)	R.1994 d.290	26 N.J.R. 2300(a)
5:93	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)	R.1994 d.290	26 N.J.R. 2300(a)
5:93-3.6, 5.6	New Jersey Council on Affordable Housing: reductions for substantial compliance; zoning for inclusionary development	26 N.J.R. 2514(a)		
	Most recent update to Title 5: TRANSMITTAL 1994-4 (supplement May 16, 1994)			
MILITARY AND VETERANS' AFFAIRS—TITLE 5A				
5A:6	Veterans' programs and services: policies and procedures	26 N.J.R. 530(a)	R.1994 d.295	26 N.J.R. 2572(b)
	Most recent update to Title 5A: TRANSMITTAL 1993-1 (supplement December 20, 1993)			

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EDUCATION—TITLE 6				
6:5-2, App.	Department of Education: organizational rule	Exempt	R.1994 d.333	26 N.J.R. 2784(a)
6:21	Pupil transportation	26 N.J.R. 1997(a)		
6:26	Intervention and referral services for general education pupils	26 N.J.R. 2004(a)		
6:28-2.10, 3.6, 4.3	Special education	26 N.J.R. 1422(a)	R.1994 d.334	26 N.J.R. 2787(a)
6:30	Adult education programs	26 N.J.R. 884(b)	R.1994 d.286	26 N.J.R. 2257(a)
6:30-2.1	Adult basic skills programs: professional staff certification	26 N.J.R. 2184(a)		
6:39	District evaluation	26 N.J.R. 1423(a)	R.1994 d.335	26 N.J.R. 2788(a)
6:70	Library network services	26 N.J.R. 2184(b)		
	Most recent update to Title 6: TRANSMITTAL 1994-3 (supplement May 16, 1994)			
ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7				
7:0	Management of waste oil: request for public comment	26 N.J.R. 1466(a)		
7:1C-1.1, 1.2, 1.5	Ninety-day construction permits: fees	26 N.J.R. 787(a)	R.1994 d.337	26 N.J.R. 2789(a)
7:1C-1.1, 1.3, 1.5	Ninety-day construction permits: fees	26 N.J.R. 913(a)	R.1994 d.379	26 N.J.R. 2920(a)
7:1G	Worker and Community Right to Know	26 N.J.R. 123(a)	R.1994 d.349	26 N.J.R. 2930(a)
7:5D	State Trails System	26 N.J.R. 1459(a)		
7:7	Coastal Permit Program	26 N.J.R. 917(a)	R.1994 d.276	26 N.J.R. 2413(a)
7:7	Coastal Permit Program	26 N.J.R. 918(a)	R.1994 d.378	26 N.J.R. 2934(a)
7:7	Coastal Permit Program: extension of comment period	26 N.J.R. 1561(a)		
7:7-8	Coastal Permit Program: enforcement	26 N.J.R. 1745(a)		
7:7E	Coastal zone management	26 N.J.R. 943(a)	R.1994 d.380	26 N.J.R. 2990(a)
7:7E	Coastal zone management: public meetings and opportunity for comment on proposed revisions to planning and growth region policies	26 N.J.R. 1003(a)		
7:7E-3.43	Coastal zone management: administrative correction regarding special urban areas	26 N.J.R. 1561(b)		
7:7E-8.12	Coastal zone management: notice of clarification	26 N.J.R. 1561(c)		
7:9-1	Treatment works approval, sewer bans and sewer ban exemptions	25 N.J.R. 3282(a)	R.1994 d.278	26 N.J.R. 2413(b)
7:9A	Individual subsurface sewage disposal systems	26 N.J.R. 2715(a)		
7:10	Safe Drinking Water Act rules	26 N.J.R. 2720(a)		
7:11-2.1-2.4, 2.9, 2.10, 2.13	Delaware and Raritan Canal—Spruce Run/Round Valley Reservoirs System: sale of water	25 N.J.R. 5742(a)	R.1994 d.306	26 N.J.R. 2595(a)
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: sale of water	25 N.J.R. 5744(a)	R.1994 d.307	26 N.J.R. 2598(a)
7:13	Flood hazard area control	26 N.J.R. 1009(a)		
7:13	Flood hazard area control	26 N.J.R. 1036(a)	R.1994 d.338	26 N.J.R. 2791(a)
7:14	Water Pollution Control Act rules	26 N.J.R. 1038(a)	R.1994 d.256	26 N.J.R. 2459(a)
7:14-8.3	Clean Water Enforcement Act: financial assurance for penalty payment schedules	25 N.J.R. 5395(a)	R.1994 d.277	26 N.J.R. 2461(a)
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)		
7:14A	NJPDES permitting program: waiver of Executive Order No. 66(1978) expiration date	———	———	26 N.J.R. 2462(a)
7:14A-1.9, 12, 22, 23	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)	R.1994 d.278	26 N.J.R. 2413(b)
7:14A-2.15, 6.14, 6.17, 12.4	Contaminated site remediation: NJPDES permit program	26 N.J.R. 158(a)		
7:15	Statewide Water Quality Management Planning Rules: public meetings and opportunity for comment on draft amendments	26 N.J.R. 792(a)		
7:15-5.18	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)	R.1994 d.278	26 N.J.R. 2413(b)
7:23	Flood Control Bond Grants	26 N.J.R. 1334(a)	R.1994 d.308	26 N.J.R. 2599(a)
7:24A	Dam Restoration and Inland Waters Projects Loan Program	26 N.J.R. 2228(a)		
7:25-4	Implementation of Wild Bird Act of 1991	26 N.J.R. 1040(a)		
7:25-5	1994-95 Game Code	26 N.J.R. 1913(b)		
7:25-6.5	Fish Code: administrative correction regarding trout fishing areas	———	———	26 N.J.R. 3082(a)
7:25-18.1	Flounder management	26 N.J.R. 1885(a)	R.1994 d.339	26 N.J.R. 2792(a)
7:25-18.1, 18.5	Directed conch fishery	26 N.J.R. 1931(a)		
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	26 N.J.R. 1652(a)		
7:26-1.4	Hazardous waste transportation: informal meeting on draft "10-day in-transit holding rule"	26 N.J.R. 294(a)		
7:26-8.2, 8.14	Hazardous waste from specific sources: removal of K053 through K059 and K074 from list	26 N.J.R. 1464(a)		
7:26C	Site Remediation Program: opportunity for comment on draft remedial priority system	25 N.J.R. 4551(c)		
7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)		
7:27-1, 8, 18, 21, 22	Air pollution control: extension of comment period regarding facility operating permits, emission statements, and penalties	25 N.J.R. 4836(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:27-1, 8, 18, 22	Air Operating Permits and Reconstruction Permits: public roundtable on proposed new rules and amendments	26 N.J.R. 793(a)		
7:27-1.4, 2.1, 8.1, 8.2, 16.1, 16.1A, 16.2–16.6, 16.8–16.11, 16.13, 16.16–16.22, 16.26, 16.27, 17.1, 17.3, 17.4, 23.1–23.7, 25.1, 25.7	Air pollution by volatile organic compounds: control and prohibition	25 N.J.R. 3339(a)	R.1994 d.313	26 N.J.R. 2600(a)
7:27-15.1, 15.2, 15.4-15.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27-15.1, 15.4	Enhanced Inspection and Maintenance (I/M) program	25 N.J.R. 5400(a)		
7:27-15.4	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27-16.1	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27-21.1–21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)		
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
7:27-25.1, 25.3, 25.8	Control and prohibition of air pollution by vehicular fuels	26 N.J.R. 1048(a)		
7:27-25.1, 25.3, 25.8	Redesignation of carbon monoxide nonattainment areas and amendments regarding oxygenated fuels: public hearing time change	26 N.J.R. 1336(a)		
7:27-26	Low Emission Vehicles Program	26 N.J.R. 1467(a)		
7:27-27	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)		
7:27A-3.2, 3.10	Air pollution by volatile organic compounds: control and prohibition	25 N.J.R. 3339(a)	R.1994 d.313	26 N.J.R. 2600(a)
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)		
7:27A-3.10	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27A-3.10	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27A-3.10	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27B-3.1, 3.10	Air pollution by volatile organic compounds: control and prohibition	25 N.J.R. 3339(a)	R.1994 d.313	26 N.J.R. 2600(a)
7:27B-4.1, 4.5–4.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27B-4.1, 4.5, 4.6, 4.9	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27B-4.5, 4.6, 4.9	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:28-48	Non-ionizing radiation producing sources: registration fees	25 N.J.R. 5422(a)		
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
7:50-2, 3, 4, 5, 6, 7	Pinelands Comprehensive Management Plan	26 N.J.R. 165(a)		
7:61-3.15, 3.16	Board of Commissioners of Pilotage: Drug Free Workplace Program	26 N.J.R. 2238(a)		

Most recent update to Title 7: TRANSMITTAL 1994-5 (supplement May 16, 1994)

HEALTH—TITLE 8				
8:1-1	Disability discrimination grievance procedure	26 N.J.R. 2005(a)		
8:8	Collection, processing, storage and distribution of blood	26 N.J.R. 2025(a)		
8:31B-2.1, 2.3, 2.4, 2.5	Hospital reporting of uniform bill-patient summaries (inpatient)	26 N.J.R. 10(a)		
8:31B-3.3, 3.70	Health care financing: monitoring and reporting	26 N.J.R. 12(a)		
8:31B-4.37	Charity care audit functions	26 N.J.R. 13(a)		
8:33L	Home Health Agency Policy Manual	26 N.J.R. 1065(a)	R.1994 d.279	26 N.J.R. 2266(a)
8:36-1.8, 9.3	Assisted living residences and comprehensive personal care homes: personal care assistants; administration of medications	26 N.J.R. 2187(a)		
8:38-1–3	Health Maintenance Organizations	26 N.J.R. 1624(a)	R.1994 d.365	26 N.J.R. 2896(a)
8:39	Long-term care facilities: standards for licensure	26 N.J.R. 1772(c)		
8:42A	Licensure of alcoholism treatment facilities	26 N.J.R. 1625(a)	R.1944 d.366	26 N.J.R. 2896(b)
8:43D	Health Care Administration Board bylaws	26 N.J.R. 1627(a)		
8:43H	Licensure of rehabilitation hospitals	26 N.J.R. 1628(a)	R.1994 d.367	26 N.J.R. 2896(c)
8:44-2.1, 2.14	Clinical laboratory licensure: HIV testing	25 N.J.R. 2184(a)	Expired	
8:44-2.5	Clinical laboratory Proficiency Testing Program	26 N.J.R. 1070(a)		
8:44-2.11	Clinical laboratories: reporting of blood lead levels	26 N.J.R. 294(b)	R.1994 d.275	26 N.J.R. 2270(a)

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8:65-10.1, 10.2	Controlled dangerous substances	26 N.J.R. 1630(a)	R.1993 d.325	26 N.J.R. 2792(b)
8:71	Interchangeable drug products (see 25 N.J.R. 4495(b), 6062(a), 364(b))	25 N.J.R. 2802(b)	R.1994 d.245	26 N.J.R. 2094(c)
8:71	Interchangeable drug products (see 25 N.J.R. 6060(c))	25 N.J.R. 3906(a)	R.1994 d.39	26 N.J.R. 364(a)
8:71	Interchangeable drug products (see 26 N.J.R. 362(b), 1347(b))	25 N.J.R. 4844(a)	R.1994 d.246	26 N.J.R. 2095(a)
8:71	List of Interchangeable Drug Products (see 26 N.J.R. 1348(a))	26 N.J.R. 13(b)	R.1994 d.247	26 N.J.R. 2096(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 14(a)	R.1994 d.244	26 N.J.R. 2039(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 69(a)	R.1994 d.243	26 N.J.R. 2028(a)
8:71	Interchangeable drug products (see 26 N.J.R. 2025(b))	26 N.J.R. 1190(b)	R.1994 d.370	26 N.J.R. 2901(a)
8:71	Interchangeable drug products	26 N.J.R. 1821(a)	R.1994 d.368	26 N.J.R. 2897(a)
8:71	Interchangeable drug products	26 N.J.R. 1822(a)	R.1994 d.369	26 N.J.R. 2898(a)
8:71	Interchangeable drug products	26 N.J.R. 2723(a)		
8:91	Health Access New Jersey	26 N.J.R. 2007(a)		
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9:18	Implementation of Higher Education Facilities Trust Fund Act	26 N.J.R. 1486(a)	R.1994 d.304	26 N.J.R. 2579(a)
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10:31	Mental Health Screening and Screening Outreach Programs	26 N.J.R. 1424(a)	R.1994 d.291	26 N.J.R. 2271(a)
10:37-5.37–5.43	Repeal (see 10:37A)	25 N.J.R. 2672(a)	R.1994 d.292	26 N.J.R. 2271(b)
10:37-6.1–6.4, 6.8, 6.9, 6.25, 6.26, 6.30–6.33, 6.37, 6.38, 6.58, 7.1–7.9	Repeal (see 10:37D)	26 N.J.R. 1277(a)		
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10:37C	Community mental health clinical case management	25 N.J.R. 4845(a)	R.1994 d.336	26 N.J.R. 3082(b)
10:37D	Division of Mental Health and Hospitals: management and governing body standards for provider agencies	26 N.J.R. 1277(a)		
10:39	Repeal (see 10:37A)	25 N.J.R. 2672(a)	R.1994 d.292	26 N.J.R. 2271(b)
10:48-1	Division of Developmental Disabilities: appeal procedure	26 N.J.R. 1280(a)		
10:48-4	Eligibility for services	26 N.J.R. 1752(a)		
10:48-4	Division of Developmental Disabilities: public hearing and reopening of comment period regarding management of waiting lists for services	26 N.J.R. 2756(a)		
10:49-14.1	Medicaid benefits: recovery from estates of payments correctly made	26 N.J.R. 2757(a)		
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10:81-11.2, 11.4, 11.18A	Public Assistance Manual: assignment of right to support; wage withholding	26 N.J.R. 896(a)		
10:81-11.9	Public Assistance Manual: $50 disregarded child support payment	26 N.J.R. 1937(a)		
10:82	Aid to Families with Dependent Children (AFDC)	26 N.J.R. 1584(a)		
10:85	General Assistance Manual	26 N.J.R. 2757(b)		
10:85-4.6	General Assistance Program: extension of temporary rental assistance benefits	26 N.J.R. 1756(a)		
10:95	Commission for the Blind and Visually Impaired: Vocational Rehabilitation Services Program	26 N.J.R. 2242(a)		
10:133-1.3	DYFS: initial response and service delivery definitions	26 N.J.R. 1285(a)		
10:133C-2	Eligibility for DYFS services	26 N.J.R. 897(a)		
10:133H-3	Review of children in out-of-home placement	25 N.J.R. 5752(a)		
10A:33	Manual of Standards for Juvenile Detention Commitment Programs (recodified to 10:18	25 N.J.R. 5749(a)	R.1994 d.392	26 N.J.R. 2902(a)
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10A:20-4.20, 4.21, 4.22, 4.45	Community release programs	26 N.J.R. 1938(a)	R.1994 d.340	26 N.J.R. 2792(c)
10A:33	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)	R.1994 d.392	26 N.J.R. 2902(a)
10A:71-3.15, 3.16	State Parole Board: parole hearings	26 N.J.R. 2189(a)		
10A:71-3.21	State Parole Board: future parole eligibility terms	25 N.J.R. 4703(a)		
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10A:71-7.16, 7.16A	Parole Board panel action: establishment of parole release date upon revocation of parole for technical violations	26 N.J.R. 2516(a)		
10A:71-8.2	State Parole Board: eligibility for Certificate of Good Conduct	26 N.J.R. 1193(a)	R.1994 d.273	26 N.J.R. 2287(a)
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12:20	Board of Review and Appeal Tribunal	26 N.J.R. 1941(a)		
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13:31-1.9	Board of Examiners of Electrical Contractors: identification of licensee vehicles	26 N.J.R. 1218(b)		
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13:35	Board of Medical Examiners rules	26 N.J.R. 2526(a)		
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13:37-12.1, 14	Board of Nursing: certification of homemaker-home health aides	25 N.J.R. 1950(a)	R.1994 d.289	26 N.J.R. 2293(c)
13:37-14	Homemaker-home health aide competency evaluation: public hearing	25 N.J.R. 3704(b)		
13:38-6.1	Board of Optometrists: release of contact lens specification to patient	26 N.J.R. 1220(a)		
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