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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MAY 15, 1989
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JUNE 17, 1989

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Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **September 6, 1989**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF MARKETS

Equine Advisory Board Rules

Proposed New Rules: N.J.A.C. 2:34-2

Authorized By: Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Authority: N.J.S.A. 5:5-88
Proposal Number: PRN 1989-397.

Submit written comments by September 6, 1989 to:
John J. Repko, Director
Division of Markets
State Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-5536

The agency proposal follows:

Summary

These proposed new rules are a compilation of the procedures used by the Equine Advisory Board. These rules provide definitions of eligibility, classes, fees and procedures for the determination of awards from equine promotion fund monies collected pursuant to N.J.S.A. 5:5-88. The Equine Advisory Board is an advisory board to the Department of Agriculture on equine issues and the expenditure of equine promotion funds, and it also conducts various equine events.

Social Impact

The provision of funds and the subsequent awarding of prize monies to owners and breeders of non-racing breeds is designed to have a positive impact on the development of the horse industry in New Jersey. It is felt that the competition and interest generated by these programs leads to improved breeding and participation in the horse industry. The Department of Agriculture sees a positive result from the promulgation of these rules as they clarify the procedures and practices that have evolved over the past 20 years.

Economic Impact

The great majority of competitors for the year-end non-racing breeder awards, are private pleasure horse owners. It is the intent of the Equine Advisory Board to provide positive economic incentive to these owners and breeders through the awarding of prize monies in variously sponsored competitions. A broader positive economic impact is realized by the subsequent development of the horse industry in the State.

Regulatory Flexibility Analysis

Although the vast majority of competitors affected by these rules are individual owners and breeders, in some instances they may be considered small businesses. However, the rules pertain basically to the ways in which certain awards are determined and granted by the Equine Advisory Board. The Department of Agriculture has determined, in accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that the rules do not impose unduly burdensome recording, recordkeeping or compliance requirements on either the individual owners nor those considered small businesses. Moreover, compliance with the established uniform standards is necessary to foster fair competition.

Full text of the proposal follows.

SUBCHAPTER 2. EQUINE ADVISORY BOARD RULES

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

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

1. If a horse is entered in a New Jersey horse show with only one horse in its class, it will not receive any points towards breeder awards, but the show will count as one of its three required New Jersey horse shows.

2. If a designated breeding class at a pointed horse show does not fill, the Grand or Reserve Champion class may be counted for New Jersey bred points at the discretion of the breed organization, if the organization has made this decision at the beginning of the year.

(b) A New Jersey bred horse is:

1. Any foal dropped in the State of New Jersey, except for transient mares. A transient mare is any mare arriving in the State of New Jersey solely for the purpose of dropping a foal;

2. Any foal resulting from an embryo transfer from a mare residing the full season in the State of New Jersey, providing blood typing of the mare, stallion and foal is carried out to authenticate parentage, and embryo transfer is agreeable to the national registry of the breed;

3. The get of any stallion standing only in New Jersey during the breeding season of the year in which the foal was conceived. Stallions standing in New Jersey must breed only in New Jersey for any yearly breeding season; or

4. Foals resulting from the transport of semen from a stallion standing the full season in the State of New Jersey, providing blood typing of the stallion, mare and foal is carried out to authenticate parentage, and semen transport is agreeable to the national registry of the breed.

(c) In order to qualify for New Jersey non-racing breeder awards, at least one owner shall be a member in good standing of the New Jersey breed association, represented on the New Jersey Equine Advisory Board, which represents the particular breed group in which the breeder is competing. In the case of a leased horse, the lessee shall hold such membership. Nominations for Jersey Breds should not close before one month prior to the New Jersey All Breed Horse Show.

(d) Individual breed groups are responsible for the certification of eligible horses and the tabulation of breeder award points, and must submit them to the New Jersey Department of Agriculture no later than November 30 of the year in which they are earned.

(e) Individual breed groups may require that additional conditions be met to qualify for non-racing breeder awards. Such conditions must not be in opposition to the intent of this section and must be approved and recorded by the New Jersey Equine Advisory Board and the New Jersey State Board of Agriculture each year prior to the show and the breeding season.

(f) Each breed's share of the year-end money is determined by:

1. The number of animals shown at the New Jersey All Breed Horse Show;

2. The number of horses entered in specific breed futurities. For a futurity run by a New Jersey breed group at a separate location, each New Jersey Bred horse's owner must sign an owner's eligibility certification form which, along with a photocopy of the entry blank, must be sent by the breed group to the New Jersey Department of Agriculture within two weeks of the show;

3. The number of animals who race at the Trotting Bred Association. All owners must sign an eligibility certification form which, along with a photocopy of the entry blank, must be sent by the Trotting Bred Association to the Department of Agriculture within two weeks of the race.

(g) For the purpose of obtaining a year-end total of competitors for each breed group, no animal is to be counted more than once by one breed group and horses who are registered with more than one breed group may be entered in any division for which they are qualified.

(h) Individual breed groups are responsible for supervising and certifying to the adherence to the provisions of this section.

(i) The New Jersey Department of Agriculture will accept the decisions of the individual breed groups regarding which horses are qualified to receive non-racing breeder awards, as well as the tabulation of breeder award points. Any disagreement with the decisions of the breed groups must be presented to the officers and/or directors of the particular group in question. The New Jersey Department of

Agriculture will abide by the decision of the breed group officers and/or directors unless fraud or misfeasance is shown.

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

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

1. Any questions arising which are not covered in the following rules shall be referred to the Equine Advisory Board Breeder Incentive Committee for final decision.

2. For any entry to be accepted, the horse or pony must be registered with its New Jersey breed association and be a certified New Jersey Bred. In addition, the owner or one lessee shall be a member in good standing with his or her New Jersey breed association represented on the New Jersey Equine Advisory Board. Every horse shall be entered under its registered name and the name of its rightful owner or lessee.

3. No entry will be accepted without a photocopy of a negative Coggins test of the date accepted by the New Jersey Department of Agriculture. Foals six months and under are allowed to use the Coggins test of their dam.

4. Copies of the Coggins test report and the horse's registration papers shall be attached to all entry forms along with the owner's Eligibility Declaration Form.

5. Foals dropped later than two months prior to show date will not be accepted as entries. No horse under three years of age may compete in under saddle classes.

6. No entries or stall reservations will be accepted unless payment by check or money order is received by the show secretary.

7. Post entries will be accepted at two times the regular fee after the closing date of entries.

8. Each breed will be judged according to the rules and regulations of its national breed association. Those breeds which do not have a national affiliation will be judged by their New Jersey State organization rules.

9. No horse shall be shown in any class at this show if it has been administered, in any manner, any foreign substance. A foreign substance is any medication. There will be spot testing by urinalysis and/or blood testing. Any entry found positive will be disqualified and will forfeit all awards for the New Jersey Bred All Breed Horse Show and New Jersey Bred year-end awards in the current year. Refusal to allow testing will automatically subject the horse to disqualification.

10. Classes designated as combined may be split if entries warrant; full prize money will be paid in both categories, providing the breed organization has not exceeded the designated prize money; otherwise, prize money will be split.

11. Two horses are required to fill a class at the All Breed Horse Show. If Classes with A and B sections do not have two entries each, A and B sections will be combined. Other classes will be combined only as specified in the prize list. Two horses are required to be shown and judged in order to receive both prize money and points.

i. Prize money will be paid as follows:

Four horses or more in class $100.00; 50.00; 30.00; 20.00
Three horses in class $100.00; 50.00; 30.00
Two horses in class $100.00; 50.00;
One horse in class ..... $100.00; no points

ii. Prize money for A and B classes over the 12 class limit is as follows:

Four horses or more in class $50.00; 25.00; 15.00; 10.00
Three horses in class $50.00; 25.00; 15.00
Two horses in class $50.00; 25.00
One horse in class ..... $50.00; no points

iii. If only one horse reports for judging, show money will be paid but no points will be given. However, that horse shown and judged will receive credit for the All Breed Horse Show—one of the horse's required three New Jersey shows.

12. In all classes, all riders and handlers appearing in the ring shall be neatly and properly attired according to the requirements of their national breed organization. Protective headgear is required in all jumping classes.

13. Any act of discourtesy or disobedience to the judges or officials by owner, trainer, rider or groom shall disqualify the horse, and the owner shall forfeit his or her entry and other fees.

14. The veterinarian and/or the steward shall be responsible for measuring height of entries and weight of shoes.

15. Prize money will be mailed to winners at a later date. No money can be paid without the winner's Social Security number.

(b) Any appeal from the provisions of this section shall be made within 20 days of the horse show date, or within 20 days of notification to owners of a decision.

1. All appeals to the New Jersey Department of Agriculture or breed groups are final if decided in accordance with this section or the breed group rules. Should there be a conflict between rules, this section shall be deemed superior and superseding of all other rules.

2. It is the policy of the New Jersey Department of Agriculture to accept the decisions of the individual breed groups regarding which horses are qualified to enter and to show at the New Jersey Bred All Breed Horse Show, and to receive non-racing breeder awards, as well as the tabulation of breeder award points. Such decisions and tabulations must not be in opposition to the intent of this section. Any disagreement with the decisions of the groups must be presented to the officers and/or directors of the particular breed group in question. The New Jersey Department of Agriculture will abide by the decision of the group's officers and/or directors.

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Acquisition of Development Easements
Criteria for Evaluating Development Easement Applications

Proposed Amendment: N.J.A.C. 2:76-6.16

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

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

Proposal Number: PRN 1989-410.

Submit comments by September 6, 1989 to:

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

The agency proposal follows:

Summary

The proposed amendment modifies the prioritization criteria currently used in the review of applications for development easement purchase and fee simple acquisition through the Farmland Preservation Program. These modifications address county response to the original rule effective October 17, 1988, and reflect county and State experience in using those original criteria.

The proposed amendment includes a reduction of the total available points from 100 to 90, clarification of the local commitment calculation and additional unweighted special considerations. The criteria will still be employed at the same points (preliminary and final Board and Committee reviews) and will still be used to rank applications in a priority fashion.

Changes in the total available points will bring the rule into closer conformity with the three statutory criteria: (1) the degree to which the easement purchase promotes continuation of the land in productive agriculture; (2) relative best buy; and (3) degree of imminence of change.

Soil quality, size and density, buffer quality and local commitment will now be evaluated as contributory factors under the first statutory criterion. "Relative best buy" and "degree of imminence of change" would drop their respective five point weights and be elevated to the same level of unweighted consideration as the first statutory criterion. Thus the three statutory criteria would be evaluated on a par with each other, while the other factors would be breakdowns of the first statutory criterion.

The proposed amendment to the local commitment calculation would clarify that financial support for agriculture retention is considered along with other indices of support for agriculture.

Also proposed is an expansion of the unweighted special considerations to differentiate between positive and negative influences, and to recognize geographic distribution of funds among counties and the impact of subdivisions and exceptions on applications.

Social Impact

The proposed amendment will have a positive impact on the preservation of New Jersey agriculture and on the affected groups. Bringing regulatory criteria into closer alignment with statutory criteria will enhance the effectiveness of easement purchase decision-making under the Farmland Preservation Program. Citizens of New Jersey will benefit from the program's expanded ability to preserve agricultural lands and protect the benefits it provides.

Economic Impact

The proposed amendment will have a positive economic impact on the citizens of the State and on New Jersey agriculture. Utilization of the proposed improved criteria ensures that viable agricultural lands will be preserved, thereby strengthening New Jersey's agricultural industry and the economic benefits it provides to the State.

Regulatory Flexibility Analysis

The majority of land potentially subject to development easements is owned by small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules do not impose reporting, recordkeeping or other requirements on such farmland owners. A farmland owner's offer to sell an easement is voluntary, as is his or her acceptance of any State offer.

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

2:76-6.16 Criteria for evaluating development easement applications

(a) The evaluation shall be based on the merits of the individual application, the application's contribution to the respective project area's ranking relative to other project areas and available funds.

The weight factor assigned to each criterion identifies the relative importance of the specific criterion in relation to the other criteria.

(b) **The criteria listed in (c), (d), (e) and (f) below shall be combined to demonstrate the degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture.**

(c) (No change.)

(d) The boundaries and buffers criterion (weight 20) is as follows:

1. (No change.)

2. Factors to be considered are as follows:

i. The type and quality of buffers, including:

(1) Compatible uses as follows:

(A)-(D) (No change.)

(E) Streams (**perennial**) and wetlands:

(F)-(J) (No change.)

(2) (No change.)

ii.-iii. (No change.)

(e) The local commitment criterion (weight 20) is as follows:

1. (No change.)

2. Factors to be considered are as follows:

i.-v. (No change.)

vi. Community **financial** support for the project area.

(f) (No change.)

(g) [The] **Factors which determine the** degree of imminence of change [criterion (weight 5) is] **of the land from productive agriculture to nonagricultural use criterion are** as follows:

1.-2. (No change.)

(h) [The] **Factors which determine the** relative best buy criterion [(weight 5) is] **are** as follows:

1.-2. (No change.)

(i) Special considerations are as follows:

1. [The board and committee shall review the following factors and recognize special considerations which cannot be adequately addressed in the previous criteria.] **Factors of positive special consideration by the committee are as follows:**

i. A contribution to reduce the committee's percent cost share of the negotiated development easement value;

ii. The first application(s) in the county to receive the committee's preliminary approval which ultimately results in the purchase of the development easement(s); **and**

iii. Geographical distribution among counties.

2. Factors of positive special consideration by the committee and the board are as follows:

[iii.]**i.** Historic contributions;

[iv.]**ii.** Environmental contributions; [and]

[v.]**iii.** Uniqueness of the agricultural operation[.] **; and**

iv. Any other considerations which the committee deems appropriate.

3. Items of negative special consideration by the committee and the board are as follows:

i. Any division of the property compromising the applicant's agricultural operation.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Neighborhood Preservation Balanced Housing Program

Affordability Control Procedures

Proposed New Rules: N.J.A.C. 5:14-4

Authorized By: Anthony M. Villane Jr., D.D.S., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-320.

Proposal Number: PRN 1989-398.

Submit comments by September 6, 1989 to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

Proposed new rules N.J.A.C. 5:14-4, Affordability Controls, for the Neighborhood Preservation Balanced Housing Program is intended to implement the provisions of the Fair Housing Act (P.L. 1985, c.222) which require the Division of Housing and Development to ensure that any unit of housing provided for low and moderate income households shall continue to be occupied by low and moderate income households for at least 20 years following the award of a loan or grant by incorporating contractual guarantees and procedures into the grant or loan agreement. The Division may approve a guarantee for a period of less than 20 years where necessary to ensure project feasibility. The Affordable Housing Management Service has been established within the Division to administer affordability controls for Balanced Housing projects as contained in these rules. This service can be utilized by municipalities receiving Balanced Housing funds at no additional cost to the municipality as a condition of the funding contract. Municipalities may elect to administer a local affordability control program using these rules provided it has been reviewed and approved by the Division.

Social Impact

The provision of clear and concise rules and procedures for the administration of affordability controls for municipalities receiving grants or loans is essential in order to guarantee a continuing supply of low and moderate income housing for residents of the State who do not have adequate opportunities to acquire affordable housing.

Economic Impact

The management of affordability controls as outlined in the proposed new rules shall preserve the supply of affordable housing during the period of controls and ensures that Neighborhood Preservation Balanced Housing grants and loans to municipalities for the development of low and moderate income housing provide maximum economic returns on these investments as intended by the long term controls established pursuant to P.L. 1985, c.222.

Regulatory Flexibility Analysis

The proposed new rules place requirements on municipalities, developers and individual unit owners. Some involved developers may be small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While certain reporting, record keeping and compliance requirements are imposed on such developers, they are necessary to maintain affordability control in the Neighborhood Preservation Balanced Housing Program. The Program's statutory purpose to provide affordable low and moderate income housing would be hindered by a relaxation of requirements for small business developers. No such differentiation based upon business size is, therefore, provided by these rules.

Full text of the proposal follows:

SUBCHAPTER 4. AFFORDABILITY CONTROLS

5:14-4.1 General provisions

(a) The purpose of the affordability control procedures is to provide the means for ensuring that housing units provided for low and moderate income households through a grant or loan agreement funded by the Neighborhood Preservation Balanced Housing Program, pursuant to N.J.S.A. 52:27D-321, remain affordable to and occupied by income eligible households for 20 years from the date initial restrictions encumber the unit unless a lesser or greater period of time has been approved by the Division of Housing and Development, Department of Community Affairs.

(b) In order to receive approval for a grant or loan from the Department of Community Affairs, Neighborhood Preservation Balanced Housing Program, a municipality must provide a plan for assuring that units remain affordable to and occupied by low and moderate income-eligible households for the prescribed time period. A municipality may adopt its own program subject to Department review and approval or it may contract with the Department to assume this responsibility. This subchapter shall apply in all cases where the municipality has elected to contract with the Department to administer the affordability controls. These rules will be used as a standard for the review and approval of any affordability control program designed and administered by a municipality as it pertains to the Neighborhood Preservation Balanced Housing Program.

(c) If any part of this subchapter shall be held invalid, the holding shall not affect the validity of the remaining part of these rules. If a part of these rules is held invalid in one or more of their applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

5:14-4.2 Definitions

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

"Adjusted rent" means the base rent for a rental unit adjusted by the Index.

"Affordable Housing Agreement" means the written agreement between an owner of an affordable housing unit and the Department that imposes restrictions on units developed with funding from the Neighborhood Preservation Balanced Housing Program to ensure that those housing units remain affordable to households of low and moderate income for a specified period of time.

"Applicant household" means a household that has submitted a Preliminary Application for an eligibility review.

"Assessments" means all taxes, levies, or charges, both public and private, including those charges by any condominium cooperative or homeowner's association as the applicable case may be, imposed upon the affordable housing unit.

"Base price" means the initial sales price of a unit designated as owner-occupied affordable housing and restricted by affordability controls.

Base rent" means the charge for a rental unit at the time the unit is first restricted by affordability controls.

"Certified household" means any eligible household whose total gross annual income has been verified, whose financial references have been approved and who has received certification as a low or moderate income-eligible household.

"Closing costs" means those costs of a real estate sale that are incurred by the buyer and seller at the time of sale including, but not limited to, attorney's fees, mortgage points, real estate transfer fee, and applicable real estate broker fees.

"Department" means the Department of Community Affairs.

"Eligible household" means a household whose preliminary application has been reviewed, whose unverified estimated total gross annual income is judged to be low or moderate income pursuant to applicable guidelines, and whose name has been placed on a waiting list for affordable housing.

"First purchase money mortgagee" means the holder and/or assigns of the first purchase money mortgage and which must also be an institutional lender or investor, licensed or regulated by a state or the Federal government or an agency thereof.

"Foreclosure" means the termination through legal processes of all rights of the mortgagor or the mortgagor's heirs, successors, assigns or grantees in a restricted Affordable Housing unit covered by a recorded mortgage.

"Gross annual income" means the total amount of a household's income from all sources including but not limited to salary, wages, interest, dividends, alimony, pensions, social security, disability, business income and capital gains, tips and welfare benefits. Generally, gross annual income will be based on income reported to the Internal Revenue Service (IRS).

"Household" means the person or persons occupying a housing unit.

"Index" means the measured percentage of change in the median income established for a household of four by geographic region using the uncapped median income estimates published periodically by the U.S. Department of Housing and Urban Development and approved for use by the New Jersey Council on Affordable Housing.

"Low income household" means a household whose gross annual income is equal to 50 percent or less of the median gross income established by geographic region and household size using median income figures and family size adjustment methodology published periodically in the Federal Register by the U.S. Department of Housing and Urban Development and approved for use by the Council on Affordable Housing.

"Moderate income household" means a household whose gross annual income is equal to more than 50 percent but less than 80 percent of the median gross income established by geographic region and household size using median income figures and family size adjustment methodology published periodically in the Federal Register by the U.S. Department of Housing and Urban Development and approved for use by the Council on Affordable Housing.

"Owner" means the title holder of record as same is reflected in the most recently dated and recorded deed for the particular affordable housing unit.

"Price differential" means the total amount of the unrestricted sales price that exceeds the maximum restricted resale price as calculated by the Index. The unrestricted sales price shall be no less than a comparable fair market price as determined by the Department at the time a Notice of Intent to Sell has been received from the owner.

"Primary residence" means the unit wherein a certified household maintains continuing residence for no less than nine months each calendar year.

"Purchaser" means a certified household who has signed an agreement to purchase an Affordable Housing unit subject to a mortgage commitment and closing.

"Repayment lien" means the second mortgage document signed by the owner that is given to the Department as security for the payment of 95 percent of the price differential generated by the first non-exempt sale of an Affordable Housing sales unit at the time of closing and transfer of title of the property after the ending date established in the Affordable Housing Agreement.

"Renter" means a household who has been certified for an Affordable Housing unit for rent subject to the signing of a lease and the payment of any required security deposit.

"Resale price" means the base price as adjusted by the Index. The resale price may also be adjusted to accommodate an approved home improvement.

"Total monthly housing costs" means the total of the following monthly payments associated with the cost of an owner-occupied Affordable Housing unit including the mortgage payment (principal,

interest, private mortgage insurance), applicable assessments by any homeowners, condominium, or cooperative associations, real estate taxes, and fire, theft and liability insurance. Total monthly housing costs shall also refer to the monthly rental charge for an Affordable Housing rental unit.

5:14-4.3 Affordable Housing Agreement

(a) An Affordable Housing Agreement (hereinafter "the Agreement") shall be signed and recorded with the recording office of the county in which the Balanced Housing unit/units (with the exception of Neighborhood Rehabilitation owner-occupied single family units and rental units covered by more restrictive Federal regulations) is/are located. The provisions of the Agreement shall constitute restrictive covenants running with the land with respect to the Balanced Housing units described and identified in the Agreement.

1. The Agreement shall set forth the terms, conditions, restrictions, and provisions applicable to the Balanced Housing units. The terms, conditions, restrictions and provisions of the instrument shall bind all purchasers and owners of the Balanced Housing units, their heirs, assigns and all persons claiming by, through or under heirs, assigns and administrators.

2. When a single Agreement is used to govern more than one Balanced Housing unit, the Agreement must contain a description of each unit governed by the Agreement and the ending date imposed on the unit.

3. This Agreement shall be executed by the Department and the owner or the then current title holder of record of the property upon which the Balanced Housing units are to be situated prior to its recording unless the municipality has an alternative affordability plan approved by the Department in which case the Agreement shall be executed by the grantee municipality and the owner.

(b) All deeds of conveyance from all owners to certified purchasers of Balanced Housing units shall include the following clause in a conspicuous place:

"The Owner's right, title and interest in this unit and the use, sale, resale and rental of this property are subject to the terms, conditions, restrictions, limitations and provisions as set forth in the AFFORDABLE HOUSING AGREEMENT dated _____ which was filed in the office of the Clerk of _____ County in Misc. Book _____ at Page ____ on _____ and is also on file with the N.J. Department of Community Affairs."

1. Any master deed that includes a Balanced Housing unit shall also reference the affordable unit and the Affordable Housing Agreement and any variation in services, fees, or other terms of the master deed that differentiates the affordable unit from all other units covered in the master deed.

(c) The Affordable Housing Agreement shall list the following restrictions:

1. The owner of an Affordable Housing sales unit shall not sell the unit at a resale price greater than an established base price plus the allowable percentage of increase as determined by the Index applicable to the household size and the municipality in which the unit is located. The owner of an Affordable Housing rental unit shall not rent the unit at an adjusted rent that is greater than an established base rent plus the allowable percentage of increase as determined by the Index applicable to the household size and the municipality in which the unit is located.

2. The owner shall not sell or rent the Affordable Housing unit to anyone other than a purchaser or renter who has been certified utilizing the income verification procedures established by the Department to determine qualified low and moderate income-eligible households.

3. The owner of an Affordable Housing sales unit shall be obligated to pay 95 percent of the price differential generated at the first non-exempt sale of the Affordable Housing unit to the Department at the time of closing and transfer of title after the termination of affordability controls in accordance with the terms of the repayment lien. For the purposes of this Agreement, price differential shall be the total amount of the unrestricted sales price (which shall be no less than a comparable fair market price established by the Department at the time a Notice of Intent to Sell has been received from the owner) that exceeds the maximum restricted resale price as calculated by the Index.

4. The Affordable Housing unit shall be sold in accordance with all rules, regulations, and restrictions duly promulgated by the Department (N.J.A.C. 5:14) the intent of which is to ensure that the Affordable Housing unit remains affordable to and occupied by low and moderate income-eligible households throughout the duration of the Agreement.

(d) The Affordable Housing Agreement shall include the following owner responsibilities:

1. Affordable Housing units which have not been previously approved as rental Affordable Housing units shall at all times remain the primary residence of the owner. The owner shall not rent such Affordable Housing unit to any party whether or not that party qualifies as a low or moderate income household without prior written approval from the Department.

2. Affordable Housing units designated as rental units shall at all times remain the primary residence of the renter and shall not be sublet to any party whether or not that party is qualified as a low or moderate income-eligible household without prior written approval from the Department.

3. All home improvements made to an Affordable Housing unit shall be at the owner's expense except that expenditures for any alteration that allows a unit to be resold or rented to a larger household size because of an increase capacity for occupancy shall be considered for a recalculation of base price or base rent. Owners must obtain prior approval for such alteration to qualify for this recalculation.

4. The owner of an Affordable Housing unit shall keep the Affordable Housing unit in good repair.

5. Owners of Affordable Housing units shall pay all taxes, charges, assessments or levies, whether public and private, assessed against such unit, or any part thereof, as and when the same become due.

6. Owners of Affordable Housing units shall notify the Department in writing 60 days prior to a rental vacancy and 90 days for notification of an intent to sell the property. Owners shall not convey title or lease or otherwise deliver possession of the Affordable Housing unit without the prior written approval of the Department.

7. An owner shall request referrals of certified households from the pre-screened established waiting list maintained by the Department.

8. If no referrals are available, the owner may sell, transfer, convey or rent the property to an eligible household not referred by the Department. The proposed purchaser/renter must complete all required Household Eligibility forms and submit gross annual income information for verification to the Department for certification as an eligible sales/rental transaction.

9. At resale of an Affordable Housing sales unit, the owner must personally certify that all items of personal property which are not permanently affixed to the unit and were not included when the unit was originally purchased (for example, refrigerator, freezer, washer, dryer, dishwasher, carpet, drapes) have either been included in the maximum allowable resale price or sold to the purchaser at a reasonable price that has been approved by the Department at the time of signing the agreement to purchase. Such transfer of funds shall also be certified by the purchaser at the time of closing. In no event shall the purchase of personal property be made a condition of the unit resale.

10. The owner shall not permit any lien, other than the first purchase money mortgage, Department approved second mortgages and liens of the Department to attach and remain on the property for more than 60 days.

11. If an Affordable Housing unit is part of a condominium, homeowner's or cooperative association, the owner, in addition to paying any assessments required by the master deed of the condominium or by-laws of an association, shall further fully comply with all of the terms, covenants or conditions of said master deed or by-laws, as well as fully comply with all conditions and restrictions of this Affordable Housing Agreement.

12. The owner shall have responsibility for fulfilling all requirements in accordance with and subject to any rules and requirements duly promulgated by the Department (N.J.A.C. 5:14-4.3), for determining that a resale transaction is qualified for a certification of exemption or a hardship waiver.

13. The owner shall have responsibility for forwarding copies of all documents filed with the applicable county recording office to the Department after they have been signed, dated and recorded.

14. The owner shall be obligated to pay a service fee at the time of resale or at each new rental occupancy. The service fee for a sales unit shall be $150.00 to be paid at closing from the seller's receipts. The service fee for a rental unit shall be in the amount of two percent of the vacant unit's current annualized rent to be paid at the time a lease agreement is signed by the owner.

5:14-4.4 Sales units

(a) At initial sale, base prices for sales units shall be determined in accordance with contractual agreements approved by the Department at levels that indicate affordability to households whose gross annual incomes are within low and moderate income ranges as determined by the approved median income guide for the municipality. At initial sale, an Affordable Housing Agreement and a repayment lien shall be signed and recorded with the property deed. The purchaser shall forward a copy of all recorded documents to the Department.

(b) The base price will be indexed according to measured changes in the approved median income guide applicable to the municipality in which the unit is located. An owner who wishes to sell an affordable housing unit shall give written notice to the Department. A resale price shall be calculated using the approved Index and an estimated monthly mortgage payment shall be determined. The approved resale price shall not be established at a level lower than the last recorded purchase price.

(c) A household's estimated monthly mortgage payment, including principal, interest, taxes, insurance, and condominium or association fees when applicable, shall not exceed 28 percent of gross monthly income. Mortgage approval is the responsibility of the household. Certified households whose gross monthly income times 28 percent is not less than the estimated monthly mortgage payment and whose family size meets occupancy criteria will be referred to the owner for contract negotiations within 60 days of receipt of the initial notice. The Department reserves the right to waive this requirement if circumstances necessitate a higher percentage and the household concurs.

(d) A home improvement that increases the unit's size, making it suitable for occupancy by a larger household, may be approved by the Department for a resale price adjustment. The adjusted resale price shall not exceed the equivalent affordability range as determined for the larger household using the applicable median income guide. Additional allowances, unrelated to the maximum allowable resale price, for home improvements deemed necessary for maintaining the standard condition of an affordable housing unit may be approved by the Department.

(e) If no certified household has executed an agreement to purchase within 90 days of the Department's notification to the owner of an approved resale price and referral of potential purchasers, the owner may request that the unit be sold to a household that exceeds the income eligibility criteria established for that unit by submitting a written request for a hardship waiver to the Department, and a copy to the municipality wherein the unit is located.

(f) For approval of a hardship waiver, an owner must provide documentation to the Department that there has been a good faith effort to sell the unit to a certified household for 90 days and no certified household has signed an agreement to purchase the unit or that economic factors not related to household income, including, but not limited to, interest rates, taxes, or insurance, inhibit the ability of an income-eligible household to obtain a mortgage commitment for the unit.

1. Upon receipt of a request for a hardship waiver, the municipality in which the unit is located shall have first option to purchase the unit at the approved resale price and to hold and rent or convey it to a certified household. The municipality shall have 30 days in which to exercise this option.

(g) The Department shall approve or deny a hardship waiver in writing within 30 days of receipt of the request. A hardship waiver in recordable form shall be provided to the purchaser at the time of closing and filed with the deed and the Affordable Housing Agreement. The hardship waiver only applies to income eligibility restrictions for occupancy and is only valid for the designated resale transaction. It does not affect the resale price restriction. Future resales are subject to all deed restrictions concerning income eligibility and the indexed resale price.

1. If the Department denies a hardship waiver, an owner may file a written request to appeal within 15 days of receipt of the denial to the Hearing Officer, Division of Housing and Development, Department of Community Affairs, CN 802, Trenton, NJ 08625. If a written request has not been received within 15 days after the owner's receipt of the denial, the order of denial shall be final.

(h) The following title transactions shall be deemed exempt and the Department shall provide the owner receiving title with written confirmation of the exemption to those restrictions that determine occupancy of the unit.

1. Transfer of ownership between husband and wife;

2. Transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial decree of separation (but not including sales to third parties);

3. Transfer of ownership between family members by will or intestate succession;

4. Transfer of ownership through an Executor's deed to a Class A beneficiary; and

5. Transfer of ownership by court order.

(i) An exempt transfer of ownership does not terminate the resale restrictions or existing liens on the property. All liens must be satisfied in full prior to subsequent resale and all subsequent resale prices must be calculated using the income index in compliance with the terms of the Affordable Housing Agreement.

1. The exempt transaction shall not be considered as a recorded transaction in calculating subsequent resale prices.

(j) The owner shall notify the Department in writing of any proposed transaction that he or she wishes to have qualify as an exempt transaction. The owner shall supply the Department with all necessary documentation to demonstrate that the transaction qualifies as exempt. The Department may request additional documentation as it deems necessary. The Department shall approve or deny in writing a request for a certificate of exemption within 15 days of the receipt of the request.

1. If the Department denies the exemption, the owner may submit a written appeal within 15 days to the Hearing Officer, Division of Housing and Development, Department of Community Affairs, CN 802, Trenton, NJ 08625. If a written request for an appeal has not been received within 15 days after the owner's receipt of the denial, the denial of the certificate of exemption shall be final.

2. A certificate of exemption shall be filed with the deed and the Affordable Housing Agreement at the time of title transfer.

5:14-4.5 Owner-occupied Neighborhood Rehabilitation Projects

(a) Owner-occupied units in Neighborhood Rehabilitation Projects shall be restricted by a deferred loan agreement that is secured by a note and mortgage from the property owner to the Department of Community Affairs. The mortgage shall be subordinate to a senior mortgage and additional liens as identified at the time of the signing of the mortgage. An income-eligible owner-occupant who is the recipient of a deferred payment loan for rehabilitation of a substandard unit shall be subject to the following restrictions:

1. If the owner-occupant (hereinafter known as the borrower) transfers title to the property, vacates the unit, or prepays the principal amount within 10 years from the date the unit has been declared in standard condition, the borrower shall pay the Department the original loan amount plus two percent interest calculated as simple interest annually.

2. In the event of the death of the owner-occupant prior to the end of the 10 year restricted period, the loan shall be due and payable at the two percent annual interest rate at the time of death unless the persons inheriting the property are income eligible and personally occupy the rehabilitated property. In this event the loan shall be due and payable under the same terms as above if the persons inheriting the property vacate, transfer title to the property, or pre-pay the loan any time thereafter until the end of the same ten year period.

3. If the property is sold for fair market value and the excess of the sales price over the costs associated with the sale, including the satisfaction of superior liens, is less than the amount owed to the Department, the Department shall waive repayment of all or a portion of the Balanced Housing loan. In this event, the Department shall review the proposed sales contract and may require an appraisal to confirm the sales price as fair market value.

4. After 10 years, the Department shall forgive the loan and cancel the note and mortgage without repayment.

(b) Rental units included in a Neighborhood Rehabilitation Project shall be subject to a 10 year Affordable Housing Agreement that shall limit the occupancy of the rental unit to an eligible low or moderate income household, limit rents to annual increases measured by the Index, and be filed in the office of the county recording officer.

(c) The deferred loan payment term and the 10 year Affordable Housing Agreement shall begin on the date the unit is determined to be in standard condition as verified by a municipal code enforcement officer.

5:14-4.6 Rental units

(a) Initial rents shall be determined in accordance with contractual agreements approved by the Department at ranges that indicate affordability to households whose gross annual incomes are within low and moderate income ranges as determined by the approved median income guide for the municipality.

1. The Department shall generally refer households to units for which the monthly rental charge including an allowance for utilities shall not exceed 30 percent of their gross monthly income.

2. At the time restrictions are initially placed on a rental unit, an Affordable Housing Agreement shall be signed and duly recorded. The owner shall forward copies of the recorded deed and the agreement to the Department for its files.

(b) The landlord shall notify the Department of any impending vacancy in any restricted rental unit no less than 60 days before the unit is to become available.

(c) The Department shall refer a list of certified households who meet income and bedroom size criteria for a vacant unit to a landlord for lease negotiations within 30 days of receipt of this notification. Landlords must select a certified household for occupancy of an affordable rental unit. Final tenant selection shall be the responsibility of the landlord. However, no referred household shall be denied a lease for any reason that violates any applicable law.

(d) A written lease shall be required in all restricted rental units. Final lease agreements will be the responsibility of the landlord and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated on the lease. All lease provisions shall comply with applicable law.

(e) Rental charges may be adjusted at the annual anniversary date of the lease. Rent adjustments shall be determined by adjusting the base rent by the applicable Index. The Department shall notify all landlords of changes in the Index. The landlord shall submit a written request for rent adjustment approval to the Department when a rent adjustment is to be made. The Department shall promptly approve or disapprove all rent adjustment requests.

(f) An owner of a restricted rental unit shall notify the Department in writing of an intent to transfer ownership of the property. A copy of the recorded deed shall be forwarded to the Department. The property shall be retained as affordable housing at resale subject to the Affordable Housing Agreement.

5:14-4.7 Procedures for establishing eligibility for occupancy

(a) In order to be considered for an Affordable Housing unit, households shall submit a preliminary application to the Department. As completed preliminary applications are received, the Department shall review the applications for income eligibility and family size and in accordance with all applicable laws.

1. When the initial review indicates that an applicant household may be eligible, the name of the head of the household shall be placed on a waiting list. The Department will send a confirmation letter to the applicant.

(b) When the initial review indicates that an applicant household is income-ineligible, the applicant household shall be advised in writing and the preliminary application shall be denied. If an applicant household receives a determination of ineligibility, the applicant may submit a written request for a redetermination to the Department within 15 days of receipt of the denial. The request must set forth the basis for the claim of eligibility. The applicant household shall be required to produce documentation to support the claim at the time of redetermination. Written notice of the redetermination shall be given to the applicant by the Department.

1. If the applicant household receives a second notice of ineligibility, a written appeal may be filed with the Hearing Officer, Division of Housing and Development, Department of Community Affairs, CN 802, Trenton, NJ 08625, within 15 days of receipt of the notice of redenial. If a written request has not been received within 15 days after the applicant household's receipt of this notice, the determination shall be final and the application shall be considered denied.

(c) As units become available, the Department shall notify eligible households who satisfy the income criteria and occupancy standards for an available unit and schedule them for a certification interview. At the certification interview, the household shall be requested to document all income for the purpose of qualifying for the required mortgage or rent payment. The certification process may also include a credit background report. Every household member 18 years of age or older who will live in the affordable unit and who receives income shall be required to provide verification of income. Verification may include, but is not necessarily limited to, any of the following:

1. A letter from the household member's employer stating an annualized current income figure of four consecutive paystubs dated within 120 days of the interview date;

2. A letter or appropriate reporting form verifying, without limitation, social security, unemployment, disability, pension or other benefits;

3. A letter or appropriate reporting form verifying any other sources of income claimed by the applicant;

4. A copy of IRS Form 1040, 1040A, or 1040EZ, as applicable, and New Jersey State income tax returns for each of the three years prior to the date of interview;

5. Reports that verify income from bank accounts, securities, trust funds or other income-producing properties; or

6. Reports that verify assets that do not earn regular income such as non-income producing real estate and savings with delayed earnings provisions.

(d) Eligible households who are denied certification shall be notified in writing of the denial. This notice shall state the specific reason for the denial. If the eligible household disagrees with this finding it may file a written request for redetermination with the Department within 15 days of receipt of the notice. Eligible households shall be required to produce documentation to support their claim.

1. Eligible households who are again denied certification may file a written appeal with the Hearing Officer, Division of Housing and Development, Department of Community Affairs, CN 802, Trenton, NJ 08625 within 15 days of receipt of the denial. If a written request has not been received within 15 days of the household's receipt of this notice, the determination shall be final and the application considered denied.

(e) Only households approved by the Department as certified households shall have an opportunity to be considered for low and moderate income housing. Households who are certified shall be issued written certification that is valid for 120 days. Certification may be extended by the Department for one additional period of 120 days if a mortgage application has been made and the household has not received approval or denial. Households having received certification which expires shall be returned to the referral list and may be considered for future housing referrals.

(f) To the greatest extent possible, certified households shall be referred to available units using the following accepted standards for occupancy:

1. A maximum of two persons per bedroom;

2. Children of same sex in same bedroom;

3. Unrelated adults or persons of the opposite sex other than husband and wife in separate bedrooms; and

4. Children not in same bedroom with parents.

(g) In no case shall a household be referred to a unit that provides for more than one bedroom in excess of family occupancy requirements.

(h) The Department shall gather information on each assisted household's income, assets and household characteristics from time to time for purposes of program evaluation.

5:14-4.8 Foreclosure

(a) A judgment of foreclosure in favor of or a deed in lieu of foreclosure to an institutional first mortgagee on any owner-occupied restricted unit shall result in a termination of affordability controls, except for the defaulting mortgagor who shall be forever subject to the restrictions with respect to the unit owned by him at the time of default.

1. All resale restrictions shall cease to be effective as of the transfer of title pursuant to foreclosure with regard to the first purchase money mortgagee or a lender in the secondary mortgage market including, but not limited to, the Federal National Mortgage Association, the Home Loan Mortgage Corporation, or the Government National Mortgage Association; or an entity acting on their behalf.

2. Affordability controls shall remain in effect in the event of any judgment of foreclosure on a rental unit, other than a rental unit in a one to four family rehabilitated owner-occupied dwelling.

(b) Nothing shall preclude the municipality in which the unit is located from purchasing the unit at the maximum permitted resale price and holding, renting or conveying it to a certified household. The municipality shall have 60 days after the unit is listed for sale in which to exercise this option. Failure of the financial institution to provide notice of a foreclosure action to the Department or the municipality shall not impair the financial institution's rights to recoup loan proceeds and shall create no cause of action against the financial institution.

(c) In the event of a foreclosure sale by a first purchase money mortgagee, any surplus funds exceeding the maximum allowable resale price, as calculated in accordance with the approved index, which remains after the amount required to pay and satisfy the first purchase money mortgage including the costs of foreclosure and any previously approved second mortgages shall be paid to the Department as reimbursement for Neighborhood Preservation Balanced Housing Program Funding invested in the unit. Any remaining funds in excess of outstanding grants or loans shall be returned to the municipality.

5:14-4.9 Violations, defaults and remedies

(a) Upon a violation of any of the provisions of the Affordable Housing Agreement by the owner of a Balanced Housing unit, the Department may give written notice to the owner specifying the nature of the violation and requiring a correction within a reasonable period of time as specified in the notice.

1. The owner shall be obligated to notify the Department that the violation has been corrected within the reasonable time period or that additional time is needed for the correction. The Department will grant additional time for good cause and notify the Owner that additional time has been granted.

2. If the owner does not forward written notification, as required, or correct the violation within the time specified, the Department may declare a default of the Agreement.

3. The interest of any owner may, at the option of the Department, be subject to forfeiture in the event of substantial breach of any of the terms, restrictions and provisions of the Agreement which remains uncured for the period of 60 days after service of the written notice of violation upon the owner by the Department.

4. The notice of violation shall specify the particular infraction and shall advise the owner that his or her right to continued ownership may be subject to forfeiture if such infraction is not cured within 60 days of receipt of the notice.

(b) If an owner makes any misrepresentation in connection with the purchase, rental, or sale of an affordable housing unit pursuant to the Agreement, the Department may apply to a court of competent jurisdiction for specific performance of the Agreement, for an injunction prohibiting a proposed sale, lease, or transfer in violation of the Agreement, or a declaration that a sale or transfer in violation of the Agreement is void, or for any other relief as may be deemed appropriate.

(c) The provisions of this section may be enforced by the Department by court action seeking a judgment which would result in the termination of the owner's equity or other interest in the unit. Any judgment shall be enforceable as if same were a judgment of default of the first money mortgage and shall constitute a lien against the particular Balanced Housing unit.

1. A court judgment of default shall obligate the owner to accept the first offer to purchase from any certified household, who has been referred to the owner by the Department, with such offer to purchase being no more than the maximum permitted resale price of the Balanced Housing unit as permitted by the terms and provisions of the Affordable Housing Agreement.

2. The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of the Agreement until such time as title is conveyed to a new owner.

(d) In the event that the Balanced Housing unit is a rental unit, and the owner has leased such unit either for a rental charge in excess of that permitted by the Agreement or to a tenant who has not been certified by the Department, the Department shall have recourse to all legal remedies as stated above, including the recapture of surplus rents paid in excess of the maximum permitted Rental Charge.

5:14-4.10 Length of restrictions

(a) The municipality shall provide contractual guarantees and procedures which will ensure that all units funded with Balanced Housing funds for low and moderate income households, with the exception of Neighborhood Rehabilitation 1-4 unit projects, shall remain affordable to such households from the date the initial restrictions encumber the unit until such time as stated below.

1. Sales units located in those municipalities listed in the Appendix to this subchapter, incorporated herein by reference, shall remain affordable to low and moderate income households for 10 years. At the first non-exempt sales transaction after 10 years, the owner shall be entitled to the maximum allowable resale price as calculated by the index and five percent of the price differential. The balance of the price differential shall be returned to the Balanced Housing Fund for additional housing development purposes.

2. Sales units located in municipalities not listed in the Appendix shall remain affordable to low and moderate income households for 20 years. At the first non-exempt sales transaction after 20 years, the owner shall be entitled to the maximum allowable resale price as calculated by the Index and five percent of the price differential. The balance of the price differential shall be returned to the Balanced Housing Fund for additional housing development purposes.

3. Ten years for rental units located in municipalities listed in the Appendix.

4. Twenty years for rental units located in municipalities not listed in the Appendix.

(b) For rental units created or rehabilitated with Balanced Housing funds, affordability controls shall remain in effect after the expiration date until the date on which a rental unit shall become vacant provided that the occupant household continues to earn a gross annual income of less than 80 percent of the applicable median income.

(c) The affordability control periods established in (a) above shall begin as follows:

1. For sales units, on the date a certificate of occupancy is issued;

2. For rental housing containing two or more units, on the date of 50 percent occupancy, as determined by the Department or municipality administering controls; and

3. For single-family housing which is rented, on the date the unit is first occupied.

APPENDIX

Sales and rental units funded in municipalities listed below shall be subject to 10 year affordability controls. Sales and rental units funded in municipalities not listed below shall be subject to 20 year affordability controls.

Atlantic: None
Bergen: Lodi, Garfield
Burlington: Pemberton Tp.
Camden: Camden
Cape May: None
Cumberland: Vineland, Bridgeton
Essex: Belleville, Bloomfield, East Orange, Irvington, Montclair, Newark, Orange
Gloucester: Deptford
Hudson: Bayonne, Hoboken, Jersey City, North Bergen, Union City, Weehawken, West New York
Hunterdon: None
Mercer: Trenton
Middlesex: Carteret, New Brunswick, Perth Amboy
Monmouth: Asbury Park, Keansburg, Long Branch, Neptune
Morris: None
Ocean: Lakewood
Passaic: Passaic, Paterson
Salem: None
Somerset: None
Sussex: None
Union: Elizabeth, Hillside, Plainfield, Roselle
Warren: None

(a)

GOVERNOR'S COUNCIL ON PHYSICAL FITNESS AND SPORTS

Volunteer Coaches' Safety Orientation and Training Skills Programs
Minimum Standards
Proposed New Rule: N.J.A.C. 5:52

Authorized By: Governor's Council on Physical Fitness and Sports, Ralph A. Dougan, Executive Director.
Authority: N.J.S.A. 2A:62A-6.
Proposal Number: PRN 1989-359.

A **public hearing** concerning this proposal will be held on August 30, 1989 at 10:00 A.M. at the following address:

Conference Room 2
1st Floor
Department of Community Affairs
101 South Broad Street
Trenton, New Jersey

Persons interested in being heard should contact Ms. Lisa Moody at (609) 633-7115 by August 25, 1989.

Submit written comments by September 6, 1989 to:

Ralph A. Dougan, Executive Director
Governor's Council on Physical Fitness and Sports
CN 005
Trenton, New Jersey 08625-0005

The agency proposal follows:

Summary

P.L. 1988, c.87 effective August 3, 1988, gave immunity to unpaid volunteer athletic coaches, managers and officials from liability for damages in civil actions for acts or omissions arising out of and in the course of the volunteer services or assistance rendered. In order to qualify for this immunity, however, a coach, manager, or official must attend a safety orientation and skills training program that meets minimum standards established by the Governor's Council on Physical Fitness and Sports. Local recreation departments, non-profit organizations and National/State sports training organizations are among the agenices and organizations that may conduct the safety orientation and skills training programs provided the program meets the minimum standards. This proposal sets forth such minimum standards. As required by statute, it has been developed in consultation with the Office of Recreation of the Division of Community Resources of the Department of Community Affairs.

Social Impact

In recent years, the threat of potential tort liability for volunteer coaches, managers and officials has discouraged many people who would otherwise like to participate in nonprofit amateur athletics in any of these capacities from doing so. By establishing the standards for training programs that are a precondition to tort immunity for volunteer coaches, managers and officials , the Governor's Council will make it possible for these people to participate without undue financial risk to themselves, thereby allowing more teams and more competitions to be organized and thus enhancing the physical fitness of the participants. The training programs that follow the standards will also have a positive social impact by better preparing coaches, managers and officials to prevent injuries and deal properly with those that do occur.

Economic Impact

The proposed minimum standards will have a positive economic impact upon those who participate in training programs that meet the standards since it will result in their being relieved of potential tort liability in connection with their volunteer activities. While the programs that comply with the standards may be expected to have the positive effect of reducing the frequency and extent of sports-related injuries, they may negatively impact upon persons who are injured by limiting their ability to recover damages. There will be no further cost to the State nor any undue burden to organizations or individuals in implementing these standards. Although it varies, a nominal cost may be incurred by an organization sponsoring the educational program or the individual coach/manager/official participating in the program. In either case the approximate amounts may vary but in no case is the cost expected to exceed $50.00 per individual participant and in many cases less.

Regulatory Flexibility Analysis

These standards relate solely to safety orientation and skills training programs for coaches, managers and officials in nonprofit voluntary athletic programs. These courses may be offered by nonprofit sponsors or by sponsors that might qualify as "small businesses" pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In either case, the health, safety and welfare of that segment of the public that participates in nonprofit voluntary athletic programs requires that the minimum standards to be followed by educational programs be the same whether the program has a nonprofit or a for-profit sponsor. The proposed rule imposes no burdensome recording or reporting requirements.

Full text of the proposed new rules follows:

CHAPTER 52
GOVERNOR'S COUNCIL ON PHYSICAL FITNESS AND SPORTS

SUBCHAPTER 1. MINIMUM STANDARDS FOR VOLUNTEER COACHES' SAFETY ORIENTATION AND TRAINING SKILLS PROGRAMS

5:52-1.1 Introduction

(a) The minimum standards set forth in this subchapter identify the major topics which must be addressed in volunteer coaching/managing/officiating programs for a safety orientation and training skills program required for civil immunity according to N.J.S.A. 2A:62-6 et seq. The topics must be presented within the context of an educational program that addresses the perspective of the specific population(s) of athletes served (for example, young, senior, disabled, novice and skilled athletes).

(b) In order to be covered by the provisions for civil immunity as prescribed by New Jersey P.L. 1988, c. 87 (N.J.S.A. 2A:62A-6 et seq.), the volunteer athletic coach, manager or official must attend a safety orientation and skills training program of at least a three-hour duration which meets the minimum standards set forth in this subchapter. The programs may be provided by local recreation departments, non-profit organizations and national/state sports training organizations. The standards apply to all volunteer athletic programs in New Jersey regardless of population served.

(c) Any organization providing a safety orientation and skills training program pursuant to these rules, shall issue a certificate of participation to each participant who successfully completes the program.

5:52-1.2 Medical, legal and first aid aspects of coaching

(a) Every volunteer coach/manager educational program shall include basic knowledge and skills in the recognition and prevention of athletic injuries and knowledge of first aid. To ensure the standards are achieved, the following topics shall be included:

1. Legal and ethical responsibilities of the coach;
2. Recognizing common sports injuries specific to the populations served by the sports program;
3. Safety plans and procedures for injury prevention;
4. Safety issues specific to the population serviced;
5. Plans and procedures for emergencies; and
6. Care and treatment of injuries generally associated with athletic activities.

5:52-1.3 Training and conditioning of athletes

(a) Every volunteer athletic coach/manager educational program shall include instruction in procedures for training and physical conditioning for participation in athletic activities appropriate for the population served. To ensure the standards are achieved, the following topics shall be included:

1. General principles of fitness and conditioning; and
2. Safety issues specific to environmental conditions in sport (for example, age, skill level, overtraining and staleness).

5:52-1.4 Psychological aspects of coaching

(a) Every volunteer athletic coach/manager educational program shall stress the importance of fostering positive social and emotional environments for all sports' participants. To ensure the standards are achieved, the following topics shall be included:

1. Philosophy of coaching;
2. Psychological understanding of the individual athlete; and
3. Sportsmanship.

5:52-1.5 General coaching concepts

(a) Every volunteer athletic coach/manager educational program shall include general concepts of teaching and coaching athletic activites. To ensure the standards are achieved, the following topics shall be included:

1. Goals and objectives appropriate for the population served;
2. Teaching and coaching methods;
3. Planning and managing practices and competitions;
4. Coaching fundamental sports skills; and
5. The importance of playing rules.

5:52-1.6 General officiating concepts

(a) Every volunteer athletic officials educational program shall be designed to prepare the official to conduct a safely officiated, competitive experience based upon the rules of the game and the maturity level and proficiency of the athletes involved. To ensure the standards are achieved, the following topics shall be included:

1. Legal and ethical responsibilities of the official;
2. Safety issues under the control of the official;
3. Mechanics of officiating; and
4. Plans and procedures for medical emergencies.

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Rent Increases
Effective Date of Increase
Proposed Amendment: N.J.A.C. 5:80-9.13

Authorized By: New Jersey Housing and Mortgage Finance Agency, Arthur J. Maurice, Executive Director.
Authority: N.J.S.A. 55:14K-5g.
Proposal Number: PRN 1989-402.

Submit comments by September 6, 1989 to:
Anthony W. Tozzi
New Jersey Housing and Mortgage Finance Agency
3625 Quakerbridge Road
CN 18550
Trenton, New Jersey 08625-2085

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency, pursuant to its statutory authority, serves as an advocate for increasing the supply, of adequate and affordable housing in the State. To fulfill its statutory objective, the Agency acts as a mortgage lender by providing financing to housing sponsors who wish to construct, rehabilitate or improve housing for low and moderate income families.

As part of the Agency's financing requirements, the Agency imposes restrictons on rent increases which may be imposed by housing sponsors (owners) of such housing. N.J.A.C. 5:80-9, Rent Increases, governs the procedure and criteria for implementing rent increases at Agency financed projects.

As provided by the rent increase rules, no rent increase shall be effective until the Agency has approved the increase. Following Agency approval, notice of the increase is given to each tenant affected. As provided currently by N.J.A.C. 5:80-9.13, a rent increase will be effective on the first day of the second full month following the mailing of notices to the tenants. The proposed amendment would permit notice by means other than the mail.

Social Impact

The amended rule will broaden the means by which owners of housing projects may provide notice to tenants of a rent increase. For example, notice may now be accomplished by personal delivery. No impact on tenants is anticipated.

Economic Impact

The amended rule will enable project owners to save the time and expense of using the mail to notify tenants of a rent increase. No impact on tenants is anticipated.

Regulatory Flexibility Analysis

The proposed amendment allows for owners of housing projects, most of which are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to use other means to notify tenants of a rent increase. No reporting or record keeping requirements are imposed by the proposed amendment. As to compliance requirements, the amendment provides greater flexibility for owners to meet the notice requirements for implementing a rent increase. The Agency foresees no increase in capital costs or the need for professional services in meeting the requirements of the proposed amendments. Because the owners of such housing are predominantly small businesses and due to the minimal nature of the compliance requirement and the benefits to owners which may arise from the amendments, no differentiation in the compliance requirement based upon business size is proposed.

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

5:80-9.13 Effective date of increase

The newly determined rent schedule shall be effective on the first day of the second full month following [the mailing of] **written** notice[s] to the tenants and other interested parties.

HEALTH

(b)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards
Patient Rights
Proposed New Rules: N.J.A.C. 8:43G-4

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Authority: N.J.S.A. 26:2H-1.
Proposal Number: PRN 1989-403.

Submit comments by September 6, 1989 to:
Director
Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to the provision of patient rights in hospitals. Proposed new N.J.A.C. 8:43G-4 of the Hospital Licensing Standards was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey was distributed to all hospitals as comprehensive draft hospital licensure standards in 31 areas, including patient rights. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules present a clear, comprehensive, and effective set of rules for the implementation of patient rights in hospitals. These standards represent a new commitment to the quality of care in the State. Prior to this time there were no written standards for patient rights in New Jersey. These new rules contain the following major provisions:

Treatment without discrimination: Proposed N.J.A.C. 8:43G-4.1(a)2 gives the patient the right to treatment and medical services without discrimination based on race, age, religion, nation origin, sex, sexual preferences, handicap, diagnosis, ability to pay or source of payment. This provision assures that all people requiring the services of New Jersey hospitals are treated equally by health care providers.

Explanation of medical condition to patient: Proposed N.J.A.C. 8:43G-4.1(a)6 gives the patient the right to have the patient's physician(s) explain to him or her—in terms that he or she understands—the patient's complete medical condition, recommended treatment, and expected results of the treatment. This provision would help assure the right patients have to be communicated to by their physician in non-medical language. Patients than can make informed decisions regarding their care.

Refusal of medications and treatment: Proposed N.J.A.C. 8:43G-4.1(a)9 gives the patient the right to refuse medications and treatments after possible consequences of this decision have been explained in language the patient understands. This provision assures the patient the right to decide his or her plan of care.

Sufficient discharge notice: Proposed N.J.A.C. 8:43G-4.1(a)13 gives the patient the right to be given adequate notice before discharge to arrange for health care needs after hospitalization. This provision will assure that sufficient time is allowed prior to discharge for the patient to arrange for continuing health care needs. Proper discharge notice can help minimize patient stress and contributes to patient welfare and recovery.

Freedom from chemical and physical restraints: Proposed N.J.A.C. 8:43G-4.1(a)19 gives the patient the right to freedom from chemical and physical restraints, unless they are authorized by a physician for a limited period of time to protect the patient or others from injury. This assures the patient that under no circumstance shall he or she be restrained for punishment or for the convenience of the hosptial staff.

Confidential treatment of information: Proposed N.J.A.C. 8:43G-4.1(a)21 gives the patient the right to have information in his or her chart treated confidentiality and not released to anyone outside the hospital without the patient's approval. This assures, with a few exceptions, that the patient's records will remain confidential and that he or she should not fear that personal medical records will become public.

Access your chart: Proposed N.J.A.C. 8:43G-4.1(a)24 gives the patient the right to access the information contained in his or her medical record. This assures the patient, except in the case where it may be detrimental to the patient's health or welfare, to have the availability to read contents of his own medical record.

Receiving a copy of medical record: Proposed N.J.A.C. 8:43G-4.1(a)25 gives the patient the right to obtain a copy of his record, at a reasonable fee and within 30 days of discharge. This assures the patient his or her rights to receive a copy of his or her record quickly and at a fair price.

Social Impact

Until now, patient rights were just a list of statements that hospitals posted in the corridors, for the patients and families to read. They were adequate, but not enforceable. With the writing of these rights and the inclusion of them in State hospital licensure rules, the patient is now afforded each and every right, by State law.

These rights will be given to each patient upon admission to the hospital with the hope that every patient will become an educated consumer of health care. At the core of these rights is the concept that patients do not have to accept everything that is proposed to them, given to them, done to them, or written about them. The formalization of patient rights gives the consumer a strong voice in their own plan of care.

Economic Impact

Most hospitals already distribute patient rights information to people when they are admitted. Additional economic impact may occur when hospitals must have the new patient rights incorporated into their admission material. This additional expenditure, for initial typesetting, would be a one time charge incurred by the hospital.

Regulatory Flexibility Statement

The proposed new rules would not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey which are regulated by N.J.A.C. 8:43G-4 all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

SUBCHAPTER 4. PATIENT RIGHTS

8:43G-4.1 Patient rights; mandatory

(a) Every New Jersey hospital patient shall have the following rights, none of which shall be abridged by the hospital or any of its staff. The hospital administrator shall be responsible for developing and implementing policies to protect patient rights and to respond to questions and grievances pertaining to patient rights. These rights shall include at least the following:

1. To receive the care and health services that the hospital is required to provide;

2. To treatment and medical services without discrimination based on race, age, religion, national origin, sex, sexual preferences, handicap, diagnosis, ability to pay, or source of payment;

3. To retain and exercise to the fullest extent possible all the constitutional, civil, and legal rights to which the patient is entitled by law;

4. To be informed of the names and functions of all physicians and other health care professionals who are providing direct care to the patient. These people shall identify themselves by introduction or by wearing a name tag;

5. To receive, whenever possible, the services of a translator or interpreter to facilitate communication between the patient and the hospital's health care personnel;

6. To have the patient's physician(s) explain to the patient—in terms that the patient understands—his or her complete medical condition, recommended treatment, and expected results of the treatment. If this information would be detrimental to the patient's health, or if the patient is not capable of understanding the information, the explanation shall be provided to his or her next of kin or guardian and documented in the patient's medical record;

7. To be informed of the physician's professional position and of the hospital's policies and procedures regarding life saving procedures, use and withdrawal of life support mechanisms, and composition and functions of the hospital's prognosis and ethics committees or their equivalents;

8. To give informed, written consent prior to the start of specified nonemergency procedures or treatments only after a physician has explained—in terms that the patient understands—specific details about the recommended procedure or treatment, the risks involved, the possible duration of incapacitation, and any reasonable medical alternatives for care and treatment. The procedures requiring informed, written consent shall be specified in the hospital's policies and procedures. If the patient is incapable of giving informed, written consent, consent shall be sought from the patient's next of kin or guardian or through an advance directive, to the extent authorized by law. If the patient does not given written consent, a physician shall enter an explanation in the patient's medical record;

9. To refuse medication and treatment after possible consequences of this decision have been explained in language the patient under-

stands, except under emergency conditions, according to the hospital's policies and procedures, except when medication or treatment is required by law;

10. To be included in experimental research only when he or she gives informed, written consent to such participation, or when a guardian provides such consent for an incompetent patient in accordance with law and regulation. The patient may refuse to participate in experimental research, including the investigations of new drugs and medical devices;

11.To be informed if the hospital has authorized other health care and educational institutions to participate in the patient's treatment. The patient also shall have a right to know the identity and function of these institutions, and may refuse to allow their participation in the patient's treatment;

12. To be informed by the attending physician and other providers of health care services about any continuing health care requirements after the patient's discharge from the hospital;

13. To have sufficient notice before discharge to arrange for health care needs after hospitalization;

14. To be informed by the hospital about any discharge appeal process to which the patient is entitled by law;

15. To be transferred to another facility only for one of the following reasons, with the reason recorded in the patient's medical record:

i. The transferring hospital is unable to provide the type or level of medical care appropriate for the patient's needs. The hospital shall make an immediate effort to notify the patient's primary care physician and the next of kin, and document that the notifications were received; or

ii. The transfer is requested by the patient, or by the patient's next of kin or guardian when the patient is mentally incapacitated or incompetent;

16. To receive from a physician an explanation of the reasons for transferring the patient to another facility, information about alternatives to the transfer, verification of acceptance from the receiving facility, and assurance that the movement associated with the transfer will not subject the patient to substantial, unnecessary risk of deterioration of his or her medical condition. This explanation of the transfer shall be given in advance to the patient, and/or to the patient's next of kin or guardian;

17. To be treated with courtesy, consideration, and respect for the patient's dignity and individuality;

18. To freedom from physical and mental abuse;

19. To freedom from chemical and physical restraints, unless they are authorized by a physician for a limited period of time to protect the patient or others from injury;

20. To have physical privacy during medical treatment and personal hygiene functions, such as bathing and using the toilet, unless the patient needs assistance for his or her own safety. The patient's privacy shall also be respected during other health care procedures and when hospital personnel are discussing the patient;

21. To confidential treatment of information about the patient. Information in the patient's records shall not be released to anyone outside the hospital without the patient's approval, unless another health care facility to which the patient was transferred requires the information, or unless the release of the information is required and permitted by law, a third-party payment contract, a medical peer review, or the New Jersey State Department of Health. The hospital may release data about the patient for studies containing aggregated statistics when the patient's identity is masked;

22. To receive a copy of the hospital charges, regardless of source of payment. Upon request, the patient shall be provided with an itemized bill and an explanation of the charges if the patient has further questions. The person responsible for paying the patient's bill also has a right to appeal the charges to the hospital;

23. To be advised in writing of the hospital rules and regulations that apply to the conduct of patients and visitors;

24. To have access to the information contained in the patient's medical record, unless a physician prohibits such access as detrimental to the patient's health or welfare, and explains the reason in the medical record. In that instance, the patient's next of kin or guardian shall have a right to see the record. This right continues after the patient is discharged from the hospital for as long as the hospital has a copy of the record;

25. To obtain a copy of the patient's medical record, at a reasonable fee, within 30 days of a written request to the hospital. If access by the patient is medically contraindicated (as documented by a physician in the patient's medical record), the medical record shall be made available to a legally authorized representative of the patient or the patient's physician;

26. To have access to individual storage space in the patient's room for the patient's private use. If the patient is unable to assume responsibility for his or her personal items, there shall be a system in place to safeguard the patient's personal property until the patient or next of kin is able to assume responsibility for these items;

27. To be given a complete, written statement of all patient rights and any additional policies and procedures established by the hospital involving patient rights and responsibilities, including the name and phone number of the hospital staff member to whom patients can complain about possible patient rights violations. In addition, an abridged version of these patient rights, approved by the Department of Health, shall be posted conspicuously in public places throughout the hospital. Complete copies shall also be distributed to hospital staff members;

28. To present his or her grievances to the hospital staff member designated by the hospital to respond to questions or grievances about patient rights and to receive an answer to those grievances within a reasonable period of time. The hospital is required to provide each patient and his or her next of kin or guardian with the names, addresses, and telephone numbers of the government agencies to which the patient can complain and ask questions, including the New Jersey Department of Health Complaint Hotline at 1-800-792-9770. This information shall also be posted conspicuously in public places throughout the hospital; and

29. To be assisted in obtaining public assistance and the private health care benefits to which the patient may be entitled. This includes being advised that they are indigent or lack the ability to pay and that they may be eligible for coverage, and receiving the information and other assistance needed to qualify and file for benefits or reimbursement.

8:43G-4.2 Patient rights; advisory

(a) Every New Jersey hospital patient should have the following rights, none of which should be abridged by the hospital or any of its staff;

1. To have a telephone and television set in the patient's room, at his or her own expense, if the hospital makes them available in that room to patients who want to have them and if their use is not disruptive to any other patient;

2. To be discharged from the hospital after receiving at least 48 hours advance notice; and

3. To receive a copy of patient rights in their native language.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards

Cardiac

Proposed New Rules: N.J.A.C. 8:43G-7

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health, with approval of the Health Care Administration Board.

Authority: N.J.S.A. 26:2H-1.

Proposal Number: PRN 1989-407.

Submit comments by September 6, 1989, to:

Director
Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to the provision of cardiac services in hospitals. Proposed new N.J.A.C. 8:43G-7 of the Hospital Licensing Standards was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey was distributed to every hospital as comprehensive draft hospital licensure standards in 31 areas, including cardiac services. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules present a clear, comprehensive, and effective set of rules for cardiac services and contain the following major provisions:

N.J.A.C. 8:43G-7.1(a) and 7.28(a) would require a minimum number of open heart operations to be performed in each dedicated cardiac operating room per year. N.J.A.C. 8:43G-7.1(a) would require 250 adult open heart procedures and N.J.A.C. 8:43G-7.28(a) would require 150 pediatric, open and closed heart operations, with a minimum of 75 open heart procedures, to be performed in each dedicated operating room per year. These minimum requirements reflect the growing belief that a positive correlation exists between the volume of certain surgical procedures and patient outcome. The proposed standards apply industry-wide minimum volume recommendations to promote and maintain the professional skills of the cardiac surgical team.

N.J.A.C. 8:43G-7.2(a) and 7.29(a) would require that both the director of the adult cardiac surgical service and the director of the pediatric cardiac surgical service be board certified in thoracic surgery. This provision would assure a high level of education, training, and experience on the part of the director who is responsible for the clinical management of the patients on each cardiac service.

N.J.A.C. 8:43G-7.2(e) would allow for alternative means of credentialing for the cardiac perfusionist. The perfusionist may graduate from an accredited educational program and be certified by the American Board of Cardiovascular Perfusion; or shall meet current requirements to be examined and shall be examined within two years of eligibility; or meet the experience requirement of having performed at least 75 perfusions during each of the past two years. This provision would assure the availability of trained and qualified cardiac perfusionists, while recognizing the advantages of the educational and certification processes as mechanisms to improve training and skill levels in efforts to provide quality patient care.

N.J.A.C. 8:43G-7.4(i) would require that a second perfusionist be available in the surgical suite to assist the primary operator. This provision would assure that there is a similarly qualified perfusionist available to assist if the primary perfusionist is called upon to do anything other than operate the heart-lung machine. The availability of the second perfusionist would prevent an interruption in the delivery of quality care to the patient undergoing a cardiac surgical procedure.

N.J.A.C. 8:43G-7.13(b) and 7.36(c) would require a catheterization laboratory dedicated to adults to perform a minimum of 500 catheterizations per year and a catheterization laboratory dedicated to pediatrics to perform a minimum of 150 catheterizations per year, respectively. This is in keeping with industry-wide recommendations that recognize minimum volume requirements as contributing to the proficiency of the cardiac catheterization team.

N.J.A.C. 8:43G-7.14 and 7.37(a) would require the director of the adult catheterization laboratory and the director of the pediatric catheterization laboratory to be board certified in the subspecialties of cardiology and pediatric cardiology, respectively, and each have additional training in interventional cardiac procedures. This is a change from the current policy that allowed the director of the laboratory to be board eligible but is consistent with the New Jersey Cardiac Services Task Force (CSTF) recommendations for eligibility requirements for the director of the cardiac laboratory. The CSTF was convened by the Commissioner of Health in May of 1986 and presented its recommendations the following year.

N.J.A.C. 8:43G-7.21(a) would require that a minimum of 200 percutaneous transluminal coronary angioplasty procedures be performed in the hospital per year. This provision affirms the Department's belief that a consistent level of proficiency resulting in excellence of patient care can best be achieved by meeting industry-accepted minimum volume requirements.

N.J.A.C. 8:43G-7.36(a) would require that pediatric invasive cardiac diagnostic procedures only be performed at pediatric cardiac surgery centers. This provision would be consistent with newly enacted certificate of need regulations for cardiac diagnostic facilities and recommendations of the Commissioner's Cardiac Services Committee. This is an advisory body to the Commissioner of Health. The standard reflects the belief that performing occasional invasive cardiac procedures on pediatric patients is not sound medical practice and is inconsistent with accepted minimum volume-positive outcome findings.

The Department also supports other measures that hospitals can take to improve safety and quality of care. These measures, which were proposed as advisory standards in the Statewide written opinion survey noted above, include certification of all cardiac perfusionists, staff development programs that include education in management techniques, opportunities for all staff to participate in interdisciplinary education programs, and two registered nurses trained and experienced in assisting cardiac surgery in each operating room when cardiac surgery is performed. Advisory standards will identify areas of strength and indicate excellence.

Social Impact

There is an ever-increasing body of scientific and clinical knowledge that has developed over the past two decades in the diagnosis and treatment of cardiovascular diseases. Simultaneously, the population is aging causing an increase in the occurrence and severity of cardiac related conditions. The cardiac practitioner is required to assimilate an enormous amount of knowledge while developing a technical expertise necessary to provide quality medical care.

The Department of Health is committed to providing sophisticated cardiac care to the citizens of New Jersey. To aid in accomplishing this, the cardiac practitioner must be thoroughly familiar with the vast body of scientific and clinical data concerning cardiovascular diseases, have extensive experience in the treatment and management of patients with cardiovascular diseases and be technically competent to use the available diagnostic and therapeutic tools. These standards help ensure higher levels of expertise in practitioners.

In addition, the Department of Health recognizes the importance of restricting invasive diagnostic and therapeutic cardiac procedures to those facilities that have proper equipment, trained staff, and meet minimum volume requirements. Only by repeated performance can the cardiac team develop the expertise necessary to ensure that the patient's need for quality cardiac care is met.

Economic Impact

Since there already are hospitals that have operational adult and pediatric cardiac services that comply with the majority of the proposed standards regarding staffing and equipment requirements, minimal additional expense is expected to be generated by the proposed standards. All existing adult and pediatric cardiac surgery facilities are currently meeting volume requirements.

Regulatory Flexibility Statement

The proposed rules would not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey that are regulated by N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

SUBCHAPTER 7. CARDIAC

8:43G-7.1 Scope

The standards set forth in this subchapter shall apply only to separate, designated units or services for cardiac surgery and cardiac catheterization.

8:43G-7.2 Cardiac surgery policies and procedures; mandatory

(a) At least 250 open-heart operations shall be performed in each dedicated cardiac operating room per year.

(b) The cardiovascular surgical intensive care service or recovery room shall receive priority laboratory services.

8:43G-7.3 Cardiac surgery staff qualifications; mandatory

(a) There shall be a director of the cardiac surgery service who is board certified in thoracic surgery.

(b) Effective July 1, 1991, the surgeon in charge of a cardiac operation shall be board certified in thoracic surgery, or shall meet current requirements to be examined and shall be examined within two years of eligibility.

(c) The surgeon in charge of a cardiac operation shall be assisted by a physician board certified in thoracic surgery, a thoracic surgery resident or a physician with privileges to assist in the specific procedure and with prior approval from the physician director of the cardiac surgery service.

(d) The cardiovascular surgical intensive care service or recovery room shall have a physician director, who may be the director of cardiac surgery.

(e) The cardiac perfusionist for each cardiac surgical procedure shall have graduated from an educational program for perfusionists accredited by the Council on Allied Health Education Administration (CAHEA) and be certified by the American Board of Cardiovascular Perfusion or shall meet current requirements to be examined and shall be examined within two years of eligibility; or during each of the past two years shall have performed at least 75 cardiac perfusions.

8:43G-7.4 Cardiac surgery staff qualifications; advisory

All perfusionists should have completed the educational program accredited by the CAHEA and should be certified by the American Board of Cardiovascular Perfusion.

8:43G-7.5 Cardiac surgery staff time and availability; mandatory

(a) There shall be at least a ratio of one registered professional nurse to one patient at all times during the first 24 hours of the patient's stay in the cardiovascular surgical intensive care service or recovery room.

(b) For patients who remain in the cardiovascular surgical intensive care service or recovery room after 24 hours, there shall be at least a ratio of one registered professional nurse to two such patients.

(c) An anesthesiologist who is board certified in anesthesiology, with additional training or experience in cardiac surgery and with hospital privileges for providing anesthesia care during cardiac surgery, shall be responsible for anesthetic management of each cardiac surgical procedure.

(d) An anesthesiologist or certified registered nurse anesthetist experienced in cardiac surgery and with hospital privileges for providing anesthesia care during cardiac surgery shall be available in the surgical suite to assist the anesthesiologist for each cardiac surgical procedure.

(e) There shall be a physician in the hospital at all times who is able to manage cardiac emergencies in the surgical intensive care service or recovery room.

(f) During the entire period of the patient's stay in the cardiovascular surgical intensive care service or recovery room, the operating surgeon or a designated alternate shall arrive at the hospital within 30 minutes of being summoned for an emergency.

(g) A physician who is board certified in internal medicine, in the subspecialty of cardiovascular disease, or other designated physician shall be in the hospital and available for assistance whenever cardiac surgery is being performed.

(h) One registered professional nurse who is certified in basic cardiac life support and trained and experienced in assisting cardiac surgery shall be in each operating room when cardiac surgery is performed. There shall be an additional assistant in each operating room who is a registered professional nurse, licensed practical nurse, or technician.

(i) A perfusionist who is certified by the American Board of Cardiovascular Perfusion or meets the experience requirements shall be available to operate the perfusion pump for each cardiac surgical procedure. A second perfusionist meeting the same requirements shall be available in the surgical suite to assist.

(j) A professional social worker who holds a masters degree in social work shall be available to assist pre/post operative cardiac patients/families to cope with the crisis of illness, adjustment to hospitalization, plans for patient's care post-discharge, or bereavement and loss.

8:43G-7.6 Cardiac surgery staff time and availability; advisory

There should be two registered professional nurses who are certified in basic cardiac life support and trained and experienced in assisting cardiac surgery in each operating room when cardiac surgery is performed. There should be an additional assistant in each operating room who is a registered professional nurse, licensed practical nurse, or technician.

8:43G-7.7 Cardiac surgery patient services; mandatory

(a) Reports of diagnostic and operative procedures performed by cardiac services shall be dictated for inclusion in the medical record within 24 hours, if possible, but not later than 48 hours after completion of the procedure.

(b) A note by the physician shall be included in the patient's medical record immediately after all diagnostic and operative procedures performed by cardiac services.

8:43G-7.8 Cardiac surgery space and environment; mandatory

There shall be a cardiac surgical intensive care service or recovery room dedicated specifically to patients from the cardiac surgical service.

8:43G-7.9 Cardiac surgery supplies and equipment; mandatory

(a) The cardiac surgical intensive care service or recovery room shall have equipment and staff for the following:

1. Hemodynamic and electrocardiogram monitoring;
2. Pacemaker usage;
3. Cardiopulmonary resuscitation;
4. Arrhythmia detection and treatment; and
5. Intra-aortic balloon-assisted circulation.

8:43G-7.10 Staff education; mandatory

(a) The cardiac services shall develop, revise as necessary, and implement a written plan of staff education. The plan shall address the education needs, relevant to the service, of different categories of staff on all work shifts. The plan shall include education programs conducted in the service, in other areas of the hospital, and off-site.

(b) The plan shall include education programs that address at least the following:

1. Orientation of new staff to the hospital and to the service in which the individual will be employed, a tour of the hospital, a review of policies and procedures, and procedures to follow in case of an emergency. New staff shall include all permanent and temporary staff, nurses retained through an outside agency, and persons providing services by contract;
2. Use of new clinical procedures, new equipment, and new technologies, including use of computers;
3. Individual staff requests for education programs;
4. Supervisor judgements about education needs based on assessment of staff performance;
5. Statutory requirements for staff education on selected topics, such as management of victims of abuse; and
6. Areas identified by the hospital-wide quality assurance program as needing additional educational programs.

(c) Implementation of the plan shall include records of attendance for each program and composite records of participation for each staff member.

8:43G-7.11 Staff education; advisory

(a) The service shall provide staff development programs that include education in management techniques.

(b) Education programs for the service should be coordinated by a designated staff member of the service who organizes programs with the hospital-wide staff educator.

(c) Each staff member should receive an individual, annual evaluation of their educational development.

(d) The service should provide opportunities for all staff to participate in interdisciplinary education programs.

(e) Education programs should include guest speakers and audiovisual aids.

8:43G-7.12 Cardiac surgery quality assurance methods; mandatory

(a) There shall be a program of quality assurance for all cardiac services that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) The quality assurance program for cardiac surgery, percutaneous transluminal coronary angioplasty (PTCA), and electrophysiology studies (EPS) shall include at least:

1. Monitoring the volume of each service provided;
2. Infection and complication rates;
3. The incidence of mortality, morbidity, and other adverse occurrences in each service;
4. Patient factors that affect risk of complications in each service; and
5. Retrospective evaluation of emergency procedures in each service.

8:43G-7.13 Cardiac surgery quality assurance methods; advisory

Cardiac services should conduct retrospective case review and follow-up on selected cardiac procedures at specified intervals after discharge, and should assess the appropriateness of the procedures and success of the treatment.

8:43G-7.14 Cardiac catheterization policies and procedures; mandatory

(a) Cardiac catheterization services shall be promptly accessible in a hospital setting, either on-site or by immediate transfer, in which case there shall be a written transfer agreement.

(b) The cardiac catheterization laboratory shall perform a minimum of 500 catheterizations per year.

(c) The cardiac catheterization laboratory shall develop, review annually, and enforce policies and procedures that ensure aseptic practices.

(d) The cardiac catheterization laboratory suite shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least radiological safety.

(e) For all procedures in the cardiac catheterization laboratory a postcatheterization report shall be entered in the patient's medical record immediately after the procedure. This report shall include at least:

1. A description of the procedure, by the physician;
2. Preliminary presentation of the results, by the physician;
3. The patient's condition upon discharge from the laboratory by the physician;
4. Postcatheterization orders, by the physician;
5. Complications, if applicable, by the physician;
6. A transport summary;
7. Medications and anesthesia given;
8. The patient's condition upon discharge; and
9. Palpation of pulses.

8:43G-7.15 Cardiac catheterization staff qualifications; mandatory

(a) There shall be a director of cardiac catheterization who is board certified in internal medicine, in the subspecialty of cardiovascular disease, and who has completed at least one year of additional training or experience in cardiac catheterization.

(b) Any physician performing cardiac catheterization in the cardiac catheterization laboratory shall be board certified in internal medicine, in the subspecialty of cardiovascular disease, who has completed at least one year additional training or experience in cardiac catheterization.

(c) Each physician performing diagnostic cardiac catheterization and angiography without supervision shall have performed at least 200 cardiac catheterizations or angiography studies as the primary operator. The hospital shall determine policy requiring the minimum number of annual procedures that a physician must perform.

(d) The circulating nurse in the cardiac catheterization laboratory shall be certified in basic cardiac life support.

8:43G-7.16 Cardiac catheterization staff time and availability; mandatory

(a) The cardiac catheterization laboratory shall be staffed for each procedure by at least:

1. One registered professional nurse, trained and experienced in assisting in cardiac catheterization procedures, who acts as the circulating nurse;
2. A scrub nurse, who is either a licensed practical nurse or a registered professional nurse, or a scrub technician who has been trained in assisting in cardiac catheterization procedures; and
3. One technician, trained in cardiac catheterization procedures.

8:43G-7.17 Cardiac catheterization patient services; mandatory

Handwashing between contacts with patients shall be performed using an antimicrobial agent by all personnel involved in patient care in the cardiac catheterization laboratory.

8:43G-7.18 Cardiac catheterization space and environment; mandatory

(a) All persons entering the cardiac catheterization laboratory shall be attired in scrub suits. Limited access people may wear cover gowns or jumpsuits as substitutes.

(b) The procedure room in the cardiac catheterization laboratory shall have a minimum clear area of 400 square feet exclusive of fixed and movable cabinets and shelves, with a minimum dimension of 20 feet.

(c) There shall be a control room in the cardiac catheterization laboratory that is at least 50 square feet and is large enough to contain and provide for the efficient functioning of the x-ray equipment and image recording equipment.

(d) The cardiac catheterization laboratory shall have an equipment room or enclosure large enough to contain the x-ray transformers, power modules, associated electronics, and electrical gear. This room or enclosure shall be at least 100 square feet and shall be positioned in the laboratory to ensure short high-voltage cables. There shall be ready access to the equipment for servicing.

(e) There shall be a patient holding area and recovery room where patients are under visual observation before and after the procedure.

(f) Scrub facilities shall be located adjacent to the entrance to the procedure room, and shall be arranged to minimize incidental splatter on nearby personnel, medical equipment, or supply carts.

(g) There shall be an enclosed soiled workroom within the cardiac catheterization suite. The workroom shall contain at least:

1. A clinical sink or equivalent flushing-type fixture;
2. A sink equipped for handwashing;
3. A work counter;
4. A waste receptacle; and
5. A linen receptacle.

(h) There shall be a clean holding room or workroom for the storage of clean and sterile supplies. This room shall have a sink equipped for handwashing.

(i) There shall be a system in the cardiac catheterization laboratory that ensures the removal and processing of soiled instruments and the immediate availability of sterile supplies.

(j) There shall be a change area for the cardiac catheterization laboratory staff that is arranged to encourage a one-way traffic pattern so that personnel entering from outside the cardiac catheterization suite can enter, change their clothing, and move directly into the catheterization laboratory.

(k) There shall be a housekeeping closet containing a floor receptor or service sink and storage for housekeeping supplies provided for the exclusive use of the cardiac catheterization suite.

(l) During scheduled hours of operation, personnel who have received special training in cleaning the cardiac catheterization suite shall be assigned to the suite for cleaning and related duties.

(m) Space with x-ray and cine equipment shall be available to the cardiac catheterization suite for the development of films.

(n) The following shall be readily available for use by the cardiac catheterization suite:

1. A viewing room;
2. A film file room;
3. A conference room;

4. A library and study room; and
5. Teaching aids and files.

(o) There shall be an emergency call system in the cardiac catheterization procedure and recovery room.

8:43G-7.19 Cardiac catheterization supplies and equipment; mandatory

(a) All cardiac catheterization laboratory linens and apparel shall be laundered in the laundry facilities provided by the hospital.

(b) The cardiac catheterization laboratory shall be equipped with radiological equipment strong enough to produce an image and in accordance with N.J.S.A. 26:2D-1 et seq.

(c) Fluoroscopic radiological equipment shall be installed in such a way that either it can be easily moved around the patient or the patient table can be adjusted mechanically in order to get the desired views.

8:43G-7.20 Cardiac catheterization staff education and training; mandatory

In addition to the staff education program for cardiac surgery, all new staff, including physicians, shall receive orientation to the physical layout of the cardiac catheterization suite, its rules, policies, routine procedures, and safe practices.

8:43G-7.21 Cardiac catheterization quality assurance methods; mandatory

(a) The quality assurance program for cardiac catheterization shall include at least:

1. Monitoring the volume of procedures;
2. Infection and complication rates;
3. The incidence of mortality, morbidity, and other adverse occurrences;
4. Patient factors that affect risk of complications in each service; and
5. Retrospective evaluation of emergency procedures.

(b) There shall be a peer review committee for the cardiac catheterization service that includes at least the chief of the cardiac catheterization laboratory, the chief of cardiology, a catheterizing cardiologist, and a non-catheterizing cardiologist. The committee shall review all mortalities, serious complications, and selected procedures done in the cardiac catheterization suite to identify trends and problems in the service. Minutes of these meetings shall be maintained.

8:43G-7.22 Percutaneous transluminal coronary angioplasty policies and procedures; mandatory

(a) Percutaneous transluminal coronary angioplasty (PTCA) shall be performed on an elective basis only in cardiac surgical centers approved by the New Jersey State Department of Health.

(b) There shall be at least 200 PTCA procedures performed in the hospital per year.

8:43G-7.23 PTCA staff qualifications; mandatory

(a) Any physician performing PTCA shall be board certified in internal medicine, in the subspecialty of cardiovascular disease, who fulfills the criteria of being a catheterizing physician and has one year of training in interventional catheterization in an accredited program, during which the physician performed more than 100 PTCAs under supervision, or has performed more than 50 PTCAs per year as the primary operator for each of the past two years.

(b) Any physician assisting in performing PTCA procedures shall have completed an approved fellowship training program in cardiology, or shall be currently undergoing training in an approved fellowship training program in cardiology.

(c) The hospital shall determine policy requiring the minimum number of annual procedures that a physician must perform.

8:43G-7.24 PTCA staff time and availability; mandatory

(a) The following staff shall be present for all PTCA procedures:

1. A registered professional nurse certified in basic cardiac life support, cardiac catheterization, and PTCA; and
2. A technician trained and experienced in assisting with cardiac catheterization and PTCA.

8:43G-7.25 PTCA space and environment; mandatory

There shall be an operating room available for immediate use on-site that complies with criteria established in the hospital's surgery policies and procedures any time a PTCA procedure is performed on an elective basis.

8:43G-7.26 Electrophysiology studies staff qualifications; mandatory

(a) The physician performing electrophysiology studies (EPS) shall be board certified in internal medicine, in the subspecialty of cardiovascular disease, who has an additional year of training in an accredited program or who has performed EPS as a primary operator for more than five years.

(b) The physician performing EPS shall have training and experience in cardiac catheterization and one of the following:

1. At least one additional year of specialized training in EPS and cardiac arrhythmia; or
2. At least five years of experience performing invasive cardiac electrophysiologic studies.

(c) The physician performing EPS shall be assisted by another physician who has successfully completed or is currently undergoing training in an approved fellowship training program in cardiology.

8:43G-7.27 EPS staff qualifications; advisory

Each physician performing EPS should have performed a minimum of 75 procedures with 50 as primary operator. The hospital should determine policy requiring the minimum number of annual procedures that a physician must perform.

8:43G-7.28 EPS staff time and availability; mandatory

(a) The following staff shall be present during all EPS procedures:

1. A registered professional nurse certified in basic cardiac life support, cardiac catheterization, and EPS; and
2. A technician trained and experienced in assisting with cardiac catheterization and EPS.

8:43G-7.29 Pediatric cardiac services standards; scope

In addition to the standards in N.J.A.C. 8:43G-7.1 through 7.28 for adult cardiac services, the following standards in N.J.A.C. 8:43G-7.30 through 7.40 shall apply to separate, designated units or services for pediatric cardiac diagnostic services and pediatric surgical centers.

8:43G-7.30 Pediatric cardiac surgery policies and procedures; mandatory

(a) At least 150 open and closed heart operations shall be performed in the hospital per year with at least 75 open heart operations performed per year.

(b) The pediatric surgical intensive care service shall receive priority laboratory services.

(c) All medical and nursing staff who provide services to pediatric cardiac patients shall have training and experience in pediatrics.

8:43G-7.31 Pediatric cardiac surgery staff qualifications; mandatory

(a) There shall be a director of the pediatric cardiac surgery service who is board certified in thoracic surgery and has five years prior experience in pediatric cardiac surgery.

(b) Effective July 1, 1990, the surgeon in charge of a pediatric cardiac operation shall be board certified in thoracic surgery, or shall meet current requirements to be examined and shall be examined within two years of eligibility.

(c) The cardiac perfusionist for each pediatric cardiac surgical procedure shall have graduated from an educational program for perfusionists accredited by the Council on Allied Health Education Administration (CAHEA) and be certified by the American Board of Cardiovascular Perfusion; or during each of the past two years, shall have performed at least 30 perfusions as primary operator.

8:43G-7.32 Pediatric cardiac surgery staff time and availability; mandatory

(a) There shall be at least a ratio of one registered nurse to one patient at all times during the first 24 hours of the patient's stay in the pediatric cardiovascular surgical intensive care service.

(b) For patients who remain in the pediatric cardiovascular surgical intensive care service after 24 hours, there shall be at least a ratio of one registered professional nurse to two such patients with capability to adjust staff levels based on acuity level of patient illness.

(c) An anesthesiologist who is board certified in anesthesia, with additional training in pediatric anesthesiology and experience in pediatric cardiac surgery, shall be responsible for anesthestic management of each pediatric cardiac surgical procedure.

(d) A pediatric cardiologist shall be available in the hospital whenever pediatric cardiovascular surgery is scheduled.

(e) There shall be a physician in the hospital at all times who is able to manage pediatric cardiac emergencies. This physician shall not be assigned to the emergency department at the same time.

(f) A professional social worker who holds a masters degree in social work or a registered professional nurse who is a masters prepared clinical specialist, shall be available to assist pre/post operative cardiac patients/families to cope with the crisis of illness, adjustment to hospitalization, plans for patient's care post-discharge, or bereavement and loss.

8:43G-7.33 Pediatric cardiac surgery patient services; mandatory

A note by a physician shall be included in the patient's medical record immediately after all diagnostic and operative procedures performed by the pediatric cardiac services.

8:43G-7.34 Pediatric cardiac surgery space and environment; mandatory

There shall be a pediatric cardiac surgical intensive care service specifically dedicated to patients from the pediatric cardiac surgical service.

8:43G-7.35 Pediatric cardiac surgery supplies and equipment; mandatory

(a) The pediatric cardiac surgical intensive care service shall have equipment and staff for at least the following:

1. Hemodynamic and electrocardiogram monitoring;
2. Pacemaker usage;
3. Cardiopulmonary resuscitation; and
4. A nitrogen freezer.

8:43G-7.36 Pediatric cardiac surgery quality assurance methods; mandatory

(a) There shall be a program of quality assurance for all pediatric cardiac services that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) The quality assurance program for pediatric cardiac surgery shall include at least:

1. Monitoring the volume of each service provided;
2. Infection and complication rates;
3. The incidence of mortality, morbidity, and other adverse occurrences in each service;
4. Patient factors that affect risk of complications in each service; and
5. Retrospective evaluation of emergency procedures in each service.

8:43G-7.37 Pediatric cardiac surgery quality assurance methods; advisory

Pediatric cardiac services should conduct retrospective case review and follow-up on selected cardiac procedures on a weekly, but no less than monthly, basis after discharge, and should assess the appropriateness of the procedures and success of the treatment.

8:43G-7.38 Pediatric cardiac catheterization policies and procedures; mandatory

(a) Pediatric invasive cardiac diagnostic procedures shall be performed only at pediatric cardiac surgery centers.

(b) There shall be a cardiac catheterization laboratory dedicated to pediatrics.

(c) The pediatric cardiac catheterization laboratory shall perform a minimum of 150 pediatric cardiac catheterizations per year.

8:43G-7.39 Pediatric cardiac catheterization staff qualifications; mandatory

(a) There shall be a director of the pediatric cardiac catheterization service who is board certified in pediatrics, in the subspecialty of pediatric cardiology, and who has completed at least one year of additional training in an accredited program for interventional pediatric cardiac procedures.

(b) Any physician performing pediatric cardiac catheterization in the pediatric cardiac catheterization laboratory shall be board certified in the subspecialty of pediatric cardiology, or shall meet requirements to be examined and shall be examined within two years of eligibility.

(c) Each physician performing diagnostic cardiac catheterization without supervision shall have performed at least 50 pediatric cardiac catheterizations as the primary operator. The hospital shall determine policy requiring the minimum number of annual procedures that a physician must perform.

8:43G-7.40 Pediatric cardiac catheterization quality assurance methods; mandatory

There shall be a peer review committee for the pediatric cardiac catheterization service that includes at least the director of the pediatric catheterization laboratory, the director of pediatric cardiology, a pediatric catheterization cardiologist, and a non-catheterizing cardiologist. The committee shall review all mortalities, serious complications, and selected procedures done in the pediatric catheterization suite to identify trends and problems in the service. Minutes of these meetings shall be maintained.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards

Critical and Intermediate Care

Proposed New Rules: N.J.A.C. 8:43G-9

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health, with approval of the Health Care Administration Board.

Authority: N.J.S.A. 26:2H-1.

Proposal Number: PRN 1989-409.

Submit comments by September 6, 1989, to:

Director
Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to critical and intermediate care services in hospitals. Proposed new N.J.A.C. 8:43G-9 of the Hospital Licensing Standards was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey was distributed to every hospital as comprehensive draft hospital licensure standards in 31 areas, including critical and intermediate care services. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules for critical and intermediate care services concern areas not currently addressed under the existing hospital licensing rules. These areas are commanding more and more attention as distinct and highly specialized health care delivery areas within the hospital setting. A high concentration of specially educated and trained staff is required to implement treatment for these patients. The treatment often

entails the usage of highly sophisticated equipment and intensive medication therapies.

The proposed new rules present a clear, comprehensive, and effective set of rules for critical and intermediate care services and contain the following major provisions:

N.J.A.C. 8:43G-9.3(a)6 would require the critical care service to have a written policy that addresses the removal of a patient's life support system. Once a patient is placed on life support, removal of the life support system becomes a complex issue. This issue emerges most frequently in the hospital critical care area where the severity of the patient's illness is at its highest and where the technology is available to maintain respiratory and circulatory functions for a patient for an indefinite period of time. This provision would assure that the critical care service has in place a written policy that provides clear and definitive guidelines for the staff to follow when a patient is to be removed from a life support system. During an emotionally difficult time for the patient, family, and staff, the presence of clear guidelines would provide structure to the situation and help to ease the process for the family once the decision has been made.

N.J.A.C. 8:43G-9.4(c)3 would require that the physician director of the critical care unit or combination of units be board certified in medicine, anesthesia, or surgery, and/or have completed a formal fellowship program in critical care approved by the specialty board in the individual's primary specialty. This provision recognizes the need for the critical care director to possess the formal training and added experience for assuring that quality medical care is provided to critically ill patients with complex, multi-system illnesses. In addition, allowing certification in any one of the primary specialties acknowledges the currently recognized position that it would be extremely difficult to develop a certification process for practitioners from such diverse medical backgrounds.

N.J.A.C. 8:43G-9.18 would require that effective January 1, 1992, all hospitals that provide critical care services shall also provide intermediate care services. There is a limited amount of critical care beds, staff, and funds available to care for the critically ill patient. Studies show that admitting the low-risk patient to intermediate care areas that provide monitoring, but not intensive therapy, is both cost and quality efficient. This provision would assure that there is proper use of the available health care resources, resulting in improved patient care.

The Department also supports other measures that hospitals can take to improve safety and quality of care. These measures, which were proposed as advisory standards in the Statewide written opinion survey noted above, include career ladders for the critical care nurse, having the nurse manager with 24-hour responsibility on the critical care unit spend at least 50 percent of his or her time on management responsibilities, and one multidisciplinary committee covering all critical care units. Advisory standards will identify areas of strength and indicate excellence.

Social Impact

Critically ill patients account for a larger and larger share of a hospital's in-patient population. This is partly due to rapid advances in medical science and partly due to people living longer and developing more severe and complicated forms of diseases. While the proliferation of critical care units can be viewed as a response to these factors, critical care medicine as a specialty is still in its infancy stage. Today, critical care units of one type or another can be found in almost all acute care hospitals in the state of New Jersey. They range from the hospital with a single combined medical-surgical intensive care unit to the hospital with individual, highly specialized units that each serve separate medical specialties.

While bringing together in one area highly trained and specialized staff and highly technical, life supporting equipment is both cost and quality efficient, the demand for critical care services often exceeds the available supply. The problem of limited health care resources in the critical care area is being addressed by implementation of intermediate care areas. Monitoring of low-risk patients in an intermediate care area where the need for equipment and highly trained staff is less, would release the available resources to meet the needs of the critically ill patient. The low-risk patient would receive the care required and not unnecessarily deplete the health resource supply.

Economic Impact

Since the majority of hospitals have operational critical care services that comply with the majority of the proposed standards regarding staffing and equipment requirements, minimal additional expense is likely to be incurred by the proposed standards. Hospitals without intermediate care services will have a period of time to establish the intermediate care service. Staffing needs would be met by restructuring staffing assignments from the available staff. Equipment and any additional expenses generated by the proposed standards will be offset by the funds saved by more efficient use of critical care services and thereby results in the delivery of improved patient care.

Regulatory Flexibility Statement

The proposed rules would not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey that are regulated by N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

SUBCHAPTER 9. CRITICAL AND INTERMEDIATE CARE

8:43G-9.1 Scope

The standards set forth in this chapter apply to medical, surgical coronary, pulmonary, cardiovascular, and neurological critical care but not pediatric or neonatal intensive care.

8:43G-9.2 Critical care structural organizations; mandatory

(a) There shall be an organizational chart, or alternative documentation, that delineates the lines of authority, responsibility, and accountability of staff in the critical care service.

(b) There shall be a multidisciplinary critical care committee or its equivalent for each critical care unit that includes representatives of at least the medical and nursing staff. The committee shall discuss issues related to the administration of the critical care practice that will enhance patient care.

8:43G-9.3 Critical care structural organization; advisory

(a) There should be one multidisciplinary critical care committee covering all critical care units.

(b) There should be a clearly delineated career ladder for nurses in the critical care service that is based on merit and results in promotion, higher remuneration, and recognition.

8:43G-9.4 Critical care policies and procedures; mandatory

(a) The critical care service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. Criteria for admission to and discharge and transfer from the unit;
2. A list of procedures that physician residents may and may not perform;
3. Infection control protocols;
4. Protocols for transfer and transport of patients within the hospital or from the hospital to another facility including who shall accompany the patient being transferred or transported;
5. A visitors policy that specifies visiting hours and number of visitors permitted each patient at any one time, subject to the discretion of the patient's primary care nurse;
6. A policy on the removal of a patient's life support system;
7. A policy defining the physician, specialist and consulting physician to be called for patient emergencies, including a response time for physicians to respond to patient emergencies;
8. Standing orders for patient emergencies;
9. A list of physicians who have case management privileges in the critical care service;
10. A policy stating the frequency, which is at least once a day that the physician with case management responsibility for the patient must visit the patient;
11. Policies on involving and communicating with families of patients during the first 24 hours after admission and throughout the patient's stay; and
12. A mechanism for daily rounds, conferences, and/or lines of communication between nurses and physicians addressing patient and family needs.

8:43G-9.5 Critical care staff qualifications; mandatory

(a) There shall be a physician director who has clinical responsibility for the care rendered in each critical care unit or combination of critical care units.

(b) There shall be a registered professional nurse with administrative responsibility for the critical care unit or combination of units

who is accountable for all critical care nursing rendered in the unit or units.

(c) The physician director of the critical care unit or combination of units shall be board certified in medicine, anesthesia, or surgery, and/or have completed a formal fellowship program in critical care approved by the specialty board in the individual's primary specialty. In the case of a critical care unit that provides one specialty area of critical care, such as coronary care, the physician director of the unit shall be board certified in that particular specialty or subspecialty.

(d) The nurse with administrative responsibility for nursing in the critical care service shall be certified in critical care nursing by the American Association of Critical Care Nurses or have five years of experience in progressive management responsibility in critical care services.

(e) The hospital shall provide to all new critical care service staff a formal orientation program.

(f) Each nurse in the critical care service shall have training in basic cardiac life support.

(g) Effective January 1, 1992, the nursing manager of each unit within the critical care service shall be certified in critical care nursing by the American Association of Critical Care Nurses.

8:43G-9.6 Critical care staff qualifications; advisory

(a) The physician director of the critical care service should have completed a formal fellowship program in critical care or should be board certified in the subspecialty of critical care within his or her specialty.

(b) The physician director of the critical care service should have annual continuing education in management and administration.

(c) The nurse with administrative responsibility for nursing care in the critical care service should be a certified nurse administrator.

(d) There should be a nurse in each critical care unit who has certification in critical care on duty at all times.

(e) Each registered professional nurse in the critical care service should have certification in advanced cardiac life support.

(f) All primary nursing care provided in the critical care service should be provided by registered professional nurses only.

(g) The hospital should provide to all new critical care service staff an internal critical care certification program, with a written program that is based on the hospital's services.

8:43G-9.7 Critical care staff time and availability; mandatory

(a) Nurse staffing shall be determined by the acuity of illness of the patients on the critical care unit.

(b) There shall always be at least one registered professional nurse for every three patients. There shall be the capability to increase nurse staffing to one nurse for every two patients or one nurse per patient based on acuity levels.

(c) The critical care service shall have access to nutritional support services for advice on both enteral and parenteral nutritional techniques.

(d) There shall be the equivalent of at least one full-time clerical support staff person on duty in the critical care unit 16 hours a day.

(e) There shall be trained support staff other than the clerical support staff who are designated specifically to do non-nursing duties in the critical care units, including at least maintenance of supplies, errands, and housekeeping.

(f) Nursing students shall not tender care to patients in the critical care service without an instructor present in the unit.

8:43G-9.8 Critical care staff time and availability; advisory

(a) The nurse manager with 24-hour responsibilities on the critical care unit should spend at least 50 percent of his or her time on management responsibilities.

(b) A physician who can initiate and/or sustain life support should be in the hospital at all times. This should be in addition to the physician assigned to the emergency department.

8:43G-9.9 Critical care patient service; mandatory

(a) Information and explanation shall be provided to the patient and the patient's family regarding the patient's condition, equipment, and specific procedures.

(b) Results of stat laboratory work including arterial blood gas analysis, electrolyte determinations, including blood sugar, and hemoglobin-hematocrit studies, including white blood counts, shall be available within 45 minutes from the time of the order.

(c) The critical care service shall have access to comprehensive laboratory services, including at least:

1. Measurement of cardiac enzymes;
2. Renal function studies;
3. Microbiological studies;
4. Blood bank services;
5. Blood type and cross-match; and
6. Fluoroscopy and other radiologic studies.

(d) Nurses shall be included in discussions and decisions among physicians and families about the use of resuscitation technology on patients in the critical care unit.

8:43G-9.10 Critical care patient services; advisory

The hospital should have in effect a system that allows a critical care registered professional nurse to be part of the code team if staffing permits.

8:43G-9.11 Critical care space and environment; mandatory

There shall be a handwashing sink that is easily accessible to each patient's bedside.

8:43G-9.12 Critical care space and environment; advisory

There should be a handwashing sink at the entrance of the critical care unit. All visitors and staff should wash their hands upon arrival to the unit. A sign to this effect should be posted prominently at the entrance of the unit.

8:43G-9.13 Critical care supplies and equipment; mandatory

(a) Each critical care unit shall be equipped to provide at least:

1. Cardiopulmonary resuscitation, including a defibrillator/monitor and emergency drugs;
2. Airway management, including endotracheal and assisted ventilation;
3. Oxygen delivery systems;
4. Continual electrocardiogram monitoring, including 12-lead electrocardiogram;
5. Emergency temporary cardiac pacing;
6. Titrated therapeutic interventions with infusion pumps;
7. Hemodynamic monitoring capabilities, pulse oximetry and end-tidal carbon dioxide monitoring; and
8. Portable life-support equipment for use in patient transport, both within the hospital and for transfer.

(b) Emergency supplies, as defined by the unit staff, shall be available at the bedside for all patients.

(c) All ventilators in use shall be equipped with an integral minimum ventilation pressure (disconnect) alarm.

(d) There shall be a system for obtaining immediate emergency repair of equipment in the critical care service.

8:43G-9.14 Critical care staff education; mandatory

(a) The critical care service shall develop, revise as necessary, and implement a written plan of staff education. The plan shall address the education needs, relevant to the service, of different categories of staff on all work shifts. The plan shall include education programs conducted in the service, in other areas of the hospital, and off-site.

(b) The plan shall include education programs that address at least the following:

1. Orientation of new staff to the hospital and to the service in which the individual will be employed, a tour of the hospital, a review of policies and procedures, and procedures to follow in case of an emergency. New staff shall include all permanent and temporary staff, nurses retained through an outside agency, and persons providing services by contract;
2. Use of new clinical procedures, new equipment, and new technologies, including use of computers;
3. Individual staff requests for education programs;
4. Supervisor judgements about education needs based on assessment of staff performance;
5. Statutory requirements for staff education on selected topics, such as management of victims of abuse; and

6. Areas identified by the hospital-wide quality assurance program as needing additional educational programs.

(c) Implementation of the plan shall include records of attendance for each program and composite records of participation for each staff member.

8:43G-9.15 Critical care staff education; advisory

(a) The critical care service should provide staff development programs that include education in management techniques.

(b) Education programs for the service should be coordinated by a designated staff member of the service who organizes programs with the hospital-wide staff educator.

(c) Each staff member should receive an individual, annual evaluation of their educational development.

(d) The service should provide opportunities for all staff to participate in interdisciplinary education programs.

(e) Education programs should include guest speakers and audiovisual aids.

8:43G-9.16 Critical care quality assurance methods; mandatory

(a) There shall be a program of quality assurance for the critical care service that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) The quality assurance activities of the critical care service shall include maintaining data on mortality rates, complications, and patients readmitted to the hospital and critical care unit with the same diagnosis during a specified interval of time. For the purposes of this data collection, critical care patients shall be stratified by diagnosis and some indicators of severity of illness, such as patient acuity levels or APACHE II (Acute Physiology And Chronic Health Evaluation).

(c) Meetings with representatives of critical care medical and nursing personnel, at management and staff levels, shall be scheduled at least four times a year to improve interdisciplinary communication.

(d) Quality assurance for the critical care service shall include review of issues relating to removal of life support, such as retrospective review of cases, the effectiveness and appropriateness of decisions, the impact on staff, and the involvement of the patient's family.

8:43G-9.17 Critical care quality assurance methods; advisory

(a) Clinical nursing staff in the critical care unit should regularly attend medical reviews of patients in critical care.

(b) Quality assurance data collection for critical care patients should be carried out using diagnoses, severity indices, and norms for expected and actual mortality rates, complications, and readmissions in consultation with the New Jersey State Department of Health.

8:43G-9.18 Intermediate care standards; scope

The standards set forth in N.J.A.C. 8:43G-9.19 through 9.25 apply to medical, surgical, coronary, pulmonary, cardiovascular, and neurological intermediate care, but not pediatric or neonatal intermediate care.

8:43G-9.19 Intermediate care structural organization; mandatory

(a) Effective January 1, 1992, intermediate care services shall be provided in all hospitals that provide critical care services.

(b) If the intermediate care unit is part of another patient care unit or service, there shall be a separate physical area devoted to nursing management for the care of the intermediate patient.

8:43G-9.20 Intermediate care policies and procedures; mandatory

(a) The intermediate care service shall have written policies and procedures that are reviewed annually, revised as necessary, and implemented. They shall include at least:

1. Criteria for admission to the service;

2. Criteria for discharge and transfer from the service to other patient care units in the hospital;

3. Criteria for discharge from the service to other health care facilities;

4. The number or percentage of beds on the service that provide continuous electrocardiogram monitoring;

5. The frequency with which physicians must visit their patients on the unit; and

6. Acuity assignments made on a daily basis for patients in each intermediate care unit with the minimum average ratio of one nurse to every six patients.

(b) There shall be a clearly defined protocol for medical administration of the service to ensure the monitoring and enforcement of the service's criteria for admission, transfer, and discharge.

(c) The intermediate care nursing staff shall be represented on the critical care committee or its equivalent, and, if pediatric or coronary patients are cared for by the intermediate care service, intermediate care nursing staff shall be represented on the committees responsible for developing policies and procedures for pediatric care and coronary care.

8:43G-9.21 Intermediate care staff qualifications; mandatory

(a) There shall be a physician director of the intermediate care service who is board certified in internal medicine, anesthesiology, or surgery, and/or has completed a formal fellowship program in critical care approved by the specialty board in the individual's primary specialty. In the case of a unit that provides one specialty area of intermediate care, such as coronary care, the physician director of the unit shall be board certified in that particular specialty or subspecialty. The physician director of the intermediate care service may also be the physician director of another service.

(b) There shall be a registered professional nurse administratively responsible for nursing care in the intermediate care service who has at least experience in the management of a patient care unit or clinical experience in critical or intermediate care.

(c) The nurse manager responsible for nursing care in the intermediate care service shall report to the nurse administrator in charge of the critical care service.

8:43G-9.22 Intermediate care staff time and availability; mandatory

(a) Intermediate care shall include services of at least a respiratory therapist, biomedical engineer, and dietitian.

(b) There shall be the equivalent of at least one full-time clerical staff person assigned to intermediate care.

8:43G-9.23 Intermediate care staff time and availability; advisory

If the intermediate care service provides telemetry services, it should receive support from at least one trained telemetry technician.

8:43G-9.24 Intermediate care staff education and training; mandatory

In addition to the critical care staff education program, nursing personnel assigned to the intermediate care service shall receive a formal orientation program that includes orientation to the service's specific policies and procedures.

8:43G-9.25 Intermediate care quality assurance methods; mandatory

(a) There shall be a program of quality assurance for the intermediate care service that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing and monitoring corrective actions on the basis of these data.

(b) The quality assurance activities of the intermediate care service shall include collecting and maintaining data on patient acuity and patient mix. For the purposes of this data collection, intermediate care patients are stratified by diagnosis and some indicators of severity of illness, such as patient acuity levels or APACHE II.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING
Hospital Licensing Standards
Medical Records
Proposed New Rules: N.J.A.C. 8:43G-15

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Authority: N.J.S.A. 26:2H-1.
Proposal Number: PRN 1989-404.

Submit comments by September 6, 1989, to:
Director
Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to the provision of medical records in hospitals. Proposed new N.J.A.C. 8:43G-15 of the Hospital Licensing Standards was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey was distributed to all hospitals as comprehensive draft hospital licensure standards in 31 areas, including medical records. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules present a clear, comprehensive, and effective set of rules for the implementation of medical records in hospitals and contain the following provisions:

An organized department of medical records: Proposed N.J.A.C. 8:43G-15.1(a) would require each hospital to maintain a department of medical records for all inpatients treated at the hospital. This provision would assure that medical records are well organized and easily accessibility to all patients.

Discharge summary part of record: Proposed N.J.A.C. 8:43G-15.2 (d)14 would require an inpatient's complete medical record to include a discharge summary, that would minimally include the patient's condition on discharge, medications on discharge, and discharge instructions. This provision would help assure a smooth discharge transition period for the patient, by compiling all pertinent discharge information in one place.

Timely completion of medical records: Proposed N.J.A.C. 8:43G-15.2(f) would require the medical record department to have charts completed within 30 days of discharge. This allows an additional 15 days for chart completion, as compared to the old standard. The additional time is needed to accommodate quality assurance medical-surgical, and mortality chart review.

Patient's access to completed chart: Proposed N.J.A.C. 8:43G-15.3(d) would require that copies of a patient's medical record be requested in writing and furnished to the patient at a reasonable fee, within 30 days of discharge. This provision would assure that copies of medical records be promptly and reasonably afforded to the patient.

Medical record director: Proposed N.J.A.C. 8:43G-15.4(a) would require a full time medical record director who is an accredited record technician or a registered record administrator. This provision acknowledges the importance of a director in medical records. Additionally, it would assure that the director be professionally prepared and have the knowledge and skills to direct the department.

Easy to read consent forms: Proposed N.J.A.C. 8:43G-15.2(i) requires that any consent form that the patient signs be printed in an understandable format and the text written in a clear, legible, non-technical language. This provision would assure that the patient receive a consent form that is easy to read and in non-medical language.

Social Impact

In order to keep up to date, legal, and accurate records of the patient's stay in the hospital, there must be predetermined parameters for hospital employees and physicians to follow. The medical record department establishes those parameters and coordinates the completion of the in-house record, in a timely manner.

As a large number of patients continue to be admitted to New Jersey hospitals and the length of stay becomes shorter, more patient charts are generated, placing more demands on the medical record department. The increase is not only seen in the amount of inpatient charts, but also in the quality of record keeping that must be maintained. As the number of malpractice law suits increases the hospital must maintain medical records that are clear, concise, and legally accurate.

The primary social impact of the proposed rules is to ensure that the care patients receive is documented from the day of admission through the day of discharge. Patients can receive a copy of their charts, at a reasonable fee and can make any amendments or additions if they so choose. In the past, discharged patients encountered difficulty receiving a copy of their medical record. Often the records were not complete and the rates charged were high. Patients can receive a copy of their charts, at a reasonable fee and in a timely manner.

Economic Impact

Since hospitals already have functioning medical record departments that meet the major provisions of the proposed rules, substantial additional expenditures are not expected to be required.

Regulatory Flexibility Statement

The proposed rules would not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey which are regulated by N.J.A.C. 8:43G-15 all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

SUBCHAPTER 15. MEDICAL RECORDS

8:43G-15.1 Medical records structural organization; mandatory

(a) There shall be a medical record department with the primary responsibility of maintaining medical records for all inpatients treated at the hospital.

(b) There shall be a system for identifying medical records to facilitate their retrieval by patient identifier.

(c) If the hospital ceases to operate, at least 14 days before cessation of operation the State Department of Health shall be notified in writing about how and where medical records will be stored.

(d) The hospital shall maintain a written organizational chart for the medical record department that delineates lines of authority and responsibility in the department.

(e) There shall be a system of access to the medical records of all patients, including outpatients.

8:43G-15.2 Medical records policies and procedures; mandatory

(a) The medical record department shall have written policies and procedures that are reviewed annually, revised as needed, implemented, and followed. They shall include at least:

1. Procedures for record completion, including chart analysis; and
2. Conditions, procedures, and fees for releasing medical information.

(b) All entries in the patient's medical record shall be written legibly in ink, dated, and signed by the recording person or, if a computerized medical records system is used, authenticated.

(c) Medical records shall be organized in a uniform format within each clinical service.

(d) The inpatient's complete medical record shall include at least:

1. Written informed consents, if indicated;
2. A complete history and physical examination, including a provisional diagnosis made no earlier than seven days prior to admission or within 24 hours of admission, in accordance with medical staff policies on the components and timeliness of the history and physical. For obstetrics patients who are not undergoing a surgical procedure with anesthesia, a legible copy of the prenatal record,

updated at the time of admission, may substitute for the history and physical examination;

3. Clinical/progress notes;

4. For surgical patients, a preanesthesia note made by the anesthesiologist before administration of anesthesia;

5. For surgical patients, an anesthesia record by the anesthesiologist or certified registered nurse anesthetist;

6. For surgical patients, a postanesthesia note made early in the postoperative period and after release from the recovery room by the anesthesiologist. In cases of strictly regional anesthetic where no anesthesiologist is assigned to the case, no preanesthesia, anesthesia or postanesthesia notes by an anesthesiologist are required;

7. For surgical patients, an operative report;

8. A postanesthesia care unit record, if applicable;

9. Consultation reports, where applicable;

10. Physician orders for treatment and medication;

11. Medication record reflecting the drug given, date, time, dosage, route of administration, and signature and status of the person administering the drug. Initials may be used after the person's full signature appears at least once on each page of the medication record. Allergies shall be listed on the medication record;

12. A record of self-administered medications, if the patient self-administers, in accordance with the policies and procedures of the hospital's pharmacy and therapeutic committee, or its equivalent;

13. Reports of laboratory, radiological, and diagnostic services;

14. A discharge summary, which includes the reason for admission, findings, treatment, condition on discharge, discharge destination, instructions to the patient, follow-up plans, medication on discharge, final diagnosis, and, in the case of death, the events leading to death and the cause of death. For cases where the patient is discharged alive within 48 hours of admission and is not transferred to another facility, for normal newborns, and for uncomplicated deliveries, a discharge note may be substituted for the discharge summary. The discharge note includes at least the patient's condition on discharge, medications on discharge, and discharge instructions; and

15. A report of autopsy, if performed, with provisional anatomic diagnoses recorded in the medical record within three days. The complete protocol is included in the medical record within the time specified in hospital policies and procedures.

(e) If the patient is transferred to another health care facility (including a home health agency) on a nonemergency basis, the hospital shall maintain a transfer record reflecting the patient's immediate needs and send a copy of this record to the receiving facility at the time of transfer. The transfer record shall contain at least the following information:

1. Diagnoses;

2. Physician orders in effect at the time of discharge and the last time each medication was administered;

3. The patient's nursing needs; and

4. Hazardous behavioral problems.

(f) Medical records shall be completed within 30 days of discharge.

(g) Medical records shall be retained and preserved in accordance with N.J.S.A. 26:8-5 et seq.

(h) Original medical records of components of medical records shall not leave hospital premises unless they are under court order or subpoena or in order to safeguard the record in case of a physical plant emergency or natural disaster.

(i) Any consent form that the patient signs shall be printed in an understandable format and the text written in clear, legible, nontechnical language. In the case where someone other than the patient signs the forms, the reason for the patient's not signing it shall be indicated on the face of the form, along with the relationship of the signer to the patient.

(j) The patient's death shall be documented in the patient's medical record upon death.

(k) Recording errors in the medical record shall be corrected by drawing a single line through the incorrect entry. The date of correction and legible signature or initials of the person correcting the error shall be included.

8:43G-15.3 Medical record patient services; mandatory

(a) Health care practitioners who provide clinical services to the patient shall enter clinical/progress notes in the patient's medical record, when the services are rendered.

(b) Notes that provide a full and accurate description of the care provided to the patient shall be made in the medical record at the time clinical services are provided. Notes that provide a description and an evaluation of the patient's response to treatment shall be made in the medical record.

(c) The medical record shall either accompany the patient when he or she leaves the patient care unit for clinical services in other departments of the hospital or shall be retrievable by authorized personnel on a computerized system with a restricted access and entry system.

(d) If a patient requests a copy of his or her medical record, the request shall be in writing and shall be furnished, at a reasonable fee, to the patient within 30 days of request. In the event that direct access to a copy by the patient is medically contraindicated (as documented by a physician in the patient's medical record), the medical record shall be made available to a legally authorized representative of the patient or the patient's physician.

(e) The patient shall have the right to attach a brief comment or explanation concerning a correction or amendment to his or her medical record after completion of the medical record.

(f) Incidents, including patient injuries and mishaps, shall be fully documented in the patient's record.

8:43G-15.4 Medical records staff qualifications; mandatory

There shall be a full-time medical record director who is an accredited record technician or a registered record administrator under a certification program approved by the American Medical Records Association.

8:43G-15.5 Staff education; mandatory

(a) The medical records service shall develop, revise as necessary, and implement a written plan of staff education. The plan shall address the education needs, relevant to the service, of different categories of staff on all work shifts. The plan shall include education programs conducted in the service, in other areas of the hospital, and off-site.

(b) The plan shall include education programs that address at least the following:

1. Orientation of new staff to the hospital and to the service in which the individual will be employed, a tour of the hospital, a review of policies and procedures, and procedures to follow in case of an emergency. New staff shall include all permanent and temporary staff, and persons providing services by contract;

2. Use of new clinical procedures, new equipment, and new technologies, including use of computers;

3. Individual staff requests for education programs;

4. Supervisor judgements about education needs based on assessment of staff performance;

5. Statutory requirements for staff education on selected topics, such as management of victims of abuse; and

6. Areas identified by the hospital-wide quality assurance program as needing additional educational programs.

(c) Implementation of the plan shall include records of attendance for each program and composite records of participation for each staff member.

8:43G-15.6 Staff education; advisory

(a) The service should provide staff development programs that include education in management techniques.

(b) Education programs for the service should be coordinated by a designated staff member of the service who organizes programs with the hospital-wide staff educator.

(c) Each staff member should receive an individual, annual evaluation of his or her educational development.

(d) The service should provide opportunities for all staff to participate in interdisciplinary education programs.

(e) Education programs should include guest speakers and audiovisual aids.

8:43G-15.7 Medical record quality assurance methods; mandatory

(a) There shall be a quality assurance program for medical records that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) Quality assurance activities for the medical record department shall include monitoring medical records for accuracy, completeness, legibility, and accessibility.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards

Employee Health

Proposed New Rules: N.J.A.C. 8:43G-20

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health, with approval of the Health Care Administration Board.

Authority: N.J.S.A. 26:2H-1.

Proposal Number: PRN 1989-405.

Submit written comments by September 6, 1989 to:

Director
Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to employee health services in hospitals. Proposed new N.J.A.C. 8:43G-20 of the Hospital Licensing Standards, was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey was distributed to all hospitals as comprehensive draft hospital licensure standards in 31 areas, including employee health. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules contain the following major provisions:

N.J.A.C. 8:43G-20.2(b) would require that the employee health service maintain employee health records for each employee, and retain the records in the employee health office separate from personnel records. This provision recognizes the particular importance of monitoring the health of employees working in a hospital environment with potential risk of exposure to infectious diseases and job-related illnesses. By knowing an employee's immunization status and the existence of any condition that may predispose the employee to acquiring or transmitting infectious diseases, the hospital can protect the employee, fellow employees, and patients. This provision simultaneously recognizes the confidentiality of this information and requires that the employee's record be retained in the office of the employee health service separate from personnel records.

N.J.A.C. 8:43G-20.2(e) would require that all employees of the hospital, including members of the medical staff, be given a rubella screening test within six months of the effective date of the standards, unless the employee was able to document seropositivity from a previous rubella screening test, inoculation with rubella vaccine, or if medically contraindicated. This provision recognizes that all employees in hospitals may be at increased risk of exposure to certain vaccine-preventable diseases. An outbreak of rubella can be seriously disruptive to a hospital, its employees and patients.

Requiring all employees to be screened for rubella is an effective way to contain the potential of an outbreak. It also serves as a protectionary measure for female employees and patients of childbearing age, who would be at high risk if the outbreak occurred during the time the individual was pregnant.

The Department also supports other measures that hospitals can take to strengthen employee health services. These measures are proposed as advisory standards and include requiring documentation from volunteers of seropositivity from a rubella screening test or inoculation with rubella vaccine, and documentation from employees and medical staff of seropositivity from a measles screening test or inoculation with measles vaccine. Advisory standards will identify areas of strength and indicate excellence.

Social Impact

The surveillance and maintenance of the health and safety of all individuals working within hospitals is a widely recognized obligation of hospitals. Although employee health and safety should be a concern of all employers, it is of utmost importance in hospital environments where there is increased exposure to infectious disease hazards. The ability of a hospital to effectively protect its employees is a reflection of the employee health service and the infection control measures implemented.

While the proposed standards give the hospital wide flexibility in determining the activities of the employee health service, each hospital, at a minimum, is required to document the results of a medical examination for each employee, and assure screening of each employee for tuberculosis and rubella. In the event a hospital is confronted with an outbreak of any infectious disease or other similar health hazards, the employee health service should have the ability to immediately assist in instituting any measures necessary to protect the health and safety of the employees.

Economic Impact

Since hospitals already have employee health services that meet the major provisions of the proposed rules, substantial additional expenditures are not expected to be required. If the proposed rules necessitate expenditures on the part of some hospitals, the Department believes that the potential costs associated with an outbreak of an infectious disease, such as laboratory testing, forced paid sick time, replacement of affected staff members, and treatment costs would be considerably greater than the cost of implementing these proposed rules.

Regulatory Flexibility Statement

The proposed new rules would not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey that are regulated by N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected.

Full text of the proposal follows:

SUBCHAPTER 20. EMPLOYEE HEALTH

8:43G-20.1 Employee health policies and procedures; mandatory

(a) Employee health service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. These policies and procedures shall be readily available for employees to review and include at least the following:

1. The content and frequency of employee health examinations by a physician;

2. Timeframes for subsequent Mantoux tuberculin skin tests after the initial employment test;

3. Precautionary measures to prevent the transmission of communicable diseases from employees to patients; and

4. Timeframes specifying the length of absence due to a communicable disease that requires a physician note approving the employee's return to work.

8:43G-20.2 Employee health services; mandatory

(a) Each new employee shall receive an initial health evaluation, which includes at least a documented history and physical examination.

(b) Employee health records shall be maintained for each employee. Employee health records shall be confidential, and kept in the employee health office separate from personnel records.

(c) The employee health record shall include documentation of all tests performed and at least the following:

1. Documentation of seropositivity from a rubella test or inoculation with rubella vaccine; and

2. Documentation of Mantoux tuberculin skin test results, including transverse diameter of induration in millimeters, and follow-up test results and treatments, if any.

(d) Each new employee, including members of the medical staff, upon employment shall receive a Mantoux tuberculin skin test with five tuberculin units of purified protein derivative. The only exceptions are employees with documented negative Mantoux skin test results (zero to nine millimeters of induration) within the last year, employees with documented positive Mantoux skin test results (10 or more millimeters of induration), employees who received appropriate medical treatment for tuberculosis, or when medically contraindicated. Results of the Mantoux tuberculin skin tests administered to new employees shall be acted upon as follows:

1. If the Mantoux tuberculin skin test is not significant (between five and nine millimeters of induration) the test shall be repeated one to three weeks later.

2. If the Mantoux test is significant (10 millimeters or more of induration), a chest x-ray is performed and, if necessary, followed by chemoprophylaxis or therapy.

(e) Each employee, including members of the medical staff, shall be given a rubella screening test using the rubella hemagglutination inhibition test or other rubella screening test within six months of the effective date of this subchapter. The only exceptions are employees who can document seropositivity from a previous rubella screening test or who can document inoculation with rubella vaccine, or when medically contraindicated.

(f) The hospital shall comply with the testing and reporting requirements of the Department of Health's Division of Epidemiology for tuberculin and rubella tests and results, pursuant to N.J.A.C. 8:57. Information regarding testing and reporting can be obtained from:

New Jersey State Department of Health
Communicable Disease Control Services
CN 369
Trenton, NJ 08625-0369

(g) The hospital shall provide initial health care for employees who become ill or are injured while at work.

(h) Personnel who are absent from work because of any reportable communicable disease, infection, or exposure to infection, as defined in N.J.A.C. 8:57, shall be excluded from working in the hospital until they have been examined by a physician designated for this purpose and certified by the physician as no longer endangering the health of patients or employees.

(i) The hospital shall have a formal mechanism to identify and refer impaired employees to rehabilitation programs.

8:43G-20.3 Employee health services; advisory

(a) All employees and medical staff should provide documentation of seropositivity from a measles screening test or inoculation with measles vaccine.

(b) All volunteers should provide documentation of a rubella screening test or inoculation with rubella vaccine.

8:43G-20.4 Employee health education; mandatory

(a) The employee health service shall develop, revise as necessary, and implement a written plan of staff education. The plan shall address the education needs, relevant to employee health, of different categories of staff on all work shifts. The plan shall include education programs conducted in the service, in other areas of the hospital, and off-site.

(b) The plan shall include education programs that address at least the following:

1. Orientation of new staff to the hospital and to the service in which the individual will be employed, a tour of the hospital, a review of policies and procedures to follow in case of an emergency. New staff shall include all permanent and temporary staff, nurses retained through an outside agency, and persons providing services by contract;

2. Use of new clinical procedures, new equipment, and new technology, including use of computers;

3. Individual staff requests for staff education programs;

4. Supervisor judgements about education needs based on assessment of staff performance;

5. Statutory requirements for staff education on selected topics, such as management of victims of abuse; and

6. Areas identified by the hospital-wide quality assurance program as needing additional educational programs.

(c) Implementation of the plan shall include records of attendance for each program and composite records of participation for each staff member.

8:43G-20.5 Employee health education; advisory

(a) The service should provide staff development programs that include education in management techniques.

(b) Education programs for the service should be coordinated by a designated staff member of the service who organizes programs with the hospital-wide staff educator.

(c) Each staff member should receive an individual, annual evaluation of his or her educational development.

(d) The service should provide opportunities for all staff to participate in interdisciplinary education programs.

(e) Education programs should include guest speakers and audio visual aids.

8:43G-20.6 Employee health quality assurance methods; mandatory

There is a program of quality assurance for employee health that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify employee health problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards

Radiology

Proposed New Rules: N.J.A.C. 8:43G-28

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health, with approval of the Health Care Administration Board.

Authority: N.J.S.A. 26:2H-1.

Proposal Number: PRN 1989-406.

Submit comments by September 6, 1989, to:

Director
Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to the provision of radiology services in hospitals. Proposed new N.J.A.C. 8:43G-28 of the Hospital Licensing Standards was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey was distributed to all hospitals as comprehensive draft licensure standards in 31 areas, including radiology. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules contain the following major provisions:

N.J.A.C. 8:43G-28.2 would require that each hospital have written policies and procedures that include at least safety practices, the management of medical and other emergencies, reactions, and infection control. This provision would assure a level of protection for patients and staff from radiologic and medical hazards related to radiology.

N.J.A.C. 8:43G-28.7 would require all radiologists performing diagnostic radiology services to have successfully completed an approved

graduate medical education residency training program in radiology. Proposed N.J.A.C. 8:43G-28.14 would require all physicians who perform radiotherapy to have completed an approved residency training program in radiotherapy. These provisions would assure a high level of knowledge and clinical skill on the part of radiology service physicians.

N.J.A.C. 8:43G-28.10(a) through (f) would require supervision and interpretation of all radiologic procedures by radiologists, and would require the provision of diagnostic procedures and their interpretation in a timely manner. These provisions would assure that patients would have their diagnostic tests performed without undue delay and interpreted by qualified physicians.

N.J.A.C. 8:43G-28.12 would require that cardiopulmonary resuscitation technology, including at least a patient monitor and defibrillater, emergency drugs, and means of maintaining respiration, be available in the radiology service at all times. This provision would assure that a patient could be treated immediately and effectively if he or she had a cardiopulmonary emergency while in the radiology service.

N.J.A.C. 8:43G-28.15(a) through (f) would require minimum staffing levels in the radiotherapy service, such as one licensed radiotherapy technologist or radiotherapist assigned to each cobalt machine in use, two radiologic technologists assigned to each linear accelerator in use, and the availability to the unit of a registered professional nurse, a radiation physicist, and a social worker. These provisions would help assure that qualified physicians and technicians have responsibility for the safe operation of radiotherapy equipment, and that the assigned nurse and social worker provide direct patient care.

N.J.A.C. 8:43G-28.17 would require that a written plan of care be developed, that computerized planning be available, and that records of treatment be retained for longer than the presumed lifetime of the patient. This provision would assure that the patient's treatment is planned, documented, and accessible to health care providers both now and in the future should further treatment be required.

N.J.A.C. 8:43G-28.19(a) would require that a simulator be available for each linear accelerator in the radiotherapy unit. Simulation is a process which assists in accurately determining the location of radiotherapy treatment on a patient's body. The proposed rule would assure that patients would not be subject to undue delay in treatment due to the unavailability of a simulator.

The Department also supports other measures that hospitals can take to improve quality of care. These measures, which are proposed as advisory standards for radiology, include a requirement that all radiology staff be certified in cardiopulmonary resuscitation, a requirement that all facets of medical imaging should be part of a single imaging department, and permanent retention of radiotherapy records. Advisory standards will identify areas of strength and indicate excellence.

Social Impact

Diagnostic and radiotherapeutic radiology services are an important component of medical care for a broad range of patients. Technological and clinical advances in these areas have contributed to improved quality of care and possible remission of illness, increased longevity, and cure for many patients. In addition, a wide range of professional staff with specialized training furnishes direct care which contributes to the amelioration or cure of disease.

The primary social impact of the proposed rules is to assure that every patient who requires radiology procedures has access to services that are safe, timely, and effective. This will ensure quality of care for all radiology service patients.

Economic Impact

Since proposed new N.J.A.C. 8:43G-28 specifies the possible need for new equipment for simulation, some hospitals may incur additional costs. Under current rate-setting rules, hospitals would be reimbursed to accommodate substantial increases in expenditures necessitated by new licensure rules.

Regulatory Flexibility Statement

The proposed rules would not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey which are regulated by N.J.A.C. 8:43G-28 all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

SUBCHAPTER 28. RADIOLOGY

8:43G-28.1 Radiology structural organization; mandatory

Radiological services shall be provided on-site, unless the hospital has been designated by the Commissioner of Health as primarily rehabilitative in mission.

8:43G-28.2 Radiology policies and procedures; mandatory

(a) The radiology service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. These policies and procedures include at least:

1. Safety practices;
2. Emergencies;
3. Reactions;
4. Management of the critically ill patient; and
5. Infection control, including patients in isolation.

(b) The radiology service's policies and procedures manual shall be available to staff in the radiology unit.

(c) There shall be a written protocol for managing medical emergencies in the radiological suite. All radiological staff shall be familiar with this protocol and know their roles in the case of such an emergency.

8:43G-28.3 Radiology staff qualifications; advisory

All patient care staff, including physicians, registered professional nurses, and radiologic technologists, should be currently certified in cardiopulmonary resuscitation.

8:43G-28.4 Radiology patient services; advisory

If patients are not under visual supervision while they are waiting in the radiology department, there should be a means for patients to summon radiology staff.

8:43G-28.5 Radiology quality assurance methods; mandatory

There shall be a program of quality assurance for the radiology service that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

8:43G-28.6 Radiology quality assurance methods; advisory

Quality assurance for the radiology service should include monitoring patients' waiting time and patients' comfort while waiting.

8:43G-28.7 Diagnostic services staff qualifications; mandatory

All radiologists performing diagnostic radiology services in the hospital shall have successfully completed an approved graduate medical education residency training program in radiology.

8:43G-28.8 Diagnostic services staff time and availability; mandatory

(a) A radiologist who has completed a residency training program in radiology shall be able to arrive, and shall arrive, at the hospital within 60 minutes of being summoned, under normal transportation conditions.

(b) A registered professional nurse shall be available in the radiology service to be present at special radiologic diagnostic procedures when needed, in the physician's judgment, to administer medications and perform other tasks.

8:43G-28.9 Diagnostic services staff time and availability; advisory

(a) A currently licensed radiologic technologist should be present in the hospital at all times.

(b) A radiologist who has completed a residency program in radiology should be able to arrive, and should arrive, at the hospital within 30 minutes of being summoned, under normal transportation conditions.

8:43G-28.10 Diagnostic services patient services; mandatory

(a) Radiologists shall supervise and interpret all radiologic procedures.

(b) All radiologic tests shall be interpreted, on a preliminary basis, within 24 hours of the time that test results are available for interpretation.

(c) If provided by the hospital, computer tomography shall be available within one hour at all times, when deemed appropriate in the judgement of the radiologist, unless the machinery is temporarily disabled or in use.

(d) If provided by the hospital in obstetrics, ultrasound shall be available within one hour at all times, unless the machinery is temporarily disabled or in use.

(e) If provided by the hospital, nuclear medicine shall be available within one hour at all times, unless the machinery is temporarily disabled or in use, or unless the needed pharmaceutical product is unavailable.

(f) If provided by the hospital, special procedures such as angiography and interventional procedures shall be available within one hour at all times, when deemed appropriate in the judgement of the radiologist, unless the machinery is temporarily disabled or in use.

(g) The radiology staff shall ensure that patients waiting for radiology services or transport from radiology are comfortable while waiting and that the service responsible for transporting the patient back to the unit is notified when the patient is ready to be returned.

(h) Fluoroscopy with image intensification and a general radiographic room, and a mobile x-ray unit, shall be available.

8:43G-28.11 Diagnostic services patient services; advisory

(a) All facets of medical imaging should be part of a single imaging department, including: nuclear medicine equipment, ultrasound equipment, diagnostic radiology, computer tomography, and magnetic resonance imaging.

(b) All radiologic tests and test results should be entered into the patient's medical record within 48 hours of the test's completion.

8:43G-28.12 Diagnostic services supplies and equipment; mandatory

(a) Cardiopulmonary resuscitation technology shall be available to radiology services on all shifts, except in facilities not using intravenous contrast agents or other invasive procedures. This technology shall include at least:

1. A patient monitor and defibrillator;
2. Emergency drugs; and
3. Means of maintaining respiration.

8:43G-28.13 Diagnostic services quality assurance methods; mandatory

Quality assurance for the radiology service shall include monitoring of the time it takes for test results to be entered into the patient's medical record.

8:43G-28.14 Radiotherapy services staff qualifications; mandatory

(a) All physicians performing radiotherapy services in the hospital shall have successfully completed an approved residency training program in radiotherapy.

(b) All radiotherapy technologists in the radiotherapy service shall be licensed.

8:43G-28.15 Radiotherapy services staff time and availability; mandatory

(a) A radiotherapist shall be able to arrive and shall arrive at the hospital within 60 minutes of being summoned under normal transportation circumstances.

(b) There shall be at least one licensed radiotherapy technologist or radiotherapist assigned to each cobalt machine when it is in use.

(c) There shall be at least two radiologic technologists assigned to each linear accelerator when it is in use. A radiotherapist may act as a substitute for one of the two radiologic technologists.

(d) A radiation physicist shall be available to the radiotherapy service on a full- or part-time basis.

(e) A registered professional nurse shall be assigned on a full- or part-time basis to the radiotherapy unit.

(f) A social worker who holds a bachelors or masters degree in social work shall be available on a full- or part-time basis to the radiotherapy unit to meet the psychosocial needs of radiotherapy patients and families.

8:43G-28.16 Radiotherapy services staff time and availability; advisory

(a) A radiotherapist and a licensed radiotherapy technologist shall be able to arrive and shall arrive at the hospital within 60 minutes of being summoned under normal transportation circumstances.

(b) There should be two licensed radiotherapy technologists assigned to each cobalt machine in use.

(c) There should be assigned the equivalent of at least one full-time technologist to every simulator in use.

8:43G-28.17 Radiotherapy services patient services; mandatory

(a) A written plan or care shall be developed upon initiation of treatment for each radiotherapy patient.

(b) Individual patient records of radiotherapy treatments shall be maintained by the radiology service for at least two years after the death of the patient. If no date of death is known, records shall be maintained at least until the patient would have attained the age of 90 years, or for five years, whichever is later.

(c) Computerized treatment planning for radiotherapy shall be available either on-site or by arrangement with another provider of services.

8:43G-28.18 Radiotherapy services patient services; advisory

(a) All radiotherapy treatments should be summarized in a written report delivered to the patient's nursing unit or attending or primary-care physician within one week of the completion of management of the case.

(b) Individual patient records of radiotherapy treatments should be maintained permanently.

8:43G-28.19 Radiotherapy services supplies and equipment; mandatory

(a) Each radiotherapy unit that has a linear accelerator shall have at least one simulator.

(b) Emergency drugs shall be immediately available to the radiotherapy service.

8:43G-28.20 Radiotherapy services quality assurance methods; mandatory

(a) A quality assurance program shall be developed in which each patient's record is reviewed at least once each week according to a plan developed by a radiation physicist. The review shall be conducted by a physicist, chief technologist, or dosimetrist.

(b) The quality assurance program for radiotherapy shall include periodic review of all cases under treatment and at least one verification film every three weeks for each patient under treatment. The program shall include follow-up review of all cases.

8:43G-28.21 Staff education; mandatory

(a) The radiology service shall develop, revise as necessary, and implement a written plan of staff education. The plan shall address the education needs, relevant to the service, of different categories of staff on all work shifts. The plan shall include education programs conducted in the service, in other areas of the hospital, and off-site.

(b) The plan shall include education programs that address at least the following:

1. Orientation of new staff to the hospital and to the service in which the individual will be employed, a tour of the hospital, a review of policies and procedures, and procedures to follow in case of an emergency. New staff shall include all permanent and temporary staff, nurses retained through an outside agency, and persons providing services by contract;
2. Use of new clinical procedures, new equipment, and new technologies, including use of computers;
3. Individual staff requests for education programs;
4. Supervisor judgements about education needs based on assessment of staff performance;
5. Statutory requirements for staff education on selected topics such as management of victims of abuse; and
6. Areas identified by the hospital-wide quality assurance program as needing additional educational programs.

(c) Implementation of the plan shall include records of attendance for each program and composite records of participation for each staff member.

8:43G-28.22 Staff education; advisory

(a) The service should provide staff development programs that include education in management techniques.

(b) Education programs for the service should be coordinated by a designated staff member of the service who organizes programs with the hospital-wide staff educator.

(c) Each staff member should receive an individual, annual evaluation of his or her educational development.

(d) The service should provide opportunities for all staff to participate in interdisciplinary education programs.

(e) Education programs should include guest speakers and audiovisual aids.

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards
Same Day Stay; Surgery
Proposed New Rules: N.J.A.C. 8:43G-32 and 34

Authorized by: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health, with approval of the Health Care Administration Board.

Authority: N.J.S.A. 26:2H-1.

Proposal Number: PRN 1989-408.

Submit comments by September 6, 1989, to:

Director
Licensure Reform Project
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The Department of Health is proposing new rules to assure patient safety and quality of care, related to same-day stay and surgery services in hospitals. Proposed new N.J.A.C. 8:43G-32 and 34 of the Hospital Licensing Standards were developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey was distributed to every hospital as comprehensive draft hospital licensure standards in 31 areas, including same day care and surgery services. The standards were formatted as a survey so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory.

Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed new rules present a clear, comprehensive, and effective set of rules for same day stay and surgery services and contain the following major provisions:

N.J.A.C. 8:43G-32.2(a)4 would require specification of same day surgical procedures that require a registered professional nurse in attendance as a circulating nurse. N.J.A.C. 8:43G-35.5(a) would require that a registered professional nurse be assigned to circulating nurse duties in each room where surgery is being performed. This provision recognizes the importance of having a registered professional nurse present in the operating suite to assist the anesthesiologist or surgeon if complications occur during a procedure. This provision reflects industry-wide practices and is vital to protecting the health and safety of patients undergoing surgery.

N.J.A.C. 8:43G-32.4(h) would require that the same-day medical record of any patient admitted to the hospital as an in-patient contain a statement giving the reason for admission. This provision recognizes the need for a patient's medical record to accurately reflect the condition and disposition of that patient. Omission of documentation has the potential to adversely affect continuity and quality of care. Additionally, this information would allow for the evaluation of the appropriate use of same-day services.

N.J.A.C. 8:43G-32.4(i) would require the same-day surgery service to have a policy that a patient who receives anesthesia does not drive home after discharge and that the patient is accompanied home by another person. If this is not the case, the circumstances shall be documented in the patient's medical record. This provision protects the health and safety of all patients receiving anesthesia, and assures that patients are made clearly aware of the danger they may place themselves in if they attempt to leave the hospital unaccompanied or drive themselves home.

N.J.A.C. 8:43G-34.4(c) would require that each surgical suite have available a roster of physicians with delineation of current surgical privileges, including those with temporary privileges. This provision would assure that the person in charge of the surgical suite has access to documentation that accurately reflects surgical privileges for all practitioners as determined by the governing body of the medical staff. This would help ensure that patient health and safety is protected.

N.J.A.C. 8:43G-34.6(e)1 would require the patient's medical record to contain a written informed consent, including identification of the physician(s) who will be performing the surgical procedure, for all procedures identified in the hospital policy as requiring informed consent. This provision recognizes the right of every patient to know who will be performing the surgical procedure and to receive full and knowing disclosure of the procedure they are about to undergo, and any potential side effects. Additionally, this provision would assure patients are made aware of the availability of any alternative treatments.

N.J.A.C. 8:43G-34.6(f) would require that the surgical suite nursing staff make a perioperative note or notes for each surgical patient, which is part of the medical record and follows the patient to the patient care unit. The note would describe nursing care and patient reactions while in the operating suite. This provision recognizes the importance of documentation to ensure continuity of patient care. The documentation reflects patient assessment and care provided and provides the information needed to further plan and implement sound nursing care practices.

N.J.A.C. 8:43G-34.6(j) would require the medical record of the surgical patient to be available to surgical suite personnel prior to surgery and contain documentation of perioperative patient education conducted prior to elective surgery. This provision acknowledges the currently held belief that the patient is an important member of the health care delivery team. Patient education helps achieve the patient's full cooperation in implementing diagnostic and therapeutic treatments, and helps minimize any fears the patient may be experiencing about his or her medical condition.

The Department also supports other measures that hospitals can take to improve safety and quality of care. These measures, which were proposed as advisory standards in the Statewide written opinion survey noted above, include a system for social-work referral services for same-day medical and surgical patients, a follow-up telephone call within 48 hours after a patient is discharged from the same-day surgery service to determine how the patient's recovery is progressing and to answer or channel any questions, and segregating pediatric patients from adult patients during the preoperative and postoperative phases of same-day surgery. Advisory standards will identify areas of strength and indicate excellence.

Social Impact

Providing surgery services is a vital function of hospitals. As new procedures and techniques develop rapidly, the body of clinical knowledge needed to implement these procedures expands. These new standards acknowledge the correlation between skilled surgical staff working as a smoothly functioning team and positive patient outcomes.

The advent of new surgical techniques and procedures has led to the ability to perform an increasing number of surgical services on an outpatient basis. In this same-day stay setting, as in all surgery, it is important to have trained and skilled staff delivering the services. Research indicates that the trend towards increasing use of same-day services will continue with positive benefits. The ability to provide, when appropriate, same-day surgery and medical services, represents a significant cost-savings for both the hospital and patient. Additionally, since same-day services minimize the need for hospitalization, apprehension on the part of the patient is lessened and recovery is generally hastened.

Economic Impact

There are no additional expenditures expected to result from the proposed new rules. Surgery and same-day services are currently meeting the major requirements of the proposed new rules.

Regulatory Flexibility Statement

The proposed rules would not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey that are regulated by the N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

SUBCHAPTER 32 SAME-DAY STAY

8:43G-32.1 Scope

The standards set forth in this subchapter apply only to hospitals that have a separate, designated unit or service for same-day stay.

8:43G-32.2 Same-day surgery services structural organization; mandatory

(a) There shall be an organizational chart or alternative documentation clearly delineating the lines of responsibility, authority, and communication for the same-day surgery service and, if the same-day medical service is a separate entity, the lines of communication between the two services.

(b) The same-day surgery service shall be represented on a multidisciplinary committee responsible for approving policies and procedures and evaluating and reviewing the activities of the same-day surgery service.

8:43G-32.3 Same-day surgery services policies and procedures; mandatory

(a) The same-day surgery service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. Infection control practices;
2. Criteria for the types of patients who may be admitted for same-day surgery;
3. Categories of surgical procedures that may be performed on a same-day basis;
4. Specification of surgical procedures that require a registered professional nurse in attendance as a circulating nurse;
5. When, where, and by whom preadmission testing may be performed;
6. Minimum requirements for preadmission testing for all types of anesthesia;
7. A system for securing the belongings and valuables of the patient; and
8. Criteria and procedures for discharging a patient, which includes nursing assessments of self-care capability and who is responsible for discharging the patient.

(b) The policies and procedures for the postanesthesia care unit shall apply to same-day surgery service.

8:43G-32.4 Same-day surgery services staff qualifications; mandatory

(a) There shall be a physician director who has clinical responsibility for the same-day surgery service who is board certified. Certification shall be by a board of the American Board of Medical Specialists. This may be the same person who is the physician director of the surgical service.

(b) If there is a postanesthesia care unit, or postoperative unit dedicated to same-day surgery patients, there shall be a registered professional nurse present whenever a patient is in the unit. Additional nursing staff shall be assigned based on the volume and case mix of patients in the unit.

(c) All registered professional nurses in the postanesthesia care unit or postoperative unit dedicated to same-day surgery patients shall have training in basic cardiac life support.

8:43G-32.5 Same-day surgery services patient services; mandatory

(a) A physician shall perform a comprehensive history and physical examination on the patient if the procedure is to be performed by a dentist or podiatrist.

(b) When anesthesia other than local is to be used, the anesthesiologist shall perform a preoperative anesthesia assessment and develop an anesthesia plan that he or she discusses with the patient. Documentation of the plan shall be included in the patient's medical record.

(c) There shall be documentation of perioperative patient education.

(d) There shall be a system to ensure checking of each patient's preoperative record for completeness before the procedure begins.

(e) Physician orders, specific for each patient, shall govern the postoperative care of each patient.

(f) After the surgical procedure and before discharge, the patient and/or significant other shall receive written instructions on self-care, follow-up, signs and symptoms to be reported to the surgeon, and how to report signs and symptoms. These instructions shall be orally explained.

(g) The medical record for same-day surgery patients shall include at least:

1. The patient's written informed consent;
2. A preoperative note by the physician, dentist, or podiatrist, which includes the surgical plan;
3. A preoperative anesthesia note by the anesthesiologist, if applicable;
4. Documentation of the history and physical examination;
5. A preoperative nursing assessment;
6. Any physician orders;
7. The surgeon's postoperative note on the procedure, including any occurrence during the procedure that was out of the ordinary;
8. The surgeon's discharge note, written prior to discharge from the hospital, which describes the disposition of the patient and discharge instructions; and
9. Nurses' notes that describe the patient's postoperative progress.

(h) When a same-day surgery patient is admitted to the hospital as an in-patient, a statement shall be made in his or her same-day medical record giving the reason for admission.

(i) The same-day surgery service shall have a policy that patients who receive anesthesia do not drive themselves home after discharge and that the patient is accompanied home by another person. If this is not the case, the circumstances shall be documented in the patient's medical record.

8:43G-32.6 Same-day surgery services patient services; advisory

(a) There should be a system in place for providing social-work referral services to same-day surgery patients.

(b) The hospital should have in effect a policy that assures that within 48 hours after discharge each patient or the patient's home is called by telephone by a designated individual to determine how the patient's recovery is progressing and to answer or channel questions about self-care and follow-up.

(c) The hospital should provide transportation service for same-day surgery patients who are not accompanied home by another person.

8:43G-32.7 Same-day surgery services space and environment; mandatory

(a) If same-day surgery is performed in a suite dedicated to same-day patients, the suite shall be maintained as a closed unit. Access to the restricted zone of the surgical suite shall be through or past a control center.

(b) There shall be a means to summon immediate emergency response for medical emergencies in the same-day surgery suite.

(c) Patients shall be afforded visual privacy while in the same-day surgery suite.

(d) There shall be a waiting area for families and significant others of patients undergoing same-day surgery.

8:43G-32.8 Same-day surgery services space and environment; advisory

(a) There should be a separate area or room for confidential conferences with same-day surgery patients and families.

(b) Pediatric patients should be segregated from adult patients during the preoperative and postoperative phases of same-day surgery.

8:43G-32.9 Same-day surgery service quality assurance methods; mandatory

(a) There shall be a program of quality assurance for same-day surgery that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data. Quality assurance shall include monitoring at least:

1. Complications;
2. Inpatient admissions from the same-day surgery service;
3. Related admissions subsequent to discharge from same-day surgery;
4. Incidents; and
5. Medical emergencies.

(b) The infection control program shall monitor infection control practices for same-day surgery patients.

(c) The same-day surgery service shall maintain a daily record of the surgical procedures performed.

8:43G-32.10 Same-day medical services standards; scope

The standards set forth in N.J.A.C. 8:43G-32.11 through 32.20 apply only to hospitals that have a separate, designated unit or service for medical same-day stay.

8:43G-32.11 Same-day medical services structural organization; mandatory

There shall be an organizational chart or alternative documentation clearly delineating the lines of responsibility, authority, and communication for the same-day medical service and, if the same-day surgery service is a separate entity, the lines of communication between the two services.

8:43G-32.12 Same-day medical services policies and procedures; mandatory

(a) The same-day medical service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. Infection control practices;
2. Criteria for the types of patients who may be admitted for same-day medical services;
3. Categories of procedures and treatments that may be performed on a same-day basis;
4. A system for handling medical and non-medical emergencies;
5. A system for securing the belongings and valuables of patients; and
6. Criteria and procedures for discharging a patient.

(b) When a same-day medical patient is admitted to the hospital as an inpatient, a statement shall be made in his or her medical day care record giving the reason for admission.

8:43G-32.13 Same-day medical services staff time and availability; mandatory

Same-day medical patients shall receive nursing care based on their acuity.

8:43G-32.14 Same-day medical services patient services; mandatory

(a) There shall be a medical record for each patient admitted for same-day medical care. This record shall include, at least, documentation of a history and physical examination, all treatments and the patient's response to treatments rendered.

(b) There shall be physician orders, specific for each patient, that govern the care of each same-day medical service patient.

8:43G-32.15 Same-day medical services patient services; advisory

There should be a system in place for providing social-work referral services to same-day medical patients.

8:43G-32.16 Same-day medical services space and environment; mandatory

(a) There shall be a means to summon immediate emergency response for medical emergencies in the same-day medical suite.

(b) Patients shall be afforded visual privacy while in the same-day medical suite.

(c) There shall be waiting areas for families and significant others of patients undergoing same-day medical procedures.

8:43G-32.17 Same-day medical services space and environment; advisory

There should be a separate area or room for confidential conferences with same-day medical patients and families.

8:43G-32.18 Same-day services education; mandatory

(a) The surgery and medical services shall develop, revise as necessary, and implement a written plan of staff education. The plan shall address the education needs, relevant to the service, of different categories of staff on all work shifts. The plan shall include education programs conducted in the service, in other areas of the hospital, and off-site.

(b) The plan shall include education programs that address at least the following:

1. Orientation of new staff, including orientation to the hospital and to the service in which the individual will be employed, a tour of the hospital, a review of policies and procedures, and procedures to follow in case of an emergency. New staff shall include all permanent and temporary staff, nurses retained through an outside agency, and persons providing services by contract;
2. Use of new clinical procedures, new equipment, and new technologies, including use of computers;
3. Individual staff requests for education programs;
4. Supervisor judgements about education needs based on assessment of staff performance;
5. Statutory requirements for staff education on selected topics, such as management of victims of abuse; and
6. Areas identified by the hospital-wide quality assurance program as needing additional educational programs.

(c) Implementation of the plan shall include records of attendance for each program and composite records of participation for each staff member.

8:43G-32.19 Same-day services staff education; advisory

(a) The service should provide staff development programs that include education in management techniques.

(b) Education programs for the service should be coordinated by a designated staff member of the service who organizes programs with the hospital-wide staff educator.

(c) Each staff member should receive an individual, annual evaluation of their educational development.

(d) The service should provide opportunities for all staff to participate in interdisciplinary education programs.

(e) Education programs should include guest speakers and audio visual aids.

8:43G-32.20 Same-day medical services quality assurance methods; mandatory

(a) There shall be a program of quality assurance for the same-day medical service that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) The infection control program shall monitor infection control practices and outcomes for same-day medical patients. If same-day medical patients are treated on inpatient units, the infection control program for those units shall fulfill this requirement.

(c) The same-day medical service shall maintain a daily record of the treatments or procedures performed for each patient.

SUBCHAPTER 34. SURGERY

8:43G-34.1 Surgery structural organization; mandatory

There shall be an organizational chart, or alternative documentation that delineates the lines of authority, responsibility, and accountability of staff in surgery services.

8:43G-34.2 Surgery structural organization; advisory

Surgery services nurses should hold meetings at least 10 times a year to address issues and problems related to clinical and management aspects of surgical care. Minutes of the meetings should be maintained.

8:43G-34.3 Surgery policies and procedures; mandatory

(a) Surgery services shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. Aseptic practices;
2. Infection control policies for the surgical suite, including attire;
3. Processing, packaging, and sterilization of materials in the suite; and
4. Special procedures for handling of trash from the surgical suite.

(b) The postanesthesia care unit shall maintain its own specific policies and procedures. Where applicable, these policies and procedures shall be integrated with the policies and procedures of the surgical suite.

(c) A policies and procedures manual governing the overall functions and responsibilities of the surgical suite shall be available to surgical suite staff whenever the suite is open.

(d) There shall be a written procedure established for the handling of soiled laundry, which includes bagging and covering soiled laundry at the site of use before transport to the soiled holding area and removing soiled laundry from each operating room following every procedure.

8:43G-34.4 Surgery staff qualifications; mandatory

(a) There shall be a physician director who has clinical responsibility for the surgical service who is board certified. Certification shall be by a board of the American Board of Medical Specialists.

(b) There shall be a person with administrative responsibility for the surgical service.

(c) Each surgical suite shall have available a roster of physicians with delineation of current surgical privileges, including those with temporary privileges.

(d) The hospital shall maintain a list of surgical procedures that require the presence of a physician to act as first assistant.

(e) There shall be documented evidence of pediatric medical staff input and advice to the surgery service on an annual basis.

8:43G-34.5 Surgery staff time and availability; mandatory

(a) A registered professional nurse shall be assigned to circulating nurse duties in each room where surgery is being performed.

(b) All registered professional nurses in the unit shall have training in basic cardiac life support.

(c) During scheduled hours of operation, personnel who have received special training in cleaning the surgical suite shall be assigned to the surgical suite for cleaning and related duties.

8:43G-34.6 Surgery patient services; mandatory

(a) There shall be a system to verify patient identification prior to any surgical procedure.

(b) There shall be a system to ensure that surgical patients' personal effects are secured during surgery.

(c) The surgery services staff shall take precautions to prevent patient falls and injuries during transportation, transfer, and positioning through the use of side rails or restraint straps, and control devices on stretchers and operating tables.

(d) The patient's privacy shall be respected at all times.

(e) Each surgical patient shall have a medical record in accordance with the medical records policies of the hospital. The medical record shall be available to surgical suite personnel prior to surgery and shall include at least:

1. A written informed consent signed by the patient that includes identification of the physician(s) performing the procedure prior to all procedures that are identified in the hospital policy as requiring informed consent;
2. A completed preoperative checklist;
3. A medical history and the results of a physical examination; and
4. A preanesthesia note reflecting evaluation of the patient and review of the patient record prior to administration of anesthesia by the anesthesiologist, except in cases of strictly regional anesthetic where no anesthesiologist is assigned to the case.

(f) The surgical suite nursing staff shall make a perioperative note or notes for each surgical patient, which is part of the medical record and follows the patient to the patient care unit. The note shall describe nursing care and patient reactions while in the operating suite.

(g) Operative reports shall be dictated or written in the medical record immediately after surgery.

(h) The completed operative report shall be reviewed for accuracy, signed and dated by the surgeon and filed in the medical record as soon as possible after surgery.

(i) There shall be a system in place for obtaining frozen section results on a timely basis.

(j) There shall be documentation of perioperative patient education conducted prior to elective surgery.

8:43G-34.7 Surgery space and environment; mandatory

(a) The surgical suite shall be maintained as a closed unit. Access to the restricted zone of the surgical suite shall be through or past a control center.

(b) All staff in the surgical suite shall be attired in scrub attire. Individuals permitted limited access may wear cover gowns or jumpsuits as substitutes.

(c) Trash shall be collected in closed containers in each operating room before transport to the soiled holding area. All trash shall be removed from each operating room after each patient is discharged from the operating room.

8:43G-34.8 Surgery supplies and equipment; mandatory

(a) The emergency equipment in the surgical suite shall include at least an emergency communication system that connects each operating room and postanesthesia care unit with the control center of the suite, a cardiac monitor, a resuscitator, an ambu bag, a defibrillator, a suction set, a thoracotomy set and a tracheostomy set or endotracheal tubes. This equipment shall be available in sizes adaptable to newborns, infants, and children. There shall be a mechanism for testing the emergency equipment on a regular basis and documenting that it is in working condition.

(b) There shall be a system to ensure that sterile supplies are immediately available. This system shall include rotation and inventory of packaged items; evaluation of the integrity of drapes, gowns and sterile supplies; and periodic review of policies and procedures for processing, packaging, and sterilization of materials.

(c) All used surgical suite linens and apparel shall be laundered daily by the hospital laundry service. Employees shall not take these materials home to wash them.

(d) All surgical suite equipment and supplies shall be maintained in a clean condition, without tears or tape.

(e) Staff who have been handling soiled linens or supplies shall wash their hands properly before handling clean linen and supplies.

(f) Clean linen shall be stored separately from soiled laundry in the surgical suite.

8:43G-34.9 Surgery staff education; mandatory

(a) The surgery service shall develop, revise as necessary, and implement a written plan of staff education. The plan shall address the education needs, relevant to the service, of different categories of staff on all work shifts. The plan shall include education programs conducted in the service, in other areas of the hospital, and off-site.

(b) The plan shall include education programs that address at least the following:

1. Orientation of new staff, including surgeons, to the hospital and to the service in which the individual will be employed, a tour of the hospital, a review of policies and procedures, and procedures to follow in case of an emergency. New staff shall include all permanent and temporary staff, nurses retained through an outside agency, and persons providing services by contract;
2. Use of new clinical procedures, new equipment, and new technologies, including use of computers;
3. Individual staff requests for education programs;
4. Supervisor judgements about education needs based on assessment of staff performance and;
5. Statutory requirements for staff education on selected topics such as management of victims of abuse; and
6. Areas identified by the hospital-wide quality assurance program as needing additional educational programs.

(c) Implementation of the plan shall include records of attendance for each program and composite records of participation for each staff member.

8:43G-34.10 Surgery staff education; advisory

(a) The surgery service should provide staff development programs that include education in management techniques.

(b) Education programs for the service should be coordinated by a designated staff member of the service who organizes programs with the hospital-wide staff educator.

(c) Each staff member should receive an individual, annual evaluation of their educational development.

(d) The service should provide opportunities for all staff to participate in interdisciplinary education programs.

(e) Education programs should include guest speakers and audio visual aids.

8:43G-34.11 Surgery quality assurance methods; mandatory

(a) There shall be a complete and current record of all surgical procedures.

(b) There shall be a program of quality assurance for the surgical suite that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

8:43G-34.12 Surgery quality assurance methods; advisory

Documentation of surgical procedures should be organized into a computerized data base in such a format that allows analysis for quality assurance purposes.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Annual Publication of Insurer Profitability Information

Proposed New Rules: N.J.A.C. 11:1-26

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6, 17:1-8 and 17:1-8.1.

Proposal Number: PRN 1989-411.

Submit comments by September 6, 1989, to:

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

The agency proposal follows:

Summary

These proposed rules provide for the annual compilation and publication by the Department of Insurance ("Department") of information regarding the profitability of insurers doing business in New Jersey. It would make summary information available to the public, government officials and those in the insurance business. The publication of relevant information is deemed essential to the existence of an informed and competitive marketplace.

Most information currently published and generally available is based upon countrywide data, and thus of limited usefulness in assessing the performance of the New Jersey insurance market. Conversely, the annual financial reports filed with the Department are company specific and not formatted so as to provide useful information about insurers' performance in the market as a whole. These rules are intended to bridge the gap by providing for the annual publication of summary data on insurer profitability by line of insurance and kind of company, together with comparison data and displayed a format that promotes understanding of the New Jersey insurance market.

A summary of the proposed new rules follows:

Proposed N.J.A.C. 11:1-26.1 sets forth the purpose and scope of the subchapter.

Proposed N.J.A.C. 11:1-26.2 contains definitions of commonly used terms.

Proposed N.J.A.C. 11:1-26.3 provides for the annual compilation and publication of insurer profitability information, as well as necessary administrative provisions.

Proposed N.J.A.C. 11:1-26.4 provides authority for Orders of the Commissioner directing insurers to provide data necessary to compile and publish the information, and further provides for penalties for failure to comply with such Orders.

Social Impact

These proposed rules are expected to have a positive social impact in that they provide for compilation and publication of insurer profitability information in order to promote better understanding of the insurance market in New Jersey. Publication should further assist consumers in making selections among insurers.

Economic Impact

These proposed rules will have an economic impact on the Department in that they require annual compilation and publication of a report which shall require additional personnel resources. The Department believes, however, that the cost is far outweighed by the benefits of publishing this information. Furthermore, the proposed rules authorize the Department to charge a reasonable fee for a copy of the report, based upon the costs of production and publication, which should offset some of the costs.

These proposed rules may also have an economic impact upon insurers, who may from time to time be required by Order of the Commissioner to provide data necessary to supplement data available through published sources or filed with the Department in connection with other statutory or regulatory requirements. Any cost should, however, be minimal as the data is already collected and maintained.

Regulatory Flexibility Analysis

These proposed rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" are insurance companies authorized to conduct business in New Jersey. Although the proposed rules do not directly impose any reporting, recordkeeping or regulatory requirements on small business, they do authorize the Commissioner to direct by Order that certain information be submitted.

It is anticipated, however, that any Order so issued will simply direct the insurer to provide current data that is already being collected and maintained in accordance with approved statistical plans. No professional services or other expenses will be required. Furthermore, the proposed rules attempt to minimize the impact on small businesses by authorizing an exemption to insurers whose market share is so small that the information, if supplied, would be of negligible value.

Adverse economic impact on small business has been minimized as set forth above consistent with the necessity to compile and publish accurate information.

Full text of the proposed new rules follows:

SUBCHAPTER 26. ANNUAL PUBLICATION OF INSURER PROFITABILITY INFORMATION

11:1-26.1 Purpose and scope

(a) This subchapter authorizes and directs the Department to compile and publish annually summary data on the profitability of insurers authorized to do business in New Jersey.

(b) This subchapter further authorizes the Commissioner to issue Orders directing insurers to submit data necessary to supplement or update information otherwise available that is necessary to prepare the annual report on insurer profitability.

11:1-26.2 Definitions

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

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

"Department" means the New Jersey Department of Insurance.

"Insurer" means any person, firm, association, corporation or partnership by the Commissioner to conduct the business of property-casualty insurance in New Jersey.

"NAIC" means the National Association of Insurance Commissioners.

"Total rate of return" means underwriting return and investment return on both reserves plus capital and surplus, related as a percentage to capital and surplus.

11:1-26.3 Annual report of insurer profitability

(a) The Department shall compile and publish annually a report on the profitability of insurers conducting business in New Jersey. The report shall be published within 60 days of the Department's receipt of annual profitability reports issued by the NAIC, but not later than September 15th of each year.

(b) The report shall contain aggregated or summary information that may be derived from reports issued by the NAIC, other recognized publishers of financial information, data on file with the Department, and data supplied as required from insurers pursuant to N.J.A.C. 11:1-26.4.

(c) The report shall be formatted so as to provide information on insurer profitability, including total rate of return, in a manner understandable to the public, and may include summary data by line of insurance, or by kind of insurer. It may further include such comparisons with data from prior years, with countrywide data, or with data of other states as may be desirable.

(d) The report shall be prepared in a manner so as to prevent the unauthorized disclosure of any privileged information on file with the Department pursuant to N.J.S.A. 17:23-6.

(e) The Department shall deliver a copy of the report to the Governor, the Senate President and the Assembly Speaker, and shall further make available copies for members of the general public upon request.

1. The Department may condition delivery of a copy of the report to a person requesting it upon payment of a reasonable fee pursuant to N.J.S.A. 17:1-8.

2. The amount of the fee shall be determined each year based upon the costs of producing the report, including costs of compilation, publication and distribution.

11:1-26.4 Orders to obtain information; penalties

(a) The Commissioner may from time to time issue Orders directing insurers to provide information to supplement or update information generally available or filed with the Department which is reasonably necessary to prepare the annual report of insurer profitability.

(b) The terms of any Order issued in accordance with (a) above shall allow the insurer at least 30 days from date of mailing to respond.

(c) A copy of any Order issued pursuant to (a) above shall be mailed to all insurers required to respond at their mailing address currently on file with the Department in accordance with N.J.A.C. 11:1-25.

(d) The terms of any Order issued pursuant to (a) above may exempt from compliance any insurer whose market share is so small as to render any information derived of negligible value.

(e) The terms of any Order issued pursuant to (a) above may provide that penalties as provided by law may be imposed upon insurers which fail to respond within the time provided by the Order, or which fail to provide accurate information.

(a)

DIVISION OF ADMINISTRATION

Rate Filing Requirements: Voluntary Market Private Passenger Automobile Insurance

Reproposed New Rules: N.J.A.C. 11:3-16

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:29A-1 et seq.; P.L. 1988, c.119, Section 9 (enacted September 8, 1988); P.L. 1988, c.156, Section 5 (enacted November 14, 1988).

Proposal Number: PRN 1989-416.

Submit comments by September 6, 1989 to:

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

The agency proposal follows:

Summary

Section 8 of P.L. 1988, c.119 (N.J.S.A. 17:29A-36.2) requires the Commissioner of the Department of Insurance to promulgate rules for private passenger automobile insurance that establish a standard format for rate filing data; a standard ratemaking methodology; uniform standards or ratemaking methodologies, data compilation and date submission; standards of efficiency and other standards of measure to be utilized in the review and evaluation of the loss, expense and financial data contained in rate filings; and the format, data specifications and other requirement for informational filings. These reproposed rules will implement the new law.

Proposed rules were previously published on March 6, 1989 at 21 N.J.R. 611(a). As a result of the comments received, and the Department's own internal and continuing review, the Department has developed these reproposed rules that incorporate significant changes. In reproposing these rules, it is appropriate that the Department address the written comments received from the March 6 proposal.

Fourteen written comments were received from various insurance companies, insurance company trade associations and insurance producer trade associations. Most commenters included general remarks applicable to the proposed rules as a whole, as well as specific comments about specific provisions. The general comments will be addressed first followed by comments related to specific provisions. Rule citations in the comments refer to the provisions of the March 6 proposal.

COMMENT: Almost all of those who commented objected generally to the volume and detail of data required to be submitted in support of their automobile insurance rates. Different commenters stressed different reasons. Several expressed concerns that the detailed data required to be filed is not currently collected and would not be available to be submitted beginning July 1, 1989 and thereafter. Many suggested that some of the data required was irrelevant to the ratemaking process. Several complained that the proposed rules seemed inconsistent with the flex rate provisions of the new law, which allow insurers to adjust rates annually within certain limits but without the Commissioner's prior approval. Some expressed concern because of the apparent lack of any limit on the Commissioner's ability to require supporting data. Others complained that the proposed data requirements would result in different information being submitted to New Jersey than other states in which national and regional insurers operated, and theorized that the cost of submitting data in response to each state's requirements would significantly increase their cost to do business and thus the rates to be charged. Many asserted in general terms that the cost to change their current systems to collect and report the data would significantly increase the rates to be charged, which costs would not be offset by more accurate determinations of the rates. Some indicated that the required costs on smaller insurers would be prohibitive.

RESPONSE: The Department acknowledges that the data required to support automobile insurance rates as set forth in the proposed rules are substantially greater than what was previously required for an initial filing. In the past, however, a great deal of time and effort was spent by the Department to obtain data in sufficient detail to analyze proposed rate changes. These reproposed rules undertake to ensure that the initial

filing to change automobile insurance rates clearly supports the cost of providing coverage by requiring insurance companies to submit more detailed and comprehensive data. The Department believes that these reproposed rules are an important step in achieving the objective of assuring that automobile insurance rates are properly based upon the costs.

These proposed rules recognize that much of the data required is not presently being collected. Filers are required to submit what information they currently have; identify what information they currently do not have; and promptly put in place systems to collect and report the balance. As those systems generate data to satisfy the requirements, that information should be included in subsequent filings.

These reproposed rules further recognize that some companies currently have a greater capability than others to collect and report data consistent with the Department's requirements. The Department is unwilling to establish a delayed time frame for this data that is geared to the ability of the slowest filer to provide it. While several commenters suggested the time limits for reports be extended, only one suggested a date, namely 18 months after adoption. Such an extension would be unsatisfactory for the Department to grant to all filers, regardless of their current capabilities. The Department fully expects all filers to act expeditiously to meet the requirements; individual filers' difficulties may be handled on a case-by-case basis as they are presented, so long as the filer continues to evidence a good-faith attempt to progress toward compliance.

The Department has determined that the extensive data required is not irrelevant, but is important to establish accurate rates. The Department views the statement of the commenters that certain items are irrelevant as simply a statement that the data has not been important to them in the development of their rates in the past. Nevertheless, after consideration of the comments, some specific items have been eliminated in the reproposed rules; others include editorial clarification of what is required.

The Department requires detailed data be filed to support rates. Rates should always be supportable and the Department must review such data to determine that the rates being charged are not excessive, inadequate or unfairly discriminatory in accordance with N.J.S.A. 17:29A-7.

The annual informational filing required by N.J.S.A. 17:29A-36.2(b) will provide the Department with periodic information about whether each insurer's rates meet the statutory standard. The Department notes that the legislation enacted in 1988 contained major revisions to the system of automobile insurance laws. It included optional tort thresholds very different from the previous options; PIP deductibles and copayments; higher standard deductibles for comprehensive and collision coverages; a medical fee schedule for payment of PIP benefits; and mandated depopulation of the New Jersey Automobile Full Insurance Underwriting Association. The impact of all of these changes on the income and expenses of New Jersey automobile insurers cannot be quantified at this time. Current rates may be found to be excessive or inadequate. The data requirements for informational filings will permit the Department to measure rates against the statutory standards as these impacts occur.

Although insurers are permitted to increase rates within the limits of flex rating, those rates must likewise be justified to meet the statutory standards.

Contrary to the fears of some commenters, the Department does not anticipate that the data requirements are so open ended as to mean no limit to the information required, so that the Commissioner could find any filing incomplete (for example, comments to N.J.A.C. 11:3-16.6(n)). As the commenters themselves recognize, not all filers will be able to provide all the data requested immediately. Additionally, the Department expects some filers to request the application of some alternate ratemaking methodology besides the Department's proposed standard methodology. The Department must retain the authority to request available information that substitutes for what is specifically set forth, or that supports alternative ratemaking methodology.

A key step to reviewing any insurer's filing will be a determination whether the filing is complete or incomplete. The requirements of these proposed rules are intended to be compatible with proposed rules governing filing review procedures published April 3, 1989 as proposed new rules N.J.A.C. 11:3-18. Those rules provide specific time frames within which the Department renders a decision whether a filing is complete or incomplete. If complete, no further information is required. If incomplete, the filer will be advised of the specific deficiencies.

Similarly, the Department does not believe there is a need to provide in these rules for discretionary powers to eliminate certain data requirements. This determination may be made on a case by case basis in addressing whether any particular filing is complete or incomplete.

The Department does not share the concern of commenters about other states' rate data filing requirements. No commenter pointed to a single example where another state's requirements were so different from those proposed that a system designed to gather and report the data set forth in these rules would not be satisfactory elsewhere. Other states generally require less. If some other state now or in the future requires more, a system that gathers additional information and submits it together with that required in these proposed rules will be satisfactory. Proposed N.J.A.C. 11:3-16.1(g) specifically notes that the data requirements of the rules are minimum requirements. Insurers should design systems that record information meet all states' requirements, and report at least what is necessary to each state.

The Department is similarly unimpressed with the contention of some commenters that the costs to develop and operate the data and collection reporting systems required will significantly raise automobile insurance rates. The Department believes that the costs will be offset by more accurate determination of the costs, and enhanced ability to price coverages accordingly. Automobile insurance generates scores of billions of dollars in revenues nationwide. As rates rise, they consume an increasing percentage of the average family's income. Mandatory automobile insurance laws guarantee automobile insurers a market for their product; regulatory oversight of rates is the cost paid for a guaranteed market. Expenses for the systems required by these proposed rules are necessary to ensure that rate review is accomplished with necessary information and is a meaningful process.

COMMENT: Several commenters objected to the inclusion of a standard ratemaking methodology. They asserted that many different methodologies are considered acceptable by the Casualty Actuarial Society and other recognized authorities. The commenters noted that they have used other ratemaking methodologies in the past in New Jersey, or other states, and achieved satisfactory rates. They stated that a single methodology is not best for all companies in all circumstances.

RESPONSE: N.J.S.A. 17:29A-36.2 now mandates that the Commissioner promulgate rules containing a standard ratemaking methodology. The one described in reproposed N.J.A.C. 11:3-16.10 (11:3-16.7 in the March 6 proposal) was chosen after careful consideration of several alternatives. Furthermore, N.J.A.C. 11:3-16.10(b) confirms that this methodology is the preferred methodology; a filer may submit an alternative methodology together with the calculations required. When doing so, it should provide a narrative that justifies why its alternate methodology is superior to the standardized methodology set forth in these rules.

COMMENT: One commenter urged the Department ". . . to permit flexibility to its approach to standardization of data and ratemaking. To do otherwise will discourage, rather than encourage place competition." Other commenters likewise expressed concern over the impact of standardization of data and rate making methodology on competition among insurers.

RESPONSE: Rather than destroying competition, the Department believes that the standardized data and rate making methodology requirements will promote competition. Such competition would be based upon price, service and efficiency, however, rather than accounting and statistical systems.

COMMENT: Of the 14 comments received, four suggested alternative approaches to standardized data reporting and ratemaking methodology. All four suggested more limited requirements for the informational and flex rate filings, while conceding that more detailed data should be required for rate changes requiring prior approval. Several suggested that the Excess Profits Reports required by N.J.S.A. 17:29A-5.1 and N.J.A.C. 11:3-20 should satisfy the annual informational filing requirement.

RESPONSE: The Department has considered the alternatives suggested and has decided to make significant changes to its proposed rules. As stated above, the Department believes it is very important to conduct a detailed annual review of current automobile rates for each company which should continue for the foreseeable future in light of the impact of legal changes on the system. The Excess Profit Report is designed to elicit information for a particular limited purpose. It does not in itself provide information for a detailed review of current rates. Combined with the additional data set forth in these reproposed rules, however, the Department believes it will obtain sufficient information to carry out the review required by the legislation.

COMMENT: Several commenters stated generally that the data filing requirements and ratemaking methodology require them to submit proprietary or confidential information as part of the rate filings. They suggested that the Department restrict the amount of data to be filed to avoid disclosure of this information. They note that rate filings become public records and may be subject to examination in accordance with

the Public Records Act, N.J.S.A. 47:1A-1 et seq. As examples of this kind of information, some of the filers pointed to the requirements of proposed N.J.A.C. 11:3-16.8(n)1 which requires information on the various steps taken in preparing the filing; information concerning their reserving practices; information concerning their disc operating system software; and expense saving activities.

RESPONSE: These commenters express an important concern, and the Department will consider either amending the rule or promulgating a separate rule prohibiting disclosure of certain proprietary information. This should, however, be a comprehensive proposal and the commenters unfortunately did not provide sufficient specifics to identify what portions of the data required to be filed should be considered proprietary and therefore not subject to public disclosure. For example, probably very little information transmitted to statistical agents or rating organizations, or information available to reporting services such as A.M. Best, can be considered "proprietary". Those commenters who suggested limiting disclosure of rating information filed with the Department should submit suggestions describing the particular data and why it should be exempt from public disclosure.

(The following paragraphs refer to specific provisions of rules proposed March 6. The reproposed rules that follow this discussion have been significantly revised and reorganized.)

COMMENT: N.J.A.C. 11:3-16.1(c). One commenter noted that this section refers to filings "for the revision of base rates" and inquired whether a detailed filing is required to revise rating factors which change base rates but are otherwise revenue neutral. It suggested that such changes would not require the degree of statistical justification as an income-producing filing.

RESPONSE: These reproposed rules apply to annual informational filings and all filings that revise base rates. Revisions to base rates must be adequately supported, even when revenue neutral.

COMMENT: Some commenters expressed an intention to use the annual informational filing due July 1, 1989 to provide information to support a flex rating change, and questioned whether this was satisfactory.

RESPONSE: This was precisely how the Department contemplated the flex rate provisions would be implemented in the prior proposal. There reproposed new rules alter the requirements for annual informational, flex rate and prior approval filings. Filers should separately file the required information for each kind of filing it makes.

COMMENT: N.J.A.C. 11:3-16.1(d). A rating organization inquired whether a rating organization filing is considered a "group" filing. One commenter stated that submitting data for the group and each individual company complicates the data submission process and adds to expense. It also questioned the credibility of data for individual companies in a group.

RESPONSE: A rating organization is not required to submit a group filing. Specific provisions have been made in these reproposed rules for filings submitted by rating organizations.

Although submitting data separately for each company in a group increases the filing requirements, it carries out the statutory requirement to review the data of each separate insurance company, regardless of their affiliation with others. The credibility of data for individual companies in a group depends upon the number of written exposures and is no different for companies in a group than other companies writing few exposures.

COMMENT: One commenter inquired whether information developed separately by companies in a group may be consolidated after the companies have been merged.

RESPONSE: Assuming the historical data was produced using identical rates and underwriting criteria, historical data may be submitted on a combined basis in these circumstances. The Department notes that the commenter is describing a single filing for a single insurer, although some of the data was developed separately.

COMMENT: N.J.A.C. 11:3-16.1(g). One commenter suggested that this section, which eliminates the need to compile data retrospectively, violates N.J.S.A. 17:29A-5. That statutory section requires the Commissioner to "give due consideration to the rating systems on file . . ."

RESPONSE: The Department does not see any conflict between the proposed data requirements and the rating systems currently on file. As stated above, filings made in accordance with these rules will produce rates clearly supported by the insurers' costs.

COMMENT: N.J.A.C. 11:3-16.1(i). One commenter requested a definition of "rating system".

RESPONSE: "Rating system" is defined at N.J.S.A. 17:29A-2. A definition has been included in N.J.A.C. 11:3-16.2 for convenience.

COMMENT: N.J.A.C. 11:3-16.2. Two comments were received concerning the definition of "small filer". One commenter inquired whether the .5 percent was for the group in total or by individual company. A second commented that the definition was too restrictive in that companies with greater than .5 percent may yet have insufficient volume to derive statistically credible data regarding territorial experience and classification differentials.

RESPONSE: The definition of small filer is applicable to each company, regardless whether it is affiliated with others in a group. If the group in total meets the definition, as a group it is a "small filer". If any individual company is a "small filer", it is not required to submit those items for which small filers are exempt. Nevertheless, its data should be included in the group compilation of all companies in the group.

COMMENT: One commenter stated that the definition of "testimony" was too "open ended".

RESPONSE: This definition primarily relates to the question and answer format and the qualifications of the person providing it. This has been deleted in the reproposed rules.

COMMENT: N.J.A.C. 11:3-16.3(a). Several commenters objected to the requirement that the data be provided on a computer disk as well as in writing. One indicated that this request is "beyond the scope of information needed to approve a rate filing." Another inquired whether it included pure text exhibits, and requested the Department specify the items requested and provide a standardized spread sheet with acceptable logic.

RESPONSE: Submission of data on a disk is necessary for convenience in review and the Commissioner is authorized to require filings in a certain format. The reproposed new rules limit this requirement to those filings that require prior approval. The reproposed rules clarify that purely textual exhibits need not be included on the disk. Standardized spread sheets are commonly available commercial programs used with personal computers.

COMMENT: N.J.A.C. 11:3-16.3(b). Several commenters objected to the requirement that testimony be submitted simultaneously with rate filings. Some indicated that the requirements exceed the Commissioner's statutory authority. Several suggested that the preparation of testimony await development of issues for hearing. Two commenters expressed concern that this requirement might adversely affect their due process rights in a contested case; one suggested the Department substitute "narrative" for "testimony". Another questioned what the testimony would be used when submitted with the initial filing. One commenter stated: "We assume that this means our filings should include an explanation of our ratemaking methodology and that additional information will be filed at a later date in response to questions raised by the Department."

RESPONSE: The Department had proposed testimony be submitted simultaneously with prior approval rate filings to expedite review. N.J.A.C. 1:11-15 provides for prefiling of testimony in insurance rate hearings. The Department had contemplated that the process would be expedited by having the insurer file direct testimony that explains its ratemaking methodology at the time of the original filing, and supplement that testimony only if necessary in response to issues raised later.

This requirement has been deleted from the reproposed new rules. Instead, filers will be required to submit a narrative description with each filing and later submit the testimony required by N.J.A.C. 1:11-15.1 in connection with a hearing.

COMMENT: N.J.A.C. 11:3-16.4(a). Two commenters suggested that both sides of a page be used in filing, noting this would be more economical and reduce the bulk of the filing.

RESPONSE: The suggestions are noted; nevertheless use of only one side of a page will make review of the information more convenient.

COMMENT: N.J.A.C. 11:3-16.4(b) and (c). One commenter suggested that identifying information need appear only once in the filing.

RESPONSE: The identifying information required to appear on each page has been altered in the reproposed new rules.

COMMENT: N.J.A.C. 11:3-16.5. Several commenters objected to the requirement that the rating system be supplied on a computer disk. Many indicated that they have no current system for producing such a disk. They stated it would be expensive and burdensome to do so. Other commenters objected to submitting their rating system because the program would contain proprietary information. One commenter indicated that their system was only available on a main frame computer. Some commenters suggested alternatives, including a written submission of their rating rules and examples applied to specific situations; one commenter stated that a simplified program on a disk would not produce all rates.

RESPONSE: Submitting the rating system on a computer disk is necessary both to confirm that the rates charged conform to the rates approved and to assist in response to consumer inquiries. The Department understands that this requirement may take time for all companies to fulfill; nevertheless, many companies have such a system now available for the use of their agents or representatives.

COMMENT: Three commenters objected to the requirement that the rating system be submitted within 20 days of approval. One suggested adding language that the rating system be submitted within 20 days of approval, or upon the effective date, whichever is later.

RESPONSE: The Department used the time period of 20 days because it is a reasonable time; nevertheless, the reproposed rule provides that the rating system shall be filed within 20 days of approval, or upon its effective date if later.

COMMENT: N.J.A.C. 11:3-16.6(a)1. Many comments were received concerning the requirement that premium be calculated at present rates using both the extension of exposure and on-level factor methodologies. A rating organization stated that its method of collection of this data does not allow calculation of premiums at present rates by extension of exposures. It indicated that liability premiums include uninsured motorist and single limit liability premiums. Several commenters stated that to use more than one method is redundant and unnecessary. Another commented that both methodologies are recognized as valid by actuaries. Two stated that either method should be sufficient for ratemaking purposes.

RESPONSE: The reproposed rules permit premium data to be submitted by either method. If necessary, however, the Department may require the other method also be submitted upon specific request in connection with the review.

COMMENT: One commenter objected to providing information about premiums at present rates for both basic limits and total limits. The commenter indicated it uses a total limits approach. It stated that although the data is maintained for some reporting purposes, it is not available for other purposes such as quarterly trend data, loss development, etc. It asserted a belief that the total limits approach is more predictive and accurate.

RESPONSE: The Department has carefully considered the commenter's objections but the reproposed rules require premium information at both basic and total limits. Basic limits is more stable; total limits is more variable. Submitting the information both ways is considered necessary for accurate review.

COMMENT: N.J.A.C. 11:3-16.6(a)3. Three comments were received. A rating organization commented that information from the Annual Statement on losses and premiums was not available to it in a combinable form prior to late August.

RESPONSE: Information to be submitted by rating organizations has been substantially revised in the reproposed new rules. In addition, a separate section describing rate filing requirements for rating organizations is included to clarify what data they must file.

COMMENT: One company inquired whether the information described in N.J.A.C. 11:3-16.6(a)2 through 7 is required for individual company filings.

RESPONSE: This is required for rating organization filings only.

COMMENT: One commenter expressed a caution regarding Annual Statement information, stating that if the company is part of a pooling arrangement, comparisons between net and direct data will be invalid.

RESPONSE: The commenter's concern is noted. The Department is aware of the limitations of Annual Statement information.

COMMENT: N.J.A.C. 11:3-16.6(a)4. A rating organization commented that the data from Exhibit 1 of the Annual Statement is not available to it from A.M. Best data tapes, and it therefore cannot provide this information in a timely manner, if at all.

RESPONSE: Data requirements have been revised in the reproposed rules.

COMMENT: N.J.A.C. 11:3-16.6(a)5 and 6. A rating organization commented it has not collected information on company deviations or consent to rate information.

RESPONSE: Data requirements have been revised in the reproposed rules; as revised, the information should be provided as promptly as it becomes available.

COMMENT: N.J.A.C. 11:3-16.6(a)7. A rating organization commented that dividends as related to manual premiums are not available, as manual premiums are not available by company.

RESPONSE: Data requirements have been revised in the reproposed rules.

COMMENT: N.J.A.C. 11:3-16.6(a)8. Two commenters inquired whether individual insurers that were part of a group of companies need to file this data if they filed rates independently or separately.

RESPONSE: Individual insurers that are affiliated in a group are not required to file jointly. Nevertheless, a group of affiliated companies that chooses to file as a group must include all members.

COMMENT: N.J.A.C. 11:3-16.6(a)9. A rating organization commented that all of the information required is not available because components are not currently compiled in this manner for paid basic losses, separate allocated loss adjustment expense, etc.

RESPONSE: As indicated in response to previous comments, if a filer is not currently able to provide required information it should so state in its filing and undertake to implement systems to collect and report the data as required in the future.

COMMENT: An individual filer commented that it can provide figures for paid allocated loss adjustment expense, but does not have the actual incurred allocated or unallocated loss adjustment expense; it stated that standard industry practice is to include these by applying a factor to incurred losses, and inquired whether this is an acceptable approach.

RESPONSE: This is an acceptable approach until the filer has implemented systems to collect and report the information as required in the reproposed rules. It should identify the alternate approach and the reason for it in its filings.

COMMENT: One commenter stated this asks for more data than is necessary or available. It stated it sets reserves for the loss and allocated loss adjustment expense combined, and therefore, reserves for loss adjustment expense are not available separately and incurred allocated loss adjustment expense is not available.

RESPONSE: This approach is satisfactory only while the filer is implementing systems that conform with the requirements in the reproposed rules. The filer should identify the deviation from the standard and the reason for it.

COMMENT: One commenter stated that specific state-level information for incurred allocated loss adjustment expenses and incurred unallocated loss adjustment expenses is not currently available; this would have to be provided by an allocation of countrywide expenses.

RESPONSES: An allocation of countrywide expenses would be satisfactory as an alternative only while the filer was implementing systems to collect and report this information as required in the reproposed rules.

COMMENT: N.J.A.C. 11:3-16.6(a)10. One filer commented with regard to catastrophe loading that 10 years of data should be sufficient and including "as many years as possible" was unnecessary.

RESPONSE: Because of the potential for variation, 10 years of data may not be enough. The filer should implement systems to collect and report this information as required by the reproposed rules.

COMMENT: N.J.A.C. 11:3-16.6(a)11. Several comments were made concerning the territorial rate calculations required. A rating organization commented that current statistical reporting and data compilations systems do not allow for meaningful compilation of written premiums by territory on either a basic limits or total limits basis; and that current systems would not allow for paid losses at basic limits nor provide them for more than the last three years. Other individual filers also commented that some of this data was not available, or available for only three years. Several commenters stated that this information should only be reported if there is a change in relativities. One commenter indicated that the requirements concerning territorial rate calculations were inconsistent with its current methodology.

RESPONSE: As stated above, if a filer is not currently able to include the information required, it should so state in its filing and undertake to implement systems to collect and report the information in the future. The reproposed rules have been changed to require that the territorial rate calculations need only be provided when a change is proposed, or at least every three years.

COMMENT: N.J.A.C. 11:3-16.6(a)12. Several comments were received concerning the derivation of classification differentials. Some commenters stated that this data is countrywide, and that information such as work sheets, etc. cannot be identified. Two suggested that the data be required only when a change in classification relativities is being proposed.

RESPONSE: If a filer is not currently able to include the information required, it should so state in its filing and undertake to implement systems to collect and report the information in the future. The reproposed rules contain provisions requiring reporting of classification information only when a change is proposed, or at least every three years.

COMMENT: N.J.A.C. 11:3-16.6(a)13. One commenter suggested this paragraph should be included with paragraph (a)9.

RESPONSE: These are separate requirements; the language of the reproposed rules has been modified, however.

COMMENT: N.J.A.C. 11:3-16.6(a)14. Several comments were received concerning the required Cause of Loss Report for comprehensive coverage. One commenter questioned the necessity for it because only one rate is established for the coverage. It suggested the first four columns of the report are inappropriate requests on a by-cause-of-loss basis. Other commenters stated this information is not currently collected separately. One commenter stated that this requirement was irrelevant and unnecessary to ratemaking; another stated it should not be required for informational or flex rate filings.

RESPONSE: The reproposed rules require totals only for the first four columns of the report. Regarding the necessity of the information, the Department believes the report provides valuable information about the causes of losses covered by comprehensive coverage, which is an important element in its statutory duty to review and monitor automobile insurance rates.

COMMENT: N.J.A.C. 11:3-16.6(a)15. Several comments were received concerning information required for payments made under the theft portion of comprehensive coverage. A rating organization indicated this data was not being collected. Several independent filers made the same comment, and stated that the information requested was irrelevant to a rate filing. One stated that the effort to develop a system to collect and report the data would be a massive system change, and not worth the effort. Another indicated that any such system would include both theft of vehicles and of components of vehicles, although several of the specific items apply only to thefts of the entire vehicle. One commenter inquired why this data was being requested on a calendar year rather than an accident year basis.

RESPONSE: Minor changes have been made in the text of the reproposed rules as a result of these comments. If a filer is not currently able to include the information required, it should so state in its filing and undertake to implement systems to collect and report the information in the future. Since this data is a first party coverage, it is requested on a calendar year basis.

COMMENT: N.J.A.C. 11:3-16(a)16. Several comments were received. A rating organization commented that the present manner of reporting a data compilation does not allow for providing this data for coverage other than PIP. Two individual filers also commented it was not available; one stated it was irrevelant to the ratemaking process.

RESPONSE: If a filer is not currently able to include the information required, it should so state in its filing and undertake to implement systems to collect and report the information in the future. This rule has been modified in the reproposal. The Department believes the data is relevant to measure the efficiency of a company.

COMMENT: N.J.A.C. 11:3-16.6(b). One commenter stated that independent filers have insufficient data to develop credibility factors. It suggested that the Department supply a standard method to be used by all filers without independent justification.

RESPONSE: This simply requires the filer to set forth the standard used in the filing.

COMMENT: N.J.A.C. 11:3-16.6(c)2. Several commenters objected to the requirement of 10 years of loss development factor data. A rating organization stated that the data was not available, since it is restricted only to rate authorizing companies. Another commenter suggested five years was sufficient. Another commenter suggested this information was not necessary for informational or flex rate filings. One commenter suggested as an alternative that the rule provide for complete total limits paid loss development triangles at annual development points.

RESPONSE: This requirement has been revised in the reproposed rules. As revised, it is deemed relevant by the Department and should be included in the filing.

COMMENT: N.J.A.C. 11:3-16.6(c)3. A rating organization commented that the information required is not calculable in a meaningful manner. A company commented that because of partial payments under basic limits, any loss development triangle would not be valid. Another company commented that this information is not available on its current system and would require a change in its reserving system.

RESPONSE: These data requirements have been revised in the reproposed rules; as stated, however, the Department believes the information is relevant to its review. The Department recognizes that many portions of these reproposed rules require companies to alter their current systems for collecting and reporting data.

COMMENT: N.J.A.C. 11:3-16.6(c)6 and 7. A rating organization commented that this information is not available on its current system. A company commented this information is not relevant to ratemaking, and that its current system did not split paid and incurred allocated loss adjustment expenses.

RESPONSE: The Department believes this information is relevant to its review of rates; if a filer is not currently able to include the information required, it should so state in its filing and undertake to implement systems to collect and report the information in the future.

COMMENT: N.J.A.C. 11:3-16.6(c)8 and 9. One commenter stated this information is irrelevant to the ratemaking process.

RESPONSE: The Department believes this information is relevant to its duty to review and monitor private passenger automobile insurance rates.

COMMENT: N.J.A.C. 11:3-16.6(d). Several commenters objected to the data required in connection with trending factor development and application. A rating organization commented that fast track data is not collected in the detail required by the regulation. It further commented that PIP trend data limited to $75,000 medical expense per person has not been compiled and that property damage liability has not been compiled on a basic limits basis. It further commented that collision and comprehensive data have not been compiled on all deductibles requested; trend data has not been compiled for liability and physical damage on an incurred basis; and that five years of trend data with a consistent group of companies included is not likely to be available. Another company commented that this section appears to require the fitting of over 1,000 trend lines, which it stated was excessive. It further commented that trend data for four deductibles per coverage seemed excessive. Another commenter stated that the proposed rule ignores the relevancy of industry countrywide trends by restricting the data to individual company data. A few commenters suggested that three or five years of trend data should be sufficient.

RESPONSE: Date requirements have been revised in the proposed rules. As revised, however, the information is deemed relevant and should be provided as required.

COMMENT: Several commenters stated that fast track data is not collected or maintained by individual companies.

RESPONSE: Data requirements have been revised in the reproposed rules; this will be required only from rating organizations.

COMMENT: Three commenters requested a definition of the use of the term "seasonality factors".

RESPONSE: A definition has been included.

COMMENT: One commenter requested a definition of "internal and external expense trend data." Another commenter stated this section would be interpreted as requiring the calculation of separate severity and frequency trends and suggested it be eliminated or the wording revised.

RESPONSE: A definition has been included in the reproposed rules; minor language changes should improve clarity.

COMMENT: N.J.A.C. 11:3-16.6(d)4. Several commenters objected to the requirements to provide information concerning such things as changes in seat belt use, drinking age, price of gasoline, average miles traveled and other legislative, regulatory, social or economic factors that could have an impact on loss frequency or severity. Several commenters indicated that the request was too vague. Another interpreted it as requiring companies to undertake such research and prepare appropriate studies. Another suggested such information be volunteered when appropriate, but not required. One commenter suggested the wording be changed to individual "vehicles" rather than individual "drivers".

RESPONSE: The data requirements have been revised in the reproposed rules. There is no affirmative duty to undertake these studies, rather just to include information that is otherwise available and upon which the filer relies.

COMMENT: N.J.A.C. 11:3-16.6(e). A rating organization commented that it would not be able to produce five years of data for these distributions on a consistent basis because of changes in rate filing authorizations over time. Another commenter stated the required information was excessive for informational or flex rate filings; if required it should begin in 1990.

RESPONSE: Minor language changes have been made in the reproposed rules. If a filer is not currently able to include the information required, it should so state in its filing and undertake to implement systems to collect and report the information in the future.

COMMENT: N.J.A.C. 11:3-16.6(e)1. A rating organization indicated its statistical plan collects exposure information on a car year basis as opposed to a number of policies basis. It suggested the wording be revised to make this permissible.

RESPONSE: Data requirements have been revised in the reproposed rules.

COMMENT: N.J.A.C. 11:3-16.6(e)2. A commenter stated the data request was too broad and requested clarification of what information is required.

RESPONSE: Language has been revised in the reproposed rules.

COMMENT: N.J.A.C. 11:3-16.6(e)4 and 6. A rating organization suggested three years of data rather than five. It suggested that shortening the time period increases the likelihood that the distributions based on mix of companies would be consistent.

RESPONSE: After careful consideration, the Department determined that five years of data should be provided.

COMMENT: N.J.A.C. 11:3-16.6(f). One commenter inquired about the use of the word "data".

RESPONSE: This change has been made in the reproposed rules.

COMMENT: N.J.A.C. 11:3-16.6(g). One commenter stated that this requirement was unnecessary because the information duplicates that of the Insurance Expense Exhibit.

RESPONSE: Insurers' expenses are clearly part of a proper rate filing. It in the filer's job to assemble the information and present it in a usable format; it is not the rate reviewer's job to assemble the filing from various sources.

COMMENT: A rating organization commented that its current statistical plan does not collect allocated loss adjustment expense for comprehensive and collision coverage; incurred expenses per exposure; AIRE assessments and reimbursements; and other expense data in the format and detail described.

RESPONSE: Language has been revised in the reproposed rules to change this requirement for rating organizations.

COMMENT: N.J.A.C. 11:3-16.6(g)2. One commenter inquired whether incurred unallocated loss adjustment expense by coverage should include New Jersey data only.

RESPONSE: Yes; if New Jersey data only is not currently available, the filer should allocate countrywide data, and provide information concerning how the allocation was made.

COMMENT: N.J.A.C. 11:3-16.6(g)3. A commenter inquired whether the allocated loss adjustment expense is to be on a paid or an incurred basis, and whether it is to include New Jersey data only.

RESPONSE: Language is the reproposed rules specifies incurred allocated loss adjustment expense; it is to include New Jersey data only.

COMMENT: N.J.A.C. 11:3-16.6(g)5i. One commenter stated that commissions on a peer exposure basis is not meaningful since commissions are determined as a percentage of premium.

RESPONSE: The Department has decided to continue to require this data in the reproposed rules to determine if any changes appear over time.

COMMENT: N.J.A.C. 11:3-16.6(g)6. One commenter stated that the UCJF assessment is made as a percentage of premium and not subject to expense flattening. It further stated that the Department must supply the information promptly to filers.

RESPONSE: Language has been clarified in the reproposed rules. The Department will publish an annual notice concerning this information.

COMMENT: N.J.A.C. 11:3-16.6(g)7. One commenter stated this expense data is not captured by state and this section would require allocation of countrywide data.

RESPONSE: The reproposed rules provide specifically what data must be supplied based on New Jersey data only and what can be allocated from countrywide data.

COMMENT: N.J.A.C. 11:3-16.6(g)8. One commenter suggested this data should be supplied by accident year. A second inquired whether the losses used were for bodily injury liability coverage only.

RESPONSE: Data requirements have been revised in the reproposed rules to require bodily injury liability data only to be supplied by accident year.

COMMENT: N.J.A.C. 11:3-16.6(h)1 and 2. One commenter stated that it may be impossible to break the Statewide rate change into components because it would involve arbitrary assumptions in estimating individual separate effects. A commenter suggested this requirement be replaced by a provision requiring the filer show the changes by coverage and territory and describe any pertinent law changes and any tax or assessment changes. A second commenter stated that this calculation is redundant since all information is provided to the Department. It further stated that it is impossible to make this calculation "without knowing the intention of the Department." A third commenter stated that paragraph (h)2 is unclear and inquired whether it is to be provided simultaneously by limit and territory.

RESPONSE: After careful consideration the Department has decided to retain paragraph (h)1 but to delete paragraph (h)2. With this modification, the Department has determined that the information is relevant in the oversight of automobile insurance rates in that it focuses attention on what components caused the rate to change.

COMMENT: N.J.A.C. 11:3-16.6(j). Several comments were received concerning data on investment earnings. One commenter inquired why the data required to discount revenue and outgo items to present value need be provided if it is not used in the standard ratemaking methodology.

RESPONSE: The Department has determined that this information is relevant to its role of monitoring the factors that cause automobile insurance rates to change; it is also relevant to the Department's process of reviewing ratemaking procedures and methodologies.

COMMENT: A commenter stated that the phrase "receipt of premium" is unclear and inquired whether it meant total premium, initial installment or total installments. It indicated that this data is not currently collected.

RESPONSE: Language in the reproposed rules has been changed to "cash flow." If a filer is not currently able to include the information required, it should so state in its filing and undertake to implement systems to collect and report the information in the future.

COMMENT: The calculation of investment income as a percentage of premium should be based upon anticipated future results and, accordingly, investment income should be related to an adequate premium level, rather than the actual premium level.

RESPONSE: The calculation required has a value for informational and computational purposes. The calculations required in the Department's standard ratemaking methodology address this commenter's concerns.

COMMENT: A rating organization stated it had not collected or compiled the information required to meet the specifics of this section.

RESPONSE: Data requirements for rating organizations have been revised in the reproposed rules. If a filer is not currently able to include the information required, it should so state in its filing and undertake to implement systems to collect and report the information in the future.

COMMENT: N.J.A.C. 11:3-16.6(j)2. One commenter inquired whether the "length of time until time of payment" was equal to the time before the first or last payment; it further inquired how claims closed without payment and open claims are to be handled.

RESPONSE: Data requirements and clarifying language have been included in the reproposed rules.

COMMENT: N.J.A.C. 11:3-16.6(l). One commenter stated that the calculations required by this section are inconsistent with the requirement to utilize the Clifford Formula, and that the calculations are "necessarily arbitrary appropriations."

RESPONSE: It is unclear what the commenter means by "necessarily arbitrary appropriations."

COMMENT: A commenter stated that this requirement assumes that "there is only one correct and acceptable method for measuring investment income". It suggested that the issue is really whether the filing reflects consideration of investment income in a reasonable manner.

RESPONSE: Filers are free to propose alternative ratemaking methodology in whole or in part, but should include data and calculations as required by the reproposed rules.

COMMENT: N.J.A.C. 11:3-16.6(m). A rating organization stated that it does not collect the information required by this section, nor is it available through any public source. Two companies commented that the ratios on a state basis require an arbitrary allocation of the company's surplus by state and by coverage.

RESPONSE: Filers may use whatever allocations they desire; they should include an explanation, however.

COMMENT: N.J.A.C. 11:3-16.6(n). Many comments were received objecting to the requirement to provide information on the various preliminary and intermediate steps taken in peparing the filing, including meeting minutes, etc. Several commenters asserted this information serves no useful purpose or was unnecessary to the ratemaking process. Some asserted the information is proprietary. One commenter specifically asserted that it should not be disclosed because of the adversarial nature of the hearing process to establish rates, and constituted a violation of due process of law. Some commenters objected that the requirements were vague or unclear, and that to comply completely would be an undue burden.

One commenter stated that it does not keep such records; another stated that such internal discussions include telephone conferences and other communications that are not memoralized. One commenter stated

that it does not establish any objective criteria. Another commented that the information requested may be available through discovery proceedings in the event it is necessary.

RESPONSE: These requirements have been revised in the reproposed rules. As revised, however, the information should be provided when required. It should be noted that the proposed rule only required filers to provide information they recorded concerning the decision making processes in preparing the filing. It did not and does not require them to memorialize all communications to comply with this reproposed rule; it simply requires that memoranda that is prepared for another business purpose be submitted with the filing as an explanation of the decision making process.

COMMENT: N.J.A.C. 11:3-16.6(n)2. One commenter stated this information is redundant, since N.J.A.C. 11:3-16.7 requires companies to develop profit and contingency loading information.

RESPONSE: The requirements of the reproposed rules have been revised to provide this information only if the filer is proposing an alternative ratemaking methodology.

COMMENT: N.J.A.C. 11:3-16.6(n)4. A rating organization commented this information was not collected in its statistical plan. Another commenter inquired whether the finance charges are for New Jersey only.

RESPONSE: If a filer is not currently able to include the information required, it should so state in its filing and undertake to implement systems to collect and report the information in the future. The finance charges are for New Jersey only.

COMMENT: N.J.A.C. 11:3-16.6(n)5. One commenter stated the requirement is unclear and that this kind of information is proprietary and irrelevant to the ratemaking process. Another commenter indicated this would be extremely difficult for parent-subsidiary and affiliated companies because home office tasks often involve work for more than one affiliate or filing; the commenter also inquired about what ratemaking element was involved.

RESPONSE: This rule does not require the filer provide the amount of expenditures, but the reason for them. This area is particularly subject to abuse and requires oversight.

COMMENT: N.J.A.C. 11:3-16.6(o). One commenter stated that since the Department had discretion to expand requirements it should also have discretion to reduce requirements. The commenter also suggests that the Department disclose its standards of efficiency and measurement.

RESPONSE: Authority to request additional information is necessary because, as many commenters noted, filers are not currently gathering all of the data set forth in the rule. When it is not collected or supplied, appropriate substitute information is required. The Department needs to have the authority to request additional detail, clarification or explanation of this kind of data.

Specific authority to "reduce" the requirements is not necessary because this will be applied in the determination of whether a particular filing is complete or incomplete. This section merely authorizes the Department to request additional specific information as necessary; it does not require a filer to guess what the Department may request and supply it in the first instance.

Some standards of efficiency and measurement are included throughout the reproposed rules; others will be developed from review of the filings.

COMMENT: N.J.A.C. 11:3-16.7(b). Several comments were received concerning the treatment of investment income in the standard ratemaking methodology. One commenter suggested that in place of this section, and the data requirements concerning investment income, "there should be a coordinated treatment of investment income." It further suggested this should not be required for flex rate and informational filings. Additionally, this commenter objected to the 3.5 percent target rate of return under the Clifford Formula and suggested the use of current Federal tax law to develop a more realistic rate of return. Another commenter stated that Federal income tax needs to be reflected in the pre-tax profit provision, which would also consider the discounting of loss reserves. It inquired whether the Department will develop a methodology for filers.

RESPONSE: These requirements have been revised in the reproposed rules. As reproposed, however, the Department expects filers to provide the calculations as required. Filers remain free to propose an alternative ratemaking methodology as well as the calculations in accordance with the Department's standard ratemaking methodology. Nothing in the rule prevents filers from making an appropriate provision for taxes.

COMMENT: N.J.A.C. 11:3-16.7(b)8. Many comments were received about the provision requiring the use of a standard interest rate in the rate making methodology calculation. The commenters objected to the rate being the value published by the Internal Revenue Service, used for discounting loss and loss adjustment expense reserves, plus 200 basis points. One commenter stated there was no justification for this rate. Others stated that the discount rate itself reflects a reasonable risk-free rate of return on conservative investments. It stated that insurers that invest heavily in government securities would be penalized, or encouraged to take greater risks with these funds. Another stated that this interest rate does not reflect the actual anticipated investment earnings of the filer. It suggested the calculation be the average actual "portfolio" rate instead of a "new money" rate. Another stated that expecting companies to consistently outperform the rate on government securities by two points is overly optimistic; it further stated that this provision is inconsistent with NAIC guidelines that encourage conservative investments.

RESPONSE: The interest rate in the standardized ratemaking methodology was established with the knowledge that insurance companies invest assets in several different kinds of investments that contain a spectrum of rates of return and risk. Insurance company investments yield both income and capital gain. The rate set approximates the rate of return on triple A rated corporate bonds, which is a relatively conservative overall rate of return for an investment portfolio.

This rate will fluctuate with the level of current interest rates and is expected to cover all investment income, including both direct income and realized and unrealized capital gains.

COMMENT: N.J.A.C. 11:3-16.7(c). One commenter described its method of calculating expense trends which is different from the standard methodology in the proposed rule. It stated that some expenses vary directly with the premium dollar and are actuarially improper to trend. It suggested those expenses be trended based on actual experience, rather than standard factors such as the prevailing wage or inflation rates.

RESPONSE: Filers are free to propose alternate ratemaking methodologies, in addition to the calculations required in accordance with the Department's standard ratemaking methodology.

COMMENT: N.J.A.C. 11:3-16.7(c)3. One commenter stated that general expenses that can be identified as New Jersey expenses should be included in lieu of countrywide allocations, such as the expenses related to commenting on these proposed rules.

RESPONSE: This is precisely what the rule calls for; it recognizes however, that some filers may not maintain their records so precisely.

COMMENT: N.J.A.C. 11:3-16.7(c)4. Several comments were received concerning the separate trending of expenses for commission, brokerage other acquisition expenses and general expenses. A rating organization stated that the trending of ratios by external index is inappropriate. It suggested that the method is flawed because commission expense is variable since it is determined as a percent of the premium dollar and therefore not subject to separate expense trend treatment. Another commenter inquired whether this prohibited the use of percentage commissions in rates. One commenter stated that the second sentence is argumentative and should be deleted, and suggested that the rule should permit other trend factors that the filer can support by appropriate data. Another commenter stated that such data as average weekly wages for fire and casualty insurance employees is not readily available, and that the proposed rule makes no provision for growth or decline in the number of units processed. An individual company's growth or decline will result in expense needs larger or smaller than those implied by adjustments for inflation.

RESPONSE: After consideration of the comments, the Department has decided to include the separate trend of commission dollars in its standard ratemaking methodology. Filers are free to propose alternate methodology that they believe is superior to the Department's standard ratemaking methodology. Average weekly wages for fire and casualty insurance employees are published by the Bureau of Labor Statistics.

COMMENT: N.J.A.C. 11:3-16.7(c)5. Many comments were received concerning the use of industry-wide averages to determine the historic expense provision for commission and brokerage, other acquisition expenses and general expenses. A rating organization stated that this provision conflicts with section 28 of P.L. 1988 c.119, which requires insurers to file "their own" expenses. Another commenter stated that this provision is anti-competitive because use of an industry average does not recognize each company's efforts to find a balance between price and service in its efforts to compete. Several stated that this section would penalize 50 percent of the insurers that have above average expenses. One comment stated that the Department should not force companies to use the lower of their own or industry average expenses, which would be inadequate for many companies especially in view of the forced depopulation of the JUA. A producer trade association objected because the averages will be influenced by direct writing companies, whose expense

do not include commission; it expressed a concern that companies using agents will be placed at a significant competitive disadvantage. One commenter stated that the use of an industry average is in direct violation of the Casualty Actuarial Society Ratemaking Principles. Another commenter stated it would be led to inadequate rates. One commenter suggested that if a standard expense provision was required, it provide for a variation around the average.

RESPONSE: One important new requirement of the 1988 amendments to the automobile insurance laws was that the Department promulgate a standard ratemaking methodology; further, the law mandates that the Department establish standards of measurement and efficiency for the ratemaking process. The use of industry-wide averages for expense provisions as a part of the standard methodology is one of the proposed standards of efficiency established by these rules.

The Department realizes that variations among companies may require a determination that the industry standard is not appropriate for all companies in all circumstances. The proposed rules recognize that in N.J.A.C. 11:3-16.10(b), which permits all filers to advocate a different ratemaking methodology that is preferable in their particular case. If a company wishes to urge a separate methodology, particularly regarding this requirement, it is free to do so. Nevertheless, the Department believes that this is precisely the kind of provision that was encouraged by the recent legislation.

COMMENT: N.J.A.C. 11:3-16.7(c)6. An industry trade association expressed a concern that the percentage loading for UCJF assessments may be too low because these assessments have been increasing over time. It suggested that this provision be amended to provide a reasonable methodology for calculation of likely future assessment levels for current premiums.

RESPONSE: After careful consideration, the Department has decided to make no change in its standard ratemaking methodology. Filers are free to suggest alternative methodology.

COMMENT: N.J.A.C. 11:3-16.7(c)7. Several commenters objected to the exclusion of certain expenses (fines, lobbying expenses, charitable contributions, etc.) from the expense base used to determine rates. The commenters generally asserted that such expenses as lobbying expenses, charitable contributions and advertising costs regarding changes in insurance regulation are legitimate costs of doing business and appropriately included in the cost of the product. One commenter distinguished between such items as fines against the company and bad faith awards, and the other categories. Several commenters asserted that this provision may restrict free speech and thus abrogate the First Amendment. One commenter indicated that eliminating expenses for charitable contributions may result in a reluctance to support New Jersey charitable organizations. Another stated that such items are legally permissible expenses incurred on behalf of and in support of their business, policyholders and shareholders; these expenses are made with the goal toward enhancing their competitive position in a free market.

RESPONSE: All of these items are expenses that, in the determination of the Department as regulator of automobile insurance rates, are not appropriate to be passed along to purchasers of automobile insurance.

The Department does not believe this provision in any way raises a constitutional issue concerning commercial free speech, First Amendment rights, or rights of due process of law. This provision does not prohibit a company from incurring or expending money for such things as lobbying and advertising in connection with proposed changes in the regulation of insurance. It merely requires that they spend their own resources to do so, not those of their policyholders. This is the Department's standard methodology. Filers are free to propose alternative methodology.

COMMENT: N.J.A.C. 11:3-16.7(d)1. A rating organization commented that physical damage data has in the past been collected by calendar year, rather than by accident year. Another commenter suggested that physical damage coverage by calendar year should be an appropriate alternative method, considering the nature of the payout pattern.

RESPONSE: Filers should include the information and calculations using the Department's standard ratemaking methodology as set forth in the reproposed rules. Filers are free to propose alternative methodology.

COMMENT: N.J.A.C. 11:3-16.7(d)2. One commenter suggested that review of increased limits factors should not be mandatory, but be considered a rate related item with regard to bureau affiliation. It stated that this would be consistent with previous practice pursuant to Insurance Department Order No. 88-6.

RESPONSE: Filers are free to propose alternative methodology.

COMMENT: N.J.A.C. 11:3-16.7(d)3. One commenter stated that this section, when read in conjunction with paragraph (c)6, is a violation of standard ratemaking principles. It stated that the methodology being required replaces medical losses in excess of $75,000 with the UCJF assessment. The UCJF assessment reflects only a cash payout of losses which are reimbursed on a paid basis, and the assessment is not an adequate measure of these excess losses. To use it would underprice PIP relative to the coverage provided to the policyholder. Another commenter stated that the data from page 14 of the Annual Statement should be adjusted for UCJF reserves which are specifically required to be excluded by other provisions of the rules. It stated that page 14 of the Annual Statement does not recognize the existence of recoverables for salvage and subrogation, and may include results of residual PIP business.

RESPONSE: After consideration of the comments, the Department has determined not to revise its standard ratemaking methodology. Filers are free to propose alternative methodology in whole or in part.

COMMENT: N.J.A.C. 11:3-16.7(f). One commenter stated that this provision adds a new requirement, absent from the rating law, regarding making rates based on total rate of return methodology. It stated that there is no statutory basis for this requirement. It acknowledged the current law required use of the Clifford Formula to consider income, but does not provide for using a total rate of return approach. The commenter further stated that there is no agreement within the actuarial profession that it is appropriate to make rates for any one state based upon a total rate of return approach. It suggested each company be allowed to determine its own methods for reflecting in its rates the effects of investments from unearned premium and loss reserves.

RESPONSE: Language has been revised in the reproposed rules. Filers are free to propose alternative methodologies.

COMMENT: N.J.A.C. 11:3-16.8(a). Several comments were received concerning the provisions for finding a filing to be complete or incomplete. One commenter suggested that complete filings be approved within 30 days, and that the Department be required to notify a filer that its filing is incomplete within two weeks of receipt. Several filers were concerned that because of the detailed requirements, no filer could ever submit a "complete" filing and the Department would have unlimited discretion to declare filings "incomplete".

RESPONSE: These rules must be read in conjunction with the Automobile Insurance Rate Review Procedure rules originally proposed April 3, 1989 as N.J.A.C. 11:3-18 (see 21 N.J.R. 839(a)). Those proposed rules set forth the time frames and processes by which a filing is determined to be incomplete and subsequent proceedings on it.

As noted in those proposed rules, any finding that a filing is incomplete must set forth the specific items that are deficient or missing, and provide the filer 30 days in which to cure it. Thus, the concern that no filing could ever be "complete" are unfounded. Subsection (b) specifically provides that no filing may be determined to be incomplete because the filer had not historically collected the data required, so long as the missing items are identified and the filer is undertaking to implement a system to collect them in the future.

The proposed rate review procedures require the Department to notify a filer within 25 days whether its prior approval filing is incomplete, and within 60 days for informational and flex rate filings. The proposed rules do not require a finding that filings are complete; they are deemed complete if not found to be incomplete within the time specified. The suggestion that the Department notify all filers that filings are complete or incomplete within 30 days is an admirable goal. Nevertheless, the Department expects to receive large numbers of informational filings at about the same time on July 1st of each year; many filings may request an increase within the flex rate band; other filings may request rate increases that require prior approval. The process for review begins with the finding whether the filing is complete or incomplete and must necessarily establish priorities for handling them. Those requesting rate increases that require prior approval must be addressed first, and a decision on completeness made within 25 days. Those flex rate filings and informational filings found incomplete will require a notice within 60 days. Informational filings and flex rate filings found to be complete will not require any further action by the Department.

COMMENT: N.J.A.C. 11:3-16.8(b)2. Two commenters indicated that it will be impossible to begin collecting some of the data required by January 1, 1990. One suggested the date be amended to at least 18 months after adoption.

RESPONSE: The Department understands the significant system changes that may be required of some insurers to begin collecting and reporting this date. Nevertheless, the Department is unwilling to postpone

requirements for those insurers who currently collect the data, or may be able to begin collecting the data as of January 1, 1990. Meeting the data submission requirements should not be delayed until all filers can comply. To the extent that a filer has a real and significant problem in meeting these time frames, that problem may be addressed on a case by case basis in the determination whether a particular filing is complete.

COMMENT: N.J.A.C. 11:3-16.8(d). One commenter objected to the provision that incomplete informational filings will incur penalties each day beginning with the 31st day.

RESPONSE: This rule, in essence, provides for a 30 day "grace" period in wich a filer may cure a deficient filing; without a grace period, fines would occur without notice and beginning the first day.

With regard to the objection of separate fines for each day of a continuing violation, the Department finds daily penalties to be particularly appropriate. Otherwise, a filer who completely ignores making an informational filing would be subject only to the maximum single violation fine. Such a provision would not encourage compliance with the statutory requirement of making an informational filing.

COMMENT: N.J.A.C. 11:3-16.8(e). One commenter stated that this provision is contrary to the statute and the concept of flex rating because it authorizes the Commissioner to disapprove use of a flex rate if the filing is found to be incomplete. The commenter further stated that this raised the possibility that the Department could "block or delay" implementation of flex rates by disputing insignificant errors or omissions.

RESPONSE: The Department does not believe it has the ability to "block or delay" implementation of flex rates. It must, however, carry out its statutory mandate of reviewing rates to determine whether they are excessive, inadequate or unfairly discriminatory. While the flex rate provisions of the new laws allow rate changes within limits without prior approval, the Department still must review the supporting data to determine that the rates meet the statutory standards. To make this review, information is necessary and recognized to be so in the flex rate law. Failure to provide the information disqualifies the filer from using the flex rate changes.

If a flex rate violates the statutory standards for automobile insurance rates (that is, provides for excessive rates), the Department must undertake an action to require the insurer to discontinue use of that rate. Supporting data is necessary to make that review. If the insurer fails or refuses to provide that information, this provision authorizes the Department to take action to require discontinuance of use of the flex rate based on failure to submit the information required to support it.

Summary

Besides the textual changes made in response to comments and the Department's continuing review, the reproposed new rules have been reorganized in an effort to make clearer the contents of each specific filing. Because of changes to N.J.S.A. 17:29A-6.1, Insurance Services Office, Inc. (ISO), the rating organization representing the greatest number of insurers, has determined that it will no longer file final rates on behalf of its members and subscribers, but rather has decided to publish "advisory" partial rates that include only the "pure premium" portion of the rate attributable to losses and loss adjustment expenses. The reproposed new rules set forth specifically what items must be filed for informational, flex rate and prior approval rate filings, both for insurers and rating organizations. They further include the processes by which qualified members and subscribers of rating organizations may incorporate by reference the "pure premium" portion of the rate filed by a rating organization in their flex rate and prior approval rate filings. These reproposed rules also differ from the prior proposed rules in that some data is required for prior approval filings only; and some data need not be filed at all unless specifically requested by the Department after the initial filing is received.

The reproposed new rules implement, among other statutory provisions, N.J.S.A. 17:29A-14c(4)(a), which authorizes the Commissioner to promulgate rules to establish standards for the submission of proposed filings, amendments, additions, deletions and alterations to automobile insurance rating systems. The reproposed new rules require that every New Jersey private passenger automobile insurer and rating organization provide the Department with specific data for every rate filing proposing new base rates. The reproposed new rules will ensure that the basic components of a filing, including but not limited to loss development, trend, expenses, investment income and loss data, are adequately addressed.

A summary of the provisions of the reproposed new rules follows:

Proposed N.J.A.C. 11:3-16.1 contains a statement of the purpose and scope, clarifying that the subchapter applies to rate filings affecting voluntary market automobile insurance on private passenger cars only.

Proposed N.J.A.C. 11:3-16.2 contains definitions.

Proposed N.J.A.C. 11:3-16.3 sets forth general provisions and formal requirements for all filers.

Proposed N.J.A.C. 11:3-16.4 sets forth the contents of insurer annual informational filings.

Proposed N.J.A.C. 11:3-16.5 sets forth the contents of insurer flex rate filings.

Proposed N.J.A.C. 11:3-16.6 sets forth the contents of insurer filings that requires prior approval, that is, rate and other changes to rating systems outside the limits permitted for flex rate changes pursuant to N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner.

Proposed N.J.A.C. 11:3-16.7 sets forth the contents of rating organization filings submitted as an annual informational filing, or as flex rate or prior approval filings.

Proposed N.J.A.C. 11:3-16.8 sets forth the loss and loss adjustment expense data required to support the pure premium portion of the rate.

Proposed N.J.A.C. 11:3-16.9 sets forth the expense and profit data required to support that portion of the rate.

Proposed N.J.A.C. 11:3-16.10 sets forth the Department's standard ratemaking methodology, and further provides for the submission in whole or in part of alternative ratemaking methodologies that a filer may wish to advance.

Proposed N.J.A.C. 11:3-16.11 relates the provisions of this rule to proposed N.J.A.C. 11:3-18, which sets forth Department procedures for the review of rate filings.

Social Impact

The reproposed new rules establish uniform data specifications and a standard ratemaking methodology which will aid the Department in its review of private passenger automobile insurance rate filings by including in the initial filing all data deemed to be necessary. The reproposed new rules will also aid insurers and rating organizations by providing them specific minimum requirements to be met in preparing private passenger automobile rate filings. The reproposed new rules will benefit the consumer by providing more accurate automobile insurance rates through better evaluation of the merits of each filing.

Economic Impact

There will be some initial and continuing economic burden on insurers and rating organizations in the necessary alteration of current data gathering techniques and rate information reporting requirements. No direct economic impact on consumers is anticipated. While some additional costs may be passed through to consumers in rates, this should be more than offset by the more accurate determination of private passenger automobile insurance rates.

There will be some necessary increase in Department personnel assigned to review automobile insurance rates, but this is due to the statutory requirement that each filer submit an annual informational filing and the likelihood that filers will take advantage of the ability to adjust rates within the flex rate band and thus make smaller rate changes more often. Additionally, the statutes implemented by these reproposed new rules mandate an increased number of filings to be reviewed, since the role of rating organizations in submitting filings is diminished by requiring more filers to submit their own total rates, and requiring other members of the rating organization to submit the expense and profit portion of the rates based on their own experience, and calculate their own final rates. Nevertheless, the reproposed new rules will enable the Department of Insurance to minimize the time and effort needed to review each rate filing, and enable it to perform more effectively its statutory mandate of regulating private passenger automobile insurance rates.

Regulatory Flexibility Analysis

The reproposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" are insurance companies authorized to write private passenger automobile insurance.

Most insurers that qualify as "small businesses" use the services of a rating organization in connection with rate filings. Nevertheless, at least two insurers that independently file private passenger automobile insurance rates appear to qualify as small businesses. Other insurers that are qualified members of rating organizations are required by statute to develop and file the expense and profit portion of the rate, including their final rates. Since these rules describe data filing requirements in connection with automobile insurance rates, it does impose reporting, re

cordkeeping and other requirements on those businesses. These requirements are imposed pursuant to the provisions of applicable statutes for all private passenger automobile insurers in the voluntary market.

The rules do, however, establish differing compliance and reporting time tables to the extent they can be made consistent with the standardized data and methodology requirements imposed by statute. Insurers not currently collecting and reporting data described in the rules are given until January of 1990 to develop appropriate systems. Data previously uncollected and unreported need not be reconstructed for past years, but it may be reported prospectively as it accumulates after 1990.

The rules set forth a performance standard in the data that must be reported; how the data is collected is left to each insurer. The reproposed rules exempt small filers, defined as those with less than 0.5 percent of the New Jersey private passenger automobile insurance market, from filing all of the detailed data concerning loss development factor, development and application; trending factor development and application; and changes in premium base and exposures.

Insurers qualifying as small businesses may need to obtain the services of data processing and actuarial consultants if these services are not currently available in house. While all insurers regardless of size have available computer systems for current recordkeeping, reporting and rate filing purposes, these systems vary in size and complexity based on each company's current needs. Costs to upgrade computer hardware and software, if required, will vary substantially based upon each insurer's current system.

Adverse economic impact on small businesses has been minimized, as stated above, consistent with the statutorily mandated purpose of the rules to establish for all filers uniform data filing and methodology in connection with the establishment of private passenger automobile insurance rates in the voluntary market.

Full text of the reproposed new rules follows:

SUBCHAPTER 16. RATE FILING REQUIREMENTS: VOLUNTARY MARKET PRIVATE PASSENGER AUTOMOBILE INSURANCE

11:3-16.1 Purpose and scope

(a) This subchapter establishes data, filing format and preferred ratemaking requirements for all private passenger automobile rate filings for the voluntary market, in implementation of N.J.S.A. 17:29A-1 et seq. and as required by N.J.S.A. 17:29A-36.2.

(b) This subchapter applies to all rating organizations and to all insurers making private passenger automobile insurance rate filings for the voluntary market in this State.

(c) These requirements apply to all rate filings made by insurers and rating organizations for the revision of base rates; informational filings to be made on July 1, 1989 and annually thereafter pursuant to N.J.S.A. 17:29A-36.2b; and those filings made under the flex rate provisions of N.J.S.A. 17:29A-44.

(d) This subchapter does not apply to rule and form filings that do not change base rates.

11:3-16.2 Definitions

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

"Accident year" means the 12-month period covering the occurrences during that period.

"AIRE" means the Automobile Insurance Risk Exchange, established pursuant to N.J.S.A. 39:6A-21.

"All other coverages" means insurance for towing and labor, accidental death and dismemberment, extended medical benefits, additional personal injury protection, rental reimbursement and any other items included in Lines 19.1, 19.2 or 21.1 of Page 14 of the Statutory Annual Statement, which are for private passenger automobile non-fleet exposures, except those items defined as "coverages".

"Basis point" means an annual interest rate of .01 percent (one one-hundredth of one percent).

"Case reserves" means the estimated value of the liability assigned to specific known claims whether determined by claim adjusters or set by formula.

"Claim" means a request for payment for a loss which comes under the terms of an insurance contract.

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

"Coverages" means insurance for bodily injury liability, property damage liability, basic personal injury protection, collision, comprehensive and uninsured/underinsured motorists.

"Department" means the New Jersey Department of Insurance.

"Exposure" means one car insured for one year, or two cars insured for six months each, etc.

"External trend data" means trend data derived from experience outside of insurance industry statistics.

"Filer" means a rating organization or any insurer who makes an annual informational filing, flex rate filing or rate filing requiring prior approval pursuant to these rules.

"Flex rate" means a Statewide average rate change as set forth in N.J.S.A. 17:29A-44.

"Flex rate filing" means a filing made to adjust rates within the limits provided by N.J.S.A. 17:29A-44 and any applicable Orders of the Commissioner.

"IBNR" or "incurred but not reported loss" means losses which have occurred but have not yet been reported as of a specified date including, if applicable, deficiencies/redundancies in case reserves.

"Informational filing" means a filing made annually on July 1 in accordance with N.J.S.A. 17:29A-36.2b.

"Internal trend data" means trend data derived from the experience of the filer related to the policies it issues if an insurer, or the policies issued by its qualified members and subscribers if a rating organization.

"Loss development parallelogram" means a display of losses showing accident year data by evaluation date, with the same number of accident years shown at each evaluation date. The accident years shall be shown vertically and the evaluation dates shown horizontally. The first evaluation date shall be three months after the end of the accident year; subsequent evaluations shall be at 12-month intervals.

"Public Advocate" means the Division of Rate Counsel, New Jersey Department of the Public Advocate.

"Qualified member" of a rating organization means an insurer member or subscriber of a rating organization whose total written car years insured, on a calendar basis, is equal to or less than two percent on January 1, 1989, 1.5 percent on January 1, 1990 and one percent on January 1, 1991, of the total written car years insured by all insurers writing motor vehicle insurance in this State in the voluntary market, pursuant to N.J.S.A. 17:29A-6.1a2.

"Rating system" means every schedule, class, classification, rule, guide, standard, manual, table, rating plan or compilation by whatever name described containing the rates used by any rating organization or by any insurer, or used by any insurer or by any rating organization in determining or ascertaining a rate.

"Reasonable total rate of return" means that rate of return appropriate for an enterprise given the risk involved.

"Small filer" means a filer with less than 0.5 percent of the New Jersey written premiums in the voluntary market for private passenger automobile insurance for the most recently available prior calendar year.

"Total rate of return" means underwriting return and investment return on both reserves plus capital and surplus, related as a percentage to capital and surplus.

"UCJF" means the Unsatisifed Claim and Judgment Fund, established pursuant to N.J.S.A. 39:6-61 et seq.

11:3-16.3 General requirements and filing format

(a) The data requirements set forth in this subchapter are minimum requirements. The filer may submit any other data it believes to be relevant in justifying proposed rate changes. If the filer has not collected portions of this information in the past, or has not collected it in a form so as to facilitate reporting, it is not required to compile it retrospectively. All filers shall begin collecting this information in a manner so as to facilitate reporting no later than January 1, 1990, and report data so collected on filings made or required to be made on or after July 1, 1991.

(b) Separate insurance companies that are affiliated by a parent-subsidiary or any group relationship and that chose to submit a single filing for the group shall provide the minimum data requirements set forth in N.J.A.C. 11:3-16.8 and 16.9, and make the rate level calculation set forth in N.J.A.C. 11:3-16.10, both separately for each company and combined for the group, except when the data is identical for each company and the filing contains an explanation.

(c) Small filers need not provide all of the information required by N.J.A.C. 11:3-16.8(c), (d), and (e); more limited requirements are set forth in those sections. Notwithstanding this, any filing by a small filer for a rate change, including flex rate filings shall include sufficient justification for all factors used.

(d) All filings shall be submitted to the Department at the following address:

New Jersey Department of Insurance
Property/Liability Division
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

(e) A copy of all filings submitted pursuant to N.J.S.A. 17:29A-14 that require the Commissioner's approval prior to implementation of a rate change shall be submitted simultaneously to the Public Advocate at the following address:

Department of the Public Advocate
Division of Rate Counsel
744 Broad Street
Newark, New Jersey 07102

(f) All filings shall be accompanied by a New Jersey Department of Insurance transmittal form (Form AMB-10, incorporated herein by reference Exhibit D in the Appendix).

(g) All filings shall be accompanied by the following certification signed by an officer of the filer: "I _____certify that the attached filing complies with all statutory and regulatory requirements and contains information that is true and accurate. I further certify that I am authorized to execute this certification on behalf of the filer."

(h) Each filer shall submit filings in loose leaf form inserted into standard three-ring binders. The loose leaf sheets used in the filing shall be eight and one-half inches wide and 11 inches long and punched for three hole standard binders. Only one side of the page shall be used. Each page shall be consecutively numbered.

(i) The margin at the top of each page shall show the filer's name, filer's identifying number for this filing, NAIC company number(s) and NAIC group number. The right hand side of the page shall show the section, exhibit and sheet number.

(j) Each flex rate filing when made, or other rate filing when effective, shall be accompanied by a computer disk(s) that contains the rating system to be implemented.

1. The computer disk may be either 5.25 inch 360 KB or 3.5 inch 1.44 MB.

2. The computer disk shall include a program and data such that when an insured's characteristics (for example, coverage, policy limits, use of auto, territory, etc.) are input, the rate to be charged by coverage is determined. The program shall allow both the input and the output information to be printed in hard copy.

3. The computer disk(s) shall be accompanied by complete and straightforward instructions for use of the program.

11:3-16.4 Insurer informational filings due July 1 of each year

(a) Informational filings shall be made by all insurers transacting private passenger automobile insurance in the voluntary market, including all individual members and subscribers of rating organizations, pursuant to N.J.S.A. 17:29A-36.2b.

(b) The informational filing shall consist of the following documents and exhibits:

1. The insurer's Excess Profits Report to be filed on or before July 1, 1989, pursuant to N.J.A.C. 11:3-20;

2. An exhibit that contains, for each of the most recent five complete accident years evaluated as of March 31 of the current year: the number of insured automobiles for which payment was made under the theft portion of comprehensive coverage as a result of the theft of the automobile; the aggregate payments made on account of those thefts; the number of automobiles recovered; and the total amount received from the resale of the automobiles.

3. An exhibit that contains, for each of the most recent five complete accident years evaluated as of March 31 of the current year: the total amount of dollars recovered by subrogation for each coverage and the percentage recovered of the total amount subject to subrogation for each coverage.

4. An exhibit that contains, for each of the most recent five complete accident years evaluated as of March 31 of the current year: the total amount of dollars recovered by salvage for each physical damage coverage and the percentage recovered of the total amount subject to salvage for each coverage.

5. A Cause of Loss Report for comprehensive coverage for the latest five complete calendar years that sets forth the information shown in Exhibit B.

6. An exhibit of investment earnings that contains the amount of investment income earned on loss, loss adjustment expense, and unearned premium reserves in relation to earned premium for private passenger automobile insurance in New Jersey. This information shall be provided for the last two years, estimated for the current year, and estimated for the two following years. Calculations shall be provided in detail including the amount of the composite reserves of each type (that is, loss, loss adjustment expense and unearned premium) at the beginning and end of the specified calendar years.

7. An exhibit that provides for the following data regarding expenses:

i. Earned premium, incurred losses, incurred allocated loss adjustment expenses and incurred unallocated loss adjustment expenses for each of the latest five complete calendar years. Provide such information by coverage and group of coverages (that is, liability and physical damage);

ii. A statement regarding any expense saving activities undertaken in the last five years;

iii. Number of claims (all limits and all deductibles) and allocated loss adjustment expenses for each of the latest five complete years. Provide such information by coverage and by group of coverages (that is, liability and physical damage);

iv. Average incurred expenses per exposure on a New Jersey basis (explain the basis of allocation) and on a countrywide basis for each of the latest five complete calendar years for the following expense categories: commission and brokerage; other acquisition expenses; and general expenses; and

v. New Jersey private passenger automobile insurance expense data shown separately for the most recent three complete calendar years using the format of the Underwriting and Investment Exhibit, Part 4 Expenses of the Statutory Annual Statement.

8. If the filer has not submitted data in the last three years to support its territorial relativities and classification differentials, it shall submit an exhibit containing the data set forth in N.J.A.C. 11:3-16.8(a)i and ii. If the filer has submitted this data during the last three years, it shall include a statement that sets forth the date and Department filing number of the filing that contained this data.

9. A duplicate copy of the Excess Profits Report does not need to be filed; nevertheless, each insurer shall include with the exhibits described above a certification by an officer of the company that the Excess Profits Report was filed as required by N.J.S.A. 17:29A-5.6 and N.J.A.C. 11:3-20.

11:3-16.5 Insurer flex rating filings

(a) Any insurer that desires to increase its rates in accordance with the flex rate provisions of N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner shall provide the following information in support of its flex rate filing:

1. A cover letter notifying the Department of its intention to adjust rates according to the provisions of N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner; a statement of the percentage and dollar amount of the increase in rates by coverage (including the variable portion plus expense fees but excluding the policy constant and RMEC); a statement containing the effective date of the change; and the name, telephone number and mailing address of the company officer familiar with the filing to whom further inquiries about the filing may be directed;

2. A checklist that sets forth the information in Exhibit AI in the Appendix incorporated herein by reference;
3. The Excess Profits Report (required by N.J.A.C. 11:3-20) and the Financial Disclosure Information (required by Order of the Commissioner). In lieu of providing copies, the filer may submit a certification by an officer that the documents have been filed and are incorporated into the filing by reference;
4. Data concerning the losses and loss adjustment expenses, as set forth in N.J.A.C. 11:3-16.8;
5. Data concerning the expense and profit provisions, as set forth in N.J.A.C. 11:3-16.9;
6. Rate calculations, as set forth in N.J.A.C. 11:3-16.10; and
7. The manual rating pages and computer disk(s) containing the flex rate system to be implemented.

(b) In accordance with N.J.S.A. 17:29A-6.1(a)2, all independent rate filers and all members or subscribers of rating organizations not defined as "qualified members" of rating organizations in N.J.A.C. 11:3-16.2 shall submit data and rate calculations in support of their flex rate filings based on their own loss experience and their own expenses.

(c) Qualified members of rating organizations may incorporate by reference the loss and loss adjustment expense data set forth in N.J.A.C. 11:3-16.8 and filed by the rating organization pursuant to N.J.A.C. 11:3-16.7, in lieu of providing their own data.

1. Qualified members of rating organizations who have been precluded by Order of the Commissioner from implementing the last approved rates of the rating organization may incorporate by reference the rating organization flex rate filing, as set forth in N.J.A.C. 11:3-16.7. Any flex rate change based upon an increase in losses and loss adjustment expenses shall, however, be limited to the percentage of increase in the rating organization flex rate filing as applied to the company's own current rates.

(d) Nothing in this section shall prohibit any member or subscriber of a rating organization from filing its own loss and allocated loss adjustment expense data, as set forth in N.J.A.C. 11:3-16.8.

1. Qualified members of rating organizations that seek to use losses and loss adjustment expenses higher than those implemented by the rating organization pursuant to the provisions of N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner shall file the required exhibits set forth in N.J.A.C. 11:3-16.8.

2. Qualified members of rating organizations that seek to use losses and loss adjustment expenses lower than those implemented by the rating organization pursuant to the provisions of N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner need only to file a statement justifying the downward deviation in the form of Exhibit E in the Appendix incorporated herein by reference. (See (c)1 above for insurers precluded by Order from using current rating organization rates.)

11:3-16.6 Insurer filings for rates requiring prior approval

(a) Any insurer that desires to modify its rates or rating system in a manner other than that provided by N.J.S.A. 17:29A-44 and Orders of the Commissioner regarding flex rates shall provide the following information in support of its application:

1. A cover letter notifying the Department of its intention to modify its rating system in a manner that requires prior approval, pursuant to N.J.S.A. 17:29A-14; a statement describing the proposed changes, which shall include the percentage and dollar amount of any change in rates (including the variable portion plus expense fees, but excluding the policy constant and RMEC) by coverage and overall; and the name, telephone number and mailing address of the company officer familiar with the filing, to whom further inquiries about the filing may be directed;
2. A checklist that sets forth the information in Exhibit AII in the Appendix incorporated herein by reference;
3. A narrative overview that sets forth the contents of the filing, and explains the reasons and procedures used to derive the rate change requested;
4. Data concerning the losses and loss adjustment expenses, as specified in N.J.A.C. 11:3-16.8;
5. Data concerning the expense and profit provisions, as set forth in N.J.A.C. 11:3-16.9;
6. Rate calculation, as set forth in N.J.A.C. 11:3-16.10; and
7. Data described in N.J.A.C. 11:3-16.8, 16.9 and 16.10 shall be submitted in written copy and, except for purely textual information, on an MS-DOS formatted disk(s). The disk(s) may be either 5.25 inch 360 KB or 3.5 inch 1.44MB. The information shall be provided in a Lotus 1-2-3 or compatible spreadsheet. The left and top margins of each page shall indicate the row and column respectively of all data on the page. Each page of written copy shall also display in the bottom right corner the name of computer file and disk on which it is contained. All calculated values shall be given as a formula in the spreadsheet.

(b) All independent rate filers and all members or subscribers of rating organizations not defined as "qualified members" shall submit data in support of their application for approval of their proposed rating system based on their own loss experience (N.J.A.C. 11:3-16.8), their own expense and profit provisions (N.J.A.C. 11:3-16.9) and their own rate calculation (N.J.A.C. 11:3-16.10).

(c) Qualified members of rating organizations may incorporate by reference the loss and loss adjustment expense data filed by the rating organization, and approved by the Department, in lieu of providing their own data.

(d) Nothing in this section shall prohibit any member or subscriber of a rating organization from filing for approval its own data regarding losses and loss adjustment expenses, as set forth in N.J.A.C. 11:3-16.8.

1. Qualified members of rating organizations that seek to use losses and loss adjustment expenses higher than those approved for the rating organization shall file all exhibits set forth in N.J.A.C. 11:3-16.8.

2. Qualified members of rating organizations that seek to use losses and loss adjustment expenses lower than those approved for the rating organization need only to file a statement justifying the downward deviation in the form of Exhibit E in the Appendix.

(e) Upon approval insurers shall file manual rating pages and computer disk(s) containing the rating system on or before the effective date of the rates.

11:3-16.7 Rating organization filings

(a) As its annual informational filing, each rating organization shall file the loss and loss adjustment expense data set forth in N.J.A.C. 11:3-16.8. and shall develop the data base and trend methodology set forth in N.J.A.C. 11:3-16.10(a)4 and 5. Rating organizations shall compile the data required using only information from its qualified members.

(b) The rating organization's annual informational filing shall also include the following exhibits compiled from the data of its qualified members.

1. An exhibit that contains, for each of the most recent five complete accident years evaluated as of March 31 of the current year: the number of insured automobiles for which payment was under made the theft portion of comprehensive coverage as the result of theft of the automobile; the aggregate payments made on account of those thefts; the number of automobiles recovered; and the total amount received from the resale of the automobiles;
2. An exhibit that contains, for each of the most recent five complete accident years evaluated as of March 31 of the current year, the total amount of dollars recovered by subrogation for each coverage;
3. An exhibit that contains, for each of the most recent five complete accident years evaluated as of March 31 of the current year, the total amount of dollars recovered by salvage for each physical damage coverage;
4. A Cause of Loss Report for comprehensive coverage for the latest five complete calendar years that sets forth information shown in Exhibit B in the Appendix incorporated herein by reference;

(c) As its flex rate filing, the rating organization may submit a loss and loss adjustment expense filing containing the data required by N.J.A.C. 11:3-16.8 for use by its qualified member companies in their individual flex rate filings if the rate level change requested is within the limits established by N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner regarding flex rates, and the rating organization submits the filing with a cover letter setting forth:

1. Notice to the Department that the filing is being submitted pursuant to N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner as a flex rate filing;

2. The percentage and dollar amount of the increase in rates by coverage and overall (including the variable portion plus expense fees but excluding the policy constant and RMEC);

3. The effective date of the change, on or after which its qualified members may submit individual flex rate filings incorporating by reference the rating organization filing; and

4. The name, telephone number and mailing address of the rating organization officer familiar with the filing, to whom further inquiries about the filing may be directed.

(d) As its filing for rate changes requiring prior approval, the rating organization may submit a loss and loss adjustment expense filing for use by its qualified member companies in their individual filings submitted for prior approval pursuant to N.J.S.A. 17:29A-44, that provides the information set forth in N.J.A.C. 11:3-16.8 and that also includes the requirements set forth in N.J.A.C. 11:3-16.6(a)1, 2 and 6. A copy of such filings shall be transmitted to the Commissioner and simultaneously to the Public Advocate.

(e) Each time the rating organization that represents the greatest number of insurers in the private passenger automobile insurance market submits a flex rate filing pursuant to N.J.A.C. 11:3-16.7(c), or a filing requiring prior approval pursuant to N.J.A.C. 11:3-16.7(d), it shall also file the following information required to establish rates for the New Jersey Automobile Full Insurance Underwriting Association in accordance with the provisions of N.J.S.A. 17:30E-13:

1. The information concerning expenses and profit provisions, as set forth in N.J.A.C. 11:3-16.9 compiled from its qualified member companies;

2. The rate calculation, as set forth in N.J.A.C. 11:3-16.10 below, as calculated based upon its data submitted pursuant to N.J.A.C. 11:3-16.8 and 16.9; and

3. Upon making the flex rate filing or no later than the effective date for filings requiring prior approval, the manual rate pages both excluding and including provisions for company expenses and profit.

11:3-16.8 Loss and loss adjustment expense data

(a) Filers shall provide the following data regarding New Jersey premium, loss and loss adjustment expense:

1. For each coverage, calculate premium at present rates using either the extension of exposures or on level factor methodologies. Indicate how such calculations were produced and supply supporting documentation for a sample of such calculations and justification of any factors used. Provide the justification for the selected use of a particular method in calculating the rate level. Provide this information both at basic limits and at total limits.

2. Rating organization filings shall include data from all qualified member companies writing non-fleet private passenger automobile insurance in New Jersey for which the organization has been given filing authorization. If data from such a company is excluded from, or if data from a non-authorized company is included with, the rate level, trend, loss development, catastrophe factor, expense determination, territorial development, classification relativity, or investment income calculations for any coverage, identify the coverage, the company and its market share and provide an explanation for its exclusion/inclusion.

3. For each coverage and each year used in setting the overall rate level, the following information both at basic limits and total limits:

i. Paid losses;

ii. Case reserves;

iii. Loss development factor;

iv. Incurred allocated loss adjustment expenses;

v. Incurred unallocated loss adjustment expenses;

vi. Trend factor;

vii. Total trended and developed incurred losses;

viii. Total trended and developed allocated loss adjustment expenses;

ix. Total trended and developed unallocated loss adjustment expenses; and

x. Total trended losses and all loss adjustment expenses (that is, (a)3 vii plus viii plus ix above)

4. Whenever New Jersey losses are separated into catastrophe and non-catastrophe losses, include a clear description and justification of the standard used to separate such losses. In determining a catastrophe loading, include as many years of data as possible. If the number of years included differs from the number available, provide an explanation. Provide an explanation if the data base from which the catastrophe loading is derived differs from that on which the rate level change is based.

5. For prior approval filings only, territorial rate calculations including written premiums, earned premiums, earned exposures, paid losses, incurred losses, and the number of claims by territory separately for each coverage and each of the years used to determine the territorial relativities, or for each of the last five years, whichever is greater.

6. For prior approval filings only, all information related to the derivation of classification differentials contained in the filing. Include the following minimum information:

i. All data reviewed, worksheets used and judgments made;

ii. A description of the methodology used to arrive at the differentials;

iii. A description of alternate methodologies used by the filer in other states;

iv. A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;

v. A description regarding the application of these criteria in the selection of a methodology for this filing; and

vi. A description of the application of the methodology to this filing.

7. For all incurred loss adjustment expense data contained in the filing, show the related incurred losses used to determine any loss adjustment expense loadings.

(b) Filers shall provide all information related to the derivation of credibility factors contained in the filing, specifically including the following information:

1. All data reviewed, worksheets used and judgments made;

2. A description of the methodology used to derive the factors;

3. A description of alternate methodologies used by the filer in other states (provide upon request for prior approval filings only);

4. A description of the criteria used to select one of the various methodologies for inclusion in the filing (provide upon request for prior approval filings only);

5. A description regarding the application of these criteria in the selection of a methodology for this filing (provide upon request for prior approval filings only); and

6. A description of the application of the methodology to this filing (provide upon request for prior approval filings only).

(c) Each filer, except small filers, shall provide the data in (c) 1 through 10 below. Small filers shall provide the data in (c) 4, 5, 7, 9, and 10 below;

1. All information related to the derivation of loss development factors contained in the filing specifically including:

i. All data reviewed, worksheets used and judgments made;

ii. A description of the methodology used to derive the factors;

iii. A description of alternate methodologies used in other states (provide upon request for prior approval filings only);

iv. A description of the criteria used to select one of the various methodologies for inclusion in a particular filing (provided upon request for prior approval filings only);

v. A description regarding the application of these criteria in the selection of the methodology for this filing (provide upon request for prior approval filings only); and

vi. A description of the application of the methodology to this filing (provide upon request for prior approval filings only).

2. For each coverage, complete total limits paid loss development parallelograms for the 10 latest available accident years at each and every annual evaluation date from 15 months to 123 months for Personal Injury Protection ("PIP") and Bodily Injury ("BI"), 15 months to 75 months for Property Damage Liability ("PD") and 15 months to 51 months for all other coverages. Provide the corresponding nine-year, five-year and three-year average loss development factors derivable from these parallelograms;

3. The information in (c)2 above for basic limits paid losses;
4. The information in (c)2 above for total limits incurred losses;
5. The information in (c)2 above for basic limits incurred losses;
6. The information in (c)2 above for paid allocated loss adjustment expenses;
7. The information in (c)2 above for incurred allocated loss adjustment expenses;
8. The information in (c)2 above for the number of paid claims;
9. The information in (c)2 above for the number of incurred claims; and
10. A statement regarding any changes in the filer's case loss reserving practices during the last five years (for rating organization filings, this shall be provided for the 10 largest qualified members).

(d) Each filer except small filers shall provide the following data regarding trend factors and their application:

1. Include the following trend data set forth in (d)1i and ii below (if an insurer) or (d)1i and iii below (if a rating organization), shown separately for frequency and severity for the latest available five calendar years on both a quarterly and quarterly year ending basis for all coverages on both a countrywide and New Jersey basis. Bodily injury liability data shall be given at basic and total limits. Property damage liability data shall be given at basic and total limits. Personal injury protection ("PIP") data shall be given at a per person limit retained by the insurer according to N.J.S.A. 36:6-73.1 ($75,000 of insurer payments). Physical damage coverages shall be shown on the basis of a $500.00 deductible; all deductibles less than $500.00 combined; all deductibles greater than $500.00 combined; and all deductibles combined. Provide this for the following:

i. All internal loss trend data on both a calendar year paid and incurred basis; and either

ii. Internal and external expense trend data (severity only); or

iii. Fast-track loss trend data.

2. For all trend data described above, calculate annual trend factors along with "T" statistics, the coefficient of correlation, and seasonality factors. This shall be done from a least-squares regression with time being the independent variable. For the purpose of this section, "seasonality factor" is the ratio between the expected value for a particular season (that is, first quarter, second quarter, third quarter and fourth quarter of a year) taking into account seasonal influences and the expected value excluding seasonal influences.

i. Include calculations for the latest six, nine, 12, 16 and 20-point periods;

ii. Provide a side-by-side comparison of the actual data, fitted data and differences; and

iii. Include calculations on both an exponential and straight line basis.

3. All information related to the derivation of trend factors contained in the filing specifically including:

i. All data reviewed, worksheets used, and judgment made;

ii. A description of the methodology used to derive the factors;

iii. A description of alternative methodologies used by the filer in other states (provide upon request for prior approval filings only);

iv. A description of the criteria used to select one of the various methodologies for inclusion in a particular filing (provide upon request for prior approval filings only);

v. A description regarding the application of these criteria in the selection of a methodology for this filing (provide upon request for prior approval filings only); and

vi. A description of the application of the methodology to this filing (provide upon request for prior approval filings only).

4. For prior approval filings only, information, including studies, analyses, and fact sheets regarding the effects (both countrywide and in New Jersey) of the items described in (d)4i through v below if the filer has either compiled the information itself or relied upon outside information in the support of the filing. If the effects of such studies, etc., have been incorporated into the rate filing, describe in detail the methodologies used. Provide this information for the following:

i. Changes in seatbelt use;

ii. Changes in the drinking age;

iii. Changes in the price and amount of gasoline purchased;

iv. Changes in the average miles driven; and

v. Other legislative, regulatory, social, or economic factors that could have an impact on loss frequency or severity.

(e) All filers except small filers shall provide the following regarding changes in premium base and exposures;

1. Data on the mix of written exposures by different policy terms for the latest five years. Include both the number of written exposures and the amount of written premium for different policy terms;

2. Calculations on the average age and symbol relativities for the latest five years;

3. Calculate the trend in the average model year and symbol relativities for physical damage coverages during the most recent five calendar years. Explain how these trends were calculated and provide all intermediate calculations;

4. The most recent five-year history of the distribution, by deductible amount, of written exposures and premium of comprehensive and collision coverages purchased;

5. The actual model year written exposure and premium distribution for comprehensive and collision coverages separately for each of the latest five calendar years; and

6. The most recent five complete calendar year history of the distribution, by limit of liability, of written exposures and premiums, separately for bodily injury, property damage, and combined single limit liability coverages.

(f) Filer shall provide the following regarding limiting factor development and application:

1. Limitations on losses and/or loss adjustment expenses included in the statistical data used in the filing;

2. Limitations on the extent of the rate level change by coverage;

3. Limitations on the extent of territorial rate changes;

4. Limitations on the extent of classification rate changes; and

5. Any other limitations applied.

(g) Filers shall provide by coverage and group of coverages (that is, liability and physical damage) the following information:

1. The amount of earned premium, incurred losses, incurred allocated and unallocated loss adjustment expenses for each of the latest five complete calendar years; and

2. The number of claims (all limits and all deductibles) by coverage and allocated loss adjustment expenses for each of the latest five complete calendar years.

(h) Filers shall show the overall Statewide rate change indicated by coverage as well as the amount of the change attributable to each of the following: loss experience, the loss trend factor, the premium trend factor, expenses, premium taxes, assessments, underwriting profit, law changes, and any other changes.

(i) Rating organizations only shall provide a copy of the most recent corporate annual report (not the Statutory Annual Statement) and 10K Statements of its 10 largest qualified member companies.

(j) Provide any additional information specifically requested by the Commissioner which may be necessary to constitute a proper rate filing.

11:3-16.9 Data requirements for company expense and profit provisions

(a) Filers shall provide the data in (a)1 through 6 below regarding expenses:

1. All information related to the derivation of expense provisions contained in the filing specifically including:

i. All data reviewed, worksheets used and judgment made;

ii. A complete description of the methodology used to derive the provisions;

iii. A description of alternative methodologies used by the filer in other states (provide upon request for prior approval filings only);

iv. A description of the criteria used to select one of the various methodologies for inclusion in this filing (provide upon request for prior approval filings only);

v. Details regarding the application of these criteria in the selection of a methodology for this filing (provide upon request for prior approval filings only);

vi. Details on the application of the methodology to this filing (provide upon request for prior approval filings only);

2. A statement regarding any expense saving activities undertaken in the last five years.

3. Average incurred expenses per exposure on a New Jersey basis (explain the basis of allocation) and on a countrywide basis for each of the last five complete calendar years for the following expense categories:

i. Commission and brokerage;

ii. Other acquisition expenses; and

iii. General expenses;

4. The derivation of the expense flattening as required by N.J.S.A. 17:29A-37. The expense flattening calculation shall exclude the UCJF assessment for the excess medical benefits reimbursed to insurers by that fund. The expense shall be applied by coverage;

5. New Jersey private passenger automobile insurance expense data separately for the most recent three complete calendar years using the format of the Underwriting Investment Exhibit, Part 4—Expenses of the Statutory Annual Statement; and

6. AIRE assessment and reimbursements in dollars and as a percent of bodily injury liability paid losses for the most recent five complete accident years evaluated as of March 31 of the current year.

(b) Filers shall provide the following data regarding proposed rates:

1. Proposed rates for each territory and coverage together with their derivation;

2. Classification differentials, with descriptions, if any proposed changes are being made to the currently approved classification plan. Include an explanation of how classification rates are determined and a sample calculation;

3. The calculations showing that the proposed rates are in compliance with N.J.S.A. 17:29A-36. The base class rates for the territorial calculations shall be inclusive of expense fees but exclusive of residual market equalization charges and policy constants, and all driving record surcharges and discounts. The filer's Statewide average base rate shall be determined from the territorial distribution for the latest year of data contained in the filing. In determining rates for principal operators 65 years of age or older, ratios of rates shall be inclusive of expense fees and exclusive of surcharges, discounts and policy constants (Residual Market Equalization Charges do not apply to these risks); and

4. By coverage, a comparison of average statewide variable rates and expense fees proposed and currently in use, along with the number of exposures by coverage.

(c) Filers shall provide the following data regarding investment earnings:

1. The amount of investment income earned on loss, loss adjustment expense and unearned premium reserves in relation to earned premium for private passenger automobile insurance in New Jersey shall be calculated for the latest two years and estimated for the current year the two following years. Calculations should be provided in detail including the amount of the composite reserves of each type (that is, loss, loss adjustment expense and unearned premium) at the beginning and end of each of the specified years;

2. The cash flow pattern from policy inception date until receipt of premium. This shall be provided by coverage;

3. The cash flow pattern from policy inception date for commission and brokerage, other acquisition expenses, general expenses, assessments, premium taxes, licenses and fees and any other expense payments; and

4. The cash flow pattern from policy inception date for losses, allocated loss adjustment expenses, and unallocated loss adjustment expenses.

(d) Filers shall provide the following regarding identification and certification of statistical plans:

1. Identification of all statistical plans used or consulted in preparing the filing, and a description of the data compiled by each plan; and

2. A certification by an officer on behalf of the filer that the data utilized in the rate filing was collected in accordance with such plans and is a true and accurate representation of the insurer's experience. The certification shall identify any data included in the filing that was not collected in accordance with the statistical plan.

(e) Filers shall provide the following information regarding investment earnings on capital and surplus:

1. Given the selected underwriting profit and contingency loadings contained in the filing, the resulting rate of return on equity capital and on total assets, showing the derivation on all factors used to produce the calculations; and

2. Justification that these rates of return are fair and reasonable. These calculations shall be performed by coverage.

(f) Filers shall provide the following data regarding the level of capital/surplus needed:

1. Premium to policyholders' surplus ratios, and their derivation, for the latest three calendar years for non-fleet private passenger automobile insurance in New Jersey;

2. Estimates of comparable ratios and their derivation for the current and the following two years; and

3. The information in (f)1 and 2 above for the loss plus loss adjustment expense reserve to policyholders' surplus ratio.

(g) Filers shall provide also the following:

1. For prior approval filings only, upon request, copies of documents relating to the various preliminary and intermediate steps taken in preparing the filing, including, but not limited to, agendas and minutes of all meetings concerning the filing for which agenda or minutes were produced. Both meetings dealing specifically with this filing and those dealing implicitly (for example, through the establishment of countrywide practices, etc.) shall be included. Include a list of attendees at any meeting for which minutes are supplied, their titles and their affiliations;

2. A copy of the most recent annual report (not the Statutory Annual Statement filed with Insurance Departments) and the latest 10-K statement;

3. The amount of finance and other miscellaneous charges collected in New Jersey in connection with the sale of private passenger automobile insurance;

4. For prior approval filings only, a description of all products and services supplied or received in transactions between the filer and a parent company, a wholly-owned subsidiary or an affiliated company; and

5. Any additional information specifically requested by the Commissioner which may be necessary to constitute a proper rate filing.

11:3-16.10 Rate calculation using standard ratemaking methodology

(a) Investment income shall be treated as follows:

1. The calculation of the underwriting profit and contingency loading taking into account investment income on loss, loss adjustment expense, and unearned premium reserves shall be calculated in accordance with the Clifford Formula methodology, wherein the combined after-tax profit from underwriting and investment income on loss, loss adjustment expense, and unearned premium reserves is 3.5% of premium.

2. No deductions shall be made for prepaid expenses unless there is specific documentation included in the filing that supports the prepayment of those expenses.

3. No deductions shall be made for the delayed remission in premiums unless there is specific supporting documentation in the filing verifying such delay in the remission of premiums.

4. The ratio of unearned premium reserves to premium shall be obtained from the appropriate line of business from Page 14 of the statutory Annual Statement for New Jersey. The calculations shall be the direct unearned premium reserve divided by the direct premiums written.

5. The ratio of loss reserves to incurred losses shall be derived from the appropriate line of business from Page 14 of the statutory Annual Statement for New Jersey. The calculations shall be as follows:

i. The average of the loss reserve at the beginning of the year and at the end of the year divided by the incurred losses during the year;

ii. The ratio of reserves to losses incurred shall be calculated for the most recent four calendar years; and

iii. If there is a monotonic trend in these ratios, either up or down, the most recent ratio shall be used in the calculation. If no such trend exists, the unweighted average of the four ratios shall be used in the calculation.

6. The ratio of loss adjustment expense reserves to loss reserves shall be derived from the appropriate line of business from Part

3A—Unpaid Losses and Loss Adjustment Expenses of the Annual Statement. The calculations shall be as follows:

i. The unpaid loss adjustment expense divided by the net losses unpaid excluding loss adjustment expense;

ii. This ratio shall be calculated for the most recent four calendar years; and

iii. If there is a monotonic trend in these ratios, either up or down, the most recent ratio shall be used in the calculation. If no such trend exists, the unweighted average of the four ratios shall be used in the calculation.

7. The expected loss and loss adjustment expense ratio shall be one minus the underwriting expense ratio, minus the underwriting profit and contingency ratio derived from the Clifford Formula.

8. The interest rate used in the calculation shall be the most recently published value by the Internal Revenue Service to be used in discounting loss and loss adjustment expense reserves for investment income plus 200 basis points.

(b) Underwriting expense provisions shall be determined as follows:

1. New Jersey specific data shall be used to determine the expense provision for commission and brokerage. Countrywide data for commissions and brokerage is not acceptable.

2. New Jersey specific data shall be used for premium taxes, licenses and fees.

3. New Jersey specific data shall be used for assessments.

4. New Jersey specific data shall be used, if available, for general expenses and other acquisition expenses. When New Jersey specific data is not available, countrywide data allocated to New Jersey may be used. In such cases, the basis of allocation of countrywide data to New Jersey shall be explained in specific detail.

5. The projected provision for other acquisition expenses and general expenses shall be based on a separate trending of the dollar amounts of these items. These shall not be determined by simply assuming the same ratio of these items to premium in the future as has been the case in the past. The basis of the trend shall be a 50/50 weighting of the trend during the past two years of the monthly All Items Consumer Price Index and monthly average weekly wages for fire and casualty insurance employees as published by the Federal Bureau of Labor Statistics. This shall be performed by calculating through regression analysis the annual trends for the two indices and then averaging these values on an equal basis.

6. In determining the historic expense provision for commission and brokerage, other acquisition expenses and general expenses on a combined basis, the percentage to premium for each year of experience shall be limited to a maximum of the percentage shown in "Best's Aggregates and Averages" for the same period for comparable property/casualty insurance companies. If a stock company, the filer shall use the percentage for stock companies; if a mutual company, the filer shall use the percentage for mutual companies; and if a reciprocal company, the filer shall use the percentage for reciprocal companies.

7. The percentage loading for the UCJF assessment shall be the most recent value established by the Commissioner.

8. The following expense items shall not be incorporated into the expense base for determining rates:

i. Fines against the company;

ii. Lobbying expenses;

iii. Charitable contributions;

iv. Political contributions;

v. Awards against the company itself for punitive damages and for bad faith claims; and

vi. Advertising and other expenses incurred in connection with proposed changes in the regulation of insurance.

9. The filing shall include for each of the categories in (b)8 above the dollars of expense that were excluded from the rate base, separately for each year of historic information and separately for each of the above six categories. If the filer submits a ratemaking methodology that includes these expenses pursuant to N.J.A.C. 11:3-16.10(g), specific justification for including these expenses shall be included.

10. Commissions for bodily injury liability coverage for the $0 and verbal threshold shall be equalized in accordance with the Exhibit C in the Appendix incorporated herein by reference.

(d) The data base to be used shall be as follows:

1. Accident year data shall be used for all coverages, both liability and physical damage.

2. The most recent accident year data used in the filing shall end no more than 15 months prior to the date of submission of the filing.

3. For prior approval filings only, each filing for a change in basic limit rates shall also include an experience review of increased limits data.

4. Personal injury protection experience shall be limited to the direct "before reinsurance" exposure retained by the insurance company according to N.J.S.A. 36:6-73.1. Any losses reimbursed or subject to reimbursement to the insurer by the UCJF for excess medical benefits shall not be included with the experience contained in the filing.

(e) The trend methodology to be used shall be as follows:

1. With regard to loss trends, the filing shall contain separate determinations of the loss severity from loss frequency trends.

2. The filing shall contain an adjustment for symbol drift, and where appropriate for model year rating.

(f) The filer shall demonstrate that a reasonable total rate of return on its capital investment attributable to the New Jersey private passenger automobile insurance market will result from the proposed rates.

(g) The ratemaking methodology set forth in (a) through (f) above is the Department's preferred procedure and must be included in the filing. The filer may, however, propose an alternate procedure in total or in part and support it with such calculations and other information it deems appropriate to demonstrate the superiority of the alternate procedure in the determination of the filer's rates.

1. In the event the filer has computed the rates using an alternate methodology, it shall provide all information related to the derivation of the profit and contingency loading contained in the filing, specifically including:

i. All data reviewed, worksheets used and judgments made;

ii. A description of the methodology used to arrive at the selected loading;

iii. A description of alternative methodologies used by the filer in other states (prior approval filings only);

iv. A description of the criteria used to select one of the various methodologies for inclusion in this filing (prior approval filings only);

v. Details regarding the application of these criteria in the selection of a methodology for this filing (prior approval filings only); and

vi. Details on the application of the methodology to this filing (prior approval filings only).

11:3-16.11 Incomplete filings and further proceedings

(a) Failure to submit the data and calculations required by this subchapter may result in a finding that the filing is incomplete. The Department shall promptly notify a filer of a finding that its filing is incomplete.

(b) No finding that a filing is incomplete shall be based solely on the filer's failure to include data that was either not being collected, or was not collected in a manner so as to facilitate reporting, on the effective date of this subchapter, provided that the filer includes with the filing a statement that identifies the item or items not included; specifies the reason; and certifies that the filer is undertaking action to collect and report such data in the future pursuant to N.J.A.C. 11:3-16.3(a).

(c) For informational filings, failure to submit a filing or failure to cure the deficiency of an incomplete filing within 30 days of notice shall authorize the Department to impose penalties as provided by N.J.S.A. 17:29A-23. Any penalty imposed shall be in addition to penalties imposed for failure to file an Excess Profits Report.

(d) For flex rate filings, failure to cure the deficiency of an incomplete filing within 30 days of notice, or failure to request a hearing on the issue of incompleteness within 10 days of notice, shall authorize the Commissioner to issue an Order directing the filer to cease using any flex rate increase, to refund any increased premiums collected, and to impose penalties as provided by N.J.S.A. 17:29A-23.

(e) For filings requiring prior approval, a notice that the filing is incomplete shall include a statement that the filing is disapproved as a nonconforming filing. The filer may thereafter resubmit the filing for approval with the deficiencies cured as noted.

APPENDIX
EXHIBIT AI
FLEX RATE FILINGS

COMPANY_____

COMPANY FILE NO._____

RATE FILING DATA REQUIREMENTS: PAGE NO.

(1) Cover Letter notifying dept. of intention to increase rates in accordance with Order A89-119 _____
Statement of % of increase by coverage (including variable portion & exp. fees excluding policy constant & RMEC) _____
Statement of dollar amount of increase by coverage _____
Effective Date of the Change _____
Name, address and telephone number of company officer familiar with filing _____
Excess Profit Report & Financial Disclosure Information or certification by company officer that it has been filed _____
Manual pages containing the flex rating pages _____

(2) Independent Filer or Non-qualified member of rating organization _____
Has submitted data & rate calculations based on own loss experience & expenses _____
Qualified member _____
Has incorporated ISO Loss & LAE by reference into filing _____
Has filed its own loss & LAE data _____
Qualified member not granted 8/1/88 rate increase _____
Has incorporated ISO Loss & LAE data; however flex change is limited to % of increase applied to company's current rates. _____
Qualified Member using loss & loss adjustment expense higher than ISO _____
Has filed information requested in (3) thru (9) below _____
Qualified Member using loss & loss adjustment expenses lower than ISO _____
Has filed deviation application form _____

(3) The following data must be filed for independent filers, non-qualified members, and qualified members using higher loss and loss adjustment expense than ISO _____
PREMIUM DATA:
Premium at present rates for each coverage using extension of exposures or on level factors _____
Explanation as to how calculations were produced & documentation for sample of such calculation & justification for factors used _____
Justification for the selected method _____
Data on a basic & total limits basis _____
LOSS DATA:
For each coverage and each year used in calculating rate level loss data is provided on a basic & total limits basis _____
Each year and each coverage includes:
Paid Losses _____
Case Reserves _____
Loss Development Factor _____
Incurred Unallocated Loss Adj. Expense _____
Incurred Allocated Loss Adj. Expense _____
Trend Factor _____
Total Trended & Developed Inc. Losses _____
Total Trended & Developed Allocated Loss Adjustment Expenses _____
Total Trended and Developed Unallocated Loss Adjustment Expenses _____
Total Trended Losses and all Loss Adjustment Expense _____
If N.J. losses are separated into catastrophic & non-catastrophic, a description of method used to separate losses is provided _____
If number of years used to determine catastrophe loading is different than number of years available, an explanation is provided _____
If data base from which catastrophe loading is derived differs from the one rate level is based upon an explanation is provided _____
For loss adjustment expense data show related incurred losses used to determine any loss adjustment expense loadings _____

(4) DERIVATION OF CREDIBILITY FACTORS
Provide all data reviewed & judgments made _____
Provide description of methodology used to derive factors _____

(5) LOSS DEVELOPMENT
All data reviewed, worksheets used and judgments made _____
Description of the methodology used to derive the loss development factors _____
By coverage provide total limits paid loss development parallelograms for the latest 10 accident yrs. at each annual evaluation date from 15 months to 123 months for PIP, 15 months to 75 months for PD, and 15 to 51 months for all other coverages _____
Nine, five, and three year average loss development factors by coverage _____
Paid Loss Development Data must be provided by: _____
Basic Limits Paid Losses _____
Total Limits Incurred Losses _____
Basic Limits Incurred Losses _____
Paid Allocated Loss Adj. Expenses _____
Incurred Allocated Loss Adj. Expenses _____
Number of Paid Claims _____
Number of Incurred Claims _____
Statement regarding any changes in loss reserving practices during last five years _____

(6) TREND FACTORS:
All internal loss trend data on both a calendar yr. paid and incurred basis for the latest five yrs. on both a quarterly and quarterly yr. ending basis _____
Bodily Injury Liability data on a basic and total limits basis (Frequency & Severity shown separately) _____
Property Damage Liability shown on a basic and total limits basis (Frequency & Severity shown separately) _____
PIP shown at a per person limit retained by insurer _____
Collision & Comprehensive shown on basis of:
$500 Deductible _____
All deductibles less than $500 combined _____
All deductibles greater than $500 combined _____
All deductibles combined _____
Internal or External Expense Trend Data on both a calendar paid and incurred basis for the latest five yrs. on both a quarterly and yr. ending basis _____
Bodily Injury Liability data on a basic and total limits basis (Severity Only) _____
Property Damage Liability shown on a basic and total limits basis (Severity Only) _____

PIP shown on a per person limit retained by insurer _____
Collision and Comprehensive shown separately on the basis of:
$500 Deductible _____
All deductibles less than $500 combined _____
All deductibles greater than $500 combined _____
All deductibles combined _____
Calculate Annual Trend Factors along with "T" statistics, coefficient of variation, and seasonability factors using least squares regression for all trend data _____
Calculations for 6, 9, 12, 16, 20 point periods on both exponential and straight line basis _____
Side by side comparison of actual data, fitted data and differences _____
All data reviewed, worksheets used and judgments made regarding trend _____
Description of methodology used to derive factors _____

(7) PREMIUM BASE AND EXPOSURES

Data on mix of written exposures by different policy terms for latest 5 yrs. Include both written exposures and amount of written premium for different policy terms _____
Calculations on average age and symbol relativities for latest 5 yrs. _____
Calculation of trend showing all steps for average model yr. and symbol relativities for most recent 5 calendar yrs. _____
Five yr. history of distribution by written exposures and premium of comprehensive and collision by deductible amount _____
Actual model yr. written exposure and premium distribution for comprehensive and collision separately for each of last 5 calendar yrs. _____
Five calendar yr. history of distribution by limit of liability of written exposures and premiums separately for BI, PD and combined single limit coverages _____

(8) LIMITING FACTOR DEVELOPMENT

Limitations on losses and/or loss adjustment expenses included in statistical data used in filing _____
Limitations on extent of rate level change by coverage _____
Limitations on extent of territorial rate changes _____
Limitation on extent of classification rate changes _____

(9) BY COVERAGE AND GROUP OF COVERAGES:

Amount of Earned Premium, incurred losses, incurred allocated and unallocated loss adjustment expense for each of the latest 5 calendar yrs. _____
# of Claims-all limits and deductibles by coverage _____
Allocated Loss adjustment expenses for each of latest 5 calendar yrs. _____
Overall statewide rate change indicated by coverage _____
Amount of change attributable to each of the following:
Loss Experience, Loss trend factor, premium trend factor, expenses, premium taxes, assessments, underwriting profit, law changes, or other changes _____

(10) EXPENSE AND PROFIT PROVISIONS

For each company provide all information related to derivation of expense provisions including all data reviewed, worksheets used, and judgments made _____
Description of methodology used to derive provisions _____
Statement regarding expense savings activities in last 5 yrs. _____

For each of the latest 5 calendar yrs. provide:
Average Incurred Expenses per exposure on a N.J. basis for: _____
Commission & Brokerage _____
Other Acquisition _____
General Expense _____
Explanation of basis of allocation _____
Average Incurred Expenses per exposure on a countrywide basis for:
Commission & Brokerage _____
Other Acquisition _____
General Expense _____
Provide Derivation of Expense _____
Flattening (Exclude UCJF assessment for excess medical) _____
Provide AIRE assessments & reimbursements for last 5 yrs. evaluated as of 3/31/89 in _____
Dollars % of BI Paid Losses _____

DATA REGARDING PROPOSED RATES

Proposed rates for each territory and coverage with their deviation _____
If classification plan is changed describe classification differentials _____
Provide explanation of how classification rates are determined and provide a sample calculation _____
Provide calculations showing how base rates are in compliance with N.J.S.A. 17:29A-36 _____
Base class not greater than 1.35 statewide average base rate (include expense fees) _____
Principal operator over 65 not greater than 1¼ times statewide average rate for principal operators over 65 _____
Comparison of avg. statewide variable rates & expense fees proposed & currently in use and # of exposures by coverage _____

INVESTMENT EARNINGS:

Amount of investment income earned on loss, loss adjustment expense & unearned premiums reserve to earned premium for the latest 2 yrs., estimated for current & two following yrs. _____
Reserves at beginning and end of specified yrs.:
Loss Reserve _____
Loss Adjustment Reserve _____
Unearned Premium Reserve _____
By coverage cash flow pattern from policy inception until premium received _____
Cash flow pattern from inception for commission & brokerage, other acq. expenses, general expenses, assessments, premium taxes, licenses, fees, other expense payments _____
Cash flow pattern from inception for losses, allocated loss adj. expense, and unallocated loss adj. expense _____

STATISTICAL PLANS

Identify plans used or consulted in preparing filing _____
Describe data compiled by each plan _____
Certification by officer that data was collected by such plans & is true & accurate _____
Identify data not collected in accordance with plan & used in filing _____
Using the underwriting profit & contingency loadings selected for use in the filing, provide the rate of return on equity & assets by coverage _____
Provide justification that rates of return are fair & reasonable _____
Provide premium to policyholders surplus for latest 3 yrs., and comparable ratios & their derivation for current & following 2 yrs. _____

Provide the loss plus loss adj. reserve to policyholders surplus for the latest 3 yrs., and comparable ratios & their derivation for current & following 2 yrs. _____

Provide copy of most recent annual report and the latest 10-K statement _____

Provide amount of finance & other miscellaneous charges collected in NJ for auto _____

(11) STANDARD RATEMAKING METHODOLOGY

INVESTMENT INCOME

Underwriting profit calculated using the Clifford Formula so that after tax profit from underwriting & investment income on loss & LAE & unearned premium reserve is 3.5% of premium _____

If there is deduction for prepaid expenses or delayed remission of premiums support is provided _____

The ratio of unearned premium reserved to premium from Pg. 14 of annual statement. (Direct E.P. divided by Direct Prem. Written) is provided _____

The ratio of loss reserves to incurred losses from Pg. 14 of annual statement for 4 yrs. (Avg. of LR at beg. of yr & at end of yr. divided by incurred losses during yr.) Monotonic trend use latest ratio, otherwise use avg. of 4 yrs. _____

The ratio of loss adj. expense reserves to loss reserves from annual statement for 4 yrs. (Unpaid LAE divided net losses unpaid exc. LAE) Monotonic trend use latest ratio, otherwise use avg. of 4 yrs. _____

The expected loss & LAE ratio 1—(Underwriting Exp. Ratio + Underwriting Profit & Cont. Ratio) _____

Interest Rate = latest value published by IRS + 200 basis pts. _____

UNDERWRITING EXPENSE PROVISIONS

NJ data for commission & brokerage _____

NJ data for taxes, licenses, fees _____

Basis of allocation for gen. exp. if NJ data is not used _____

Provision for other acq. & general expense based on separate trending of dollar amounts for these items. (50/50 weighting of trend using AICP index & MAWWFCIE index & regression analysis) _____

Historic Exp. Provisions limited by % in Best Aggregates & Avgs. for comparable company _____

UCJF loading = 3.3% _____

Fines against cos, lobbying expenses charitable & political contributions awards against co. for punitive dam., advertising & expenses in connection with changes in regulation of ins. are "not included" Company must show dollar amt. of expense excluded separately & by yr. _____

Commissions for BI for $0 & verbal threshold are equalized _____

DATA BASE

Accident yr. used for liab. & phy. dam. _____

Most recent data yr. ends no more than 15 months prior to submission PIP limited to direct exposure retained by co. _____

TREND

Separate determinations of loss severity and frequency trends _____

Adjustment for symbol drift & model yr. rating _____

TOTAL RATE OF RETURN

Demonstrate reasonable rate of return from capital investment will result from proposed rates. _____

(12) ALTERNATIVE RATEMAKING METHODOLOGY

Is one used? _____

If yes, provide: all data reviewed, worksheets used, description of methodology to arrive at selective loading _____

(13) GENERAL & FORMAT REQUIREMENTS

Separate insurance companies affiliated by a parent or other groups relationship must submit data shown in (3-9) & (10) and make rate calculation as shown in (11) separately and combined as a group _____

Form AMB 10 must be included _____

Certification by company officer (meets statutory & regulatory requirements) _____

Loose leaf binder, one side of page, consecutively numbered _____

Filer's name shown _____

Filer's identifying numbers _____

Filer's NAIC # _____

Group NAIC # _____

(14) List of items the filer states are not included and the reason why.

EXHIBIT AII
PRIOR APPROVAL FILINGS

COMPANY_____

COMPANY FILE NO._____

RATE FILING DATA REQUIREMENTS:	PAGE NO
(1) Cover Letter notifying dept. of intention to modify rates which requires prior approval	
Statement of % of increase by coverage and overall (including variable portion & expense fees exc. policy constant & RMEC)	
Statement of dollar amount of increase by coverage and overall	
Effective Date of the Change	
Name, address and telephone number of company officer familiar with filing	
An overview of the contents of filing and the reasons and procedures used to derive the rate change requested	
Manual pages on or before the effective date of the rates	
(2) Independent Filer or Non-qualified member of rating organization	
Has submitted data & rate calculations based on own loss experience & expense rate calculation (3-11) below	
Qualified member	
Has incorporated ISO Loss & LAE by reference into filing & has submitted data for (10) & (11) below	
Has filed its own loss & LAE data and data for (10) & (11) below	
Data in (3-9), (10) and (11) below is submitted on an MS-DOS disk-3.5 or 5.25, Lotus or compatible spreadsheet, left & top margins of each page indicate row and column. Calculated values given as formula in worksheet. A written copy of filings indicate name of computer and location	
Qualified Member using loss & loss adjustment expense higher than ISO	
Has filed information requested in (3-9) and (10,11) below	

Qualified Member using loss & loss adjustment expenses lower than ISO _____
Has filed deviation application form and data in (10) & (11) below _____

(3) The following data must be filed for independent filers, non-qualified members, and qualified members using higher loss and loss adjustment expense than ISO _____

PREMIUM DATA:
Premium at present rates for each coverage using extension of exposures or on level factors _____
Explanation as to how calculations were produced & documentation for sample of such calculation & justification for factors used _____
Justification for the selected method _____
Data on a basic & total limits basis _____

LOSS DATA:
For each coverage and each year used in calculating rate level loss data is provided on a basic & total limits basis _____
Each year and each coverage includes:
Paid Losses _____
Case Reserves _____
Loss Development Factor _____
Incurred Unallocated Loss Adj. Expense _____
Incurred Allocated Loss Adj. Expense _____
Trend Factor _____
Total Trended & Developed Inc. Losses _____
Total Trended & Developed Allocated Loss Adjustment Expenses _____
Total Trended and Developed Unallocated Loss Adjustment Expenses _____
Total Trended Losses and all Loss Adjustment Expense _____
If N.J. losses are separated into catastrophic & non-catastrophic, a description of method used to separate losses is provided _____
If number of years used to determine catastrophe loading is different than number of years available, an explanation is provided _____
If data base from which catastrophe loading is derived differs from the one rate level is based upon an explanation is provided _____
Territorial Rate Calculations include written premiums, earned premiums, earned exposures, paid losses, incurred losses, & number of claims by territory for each coverage and each of the years used to determine territorial relativities or last five years, whichever is greater _____
Provide the following information with regard to classification differentials: Data reviewed, worksheets used & judgments made _____
Methodology used to arrive at differentials _____
Description of alternate methodologies used by filer in other states _____
Criteria used to select a particular methodology used in a filing _____
Description of criteria used in selection of methodology for this filing _____
Description of application of the methodology to this filing _____
For loss adjustment expense data show related incurred losses used to determine any loss adjustment expense loadings _____

(4) DERIVATION OF CREDIBILITY FACTORS
Provide all data reviewed & judgments made _____
Provide description of methodology used to derive factors _____

(5) LOSS DEVELOPMENT
All data reviewed, worksheets used and judgments made _____
Description of the methodology used to derive the loss development factors _____
By coverage provide total limits paid loss development parallelograms for the latest 10 accident yrs. at each annual evaluation date from 15 months to 123 months for PIP, 15 months to 75 months for PD, and 15 to 51 months for all other coverages _____
Nine, five, and three year average loss development factors by coverage _____
Paid Loss Development Data must be provided by: _____
Basic Limits Paid Losses _____
Total Limits Incurred Losses _____
Basic Limits Incurred Losses _____
Paid Allocated Loss Adj. Expenses _____
Incurred Allocated Loss Adj. Expenses _____
Number of Paid Claims _____
Number of Incurred Claims _____
Statement regarding any changes in loss reserving practices during last five years _____

(6) TREND FACTORS:
All internal loss trend data on both a calendar yr. paid and incurred basis for the latest five yrs. on both a quarterly and quarterly yr. ending basis _____
Bodily Injury Liability data on a basic and total limits basis (Frequency & Severity shown separately) _____
Property Damage Liability shown on a basic and total limits basis (Frequency & Severity shown separately) _____
PIP shown at a per person limit retained by insurer _____
Collision & Comprehensive shown on basis of:
$500 Deductible _____
All deductibles less than $500 combined _____
All deductibles greater than $500 combined _____
All deductibles combined _____
Internal or External Expense Trend Data on both a calendar paid and incurred basis for the latest five yrs. on both a quarterly and yr. ending basis _____
Bodily Injury Liability data on a basic and total limits basis (Severity Only) _____
Property Damage Liability shown on a basic and total limits basis (Severity Only) _____
PIP shown on a per person limit retained by insurer _____
Collision and Comprehensive shown separately on the basis of:
$500 Deductible _____
All deductibles less than $500 combined _____
All deductibles greater than $500 combined _____
All deductibles combined _____
Calculate Annual Trend Factors along with "T" statistics, coefficient of variation, and seasonability factors using least squares regression for all trend data _____
Calculations for 6, 9, 12, 16, 20 point periods on both exponential and straight line basis _____
Side by side comparison of actual data, fitted data and differences _____
All data reviewed, worksheets used and judgments made regarding trend _____
Description of methodology used to derive factors _____
Description of methodology used to select one of the various methodologies in a particular filing _____
If filer has included the effects of any studies, analysis, or fact sheets, describe in detail the methodologies used for the following:
Changes in seatbelt use _____

Changes in Drinking Age _____
Changes in price & amount of gasoline purchased _____
Changes in avg. miles driven _____
Legislative, regulatory, social or economic factors _____

(7) PREMIUM BASE AND EXPOSURES

Data on mix of written exposures by different policy terms for latest 5 yrs. Include both written exposures and amount of written premium for different policy terms _____
Calculations on average age and symbol relativities for latest 5 yrs. _____
Calculation of trend showing all steps for average model yr. and symbol relativities for most recent 5 calendar yrs. _____
Five yr. history of distribution by written exposures and premium of comprehensive and collision by deductible amount _____
Actual model yr. written exposure and premium distribution for comprehensive and collision separately for each of last 5 calendar yrs. _____
Five calendar yr. history of distribution by limit of liability of written exposures and premiums separately for BI, PD and combined single limit liability coverages _____

(8) LIMITING FACTOR DEVELOPMENT

Limitations on losses and/or loss adjustment expenses included in statistical data used in filing _____
Limitations on extent of rate level change by coverage _____
Limitations on extent of territorial rate changes _____
Limitation on extent of classification rate changes _____

(9) BY COVERAGE AND GROUP OF COVERAGES:

Amount of Earned Premium, incurred losses, incurred allocated and unallocated loss adjustment expense for each of the latest 5 calendar yrs. _____
# of Claims-all limits and deductibles by coverage _____
Allocated Loss adjustment expenses for each of latest 5 calendar yrs. _____
Overall statewide rate change indicated by coverage _____
Amount of change attributable to each of the following:
Loss Experience, Loss trend factor, premium trend factor, expenses, premium taxes, assessments, underwriting profit, law changes, or other changes _____

(10) EXPENSE AND PROFIT PROVISIONS

For each company provide all information related to derivation of expense provisions including all data reviewed, worksheets used, and judgments made _____
Description of methodology used to derive provisions _____
Statement regarding expense savings activities in last 5 yrs. _____
For each of the latest 5 calendar yrs. provide:
Average Incurred Expenses per exposure on a N.J. basis for: _____
Commission & Brokerage _____
Other Acquisition _____
General Expense _____
Explanation of basis of allocation _____
Average Incurred Expenses per exposure on a countrywide basis for:
Commission & Brokerage _____
Other Acquisition _____
General Expense _____
Provide Derivation of Expense _____
Flattening (Exclude UCJF assessment for excess medical) _____

Provide AIRE assessments & reimbursements for last 5 yrs. evaluated as of 3/31/89 in _____
Dollars % of BI Paid Losses _____

DATA REGARDING PROPOSED RATES

Proposed rates for each territory and coverage with their deviation _____
If classification plan is changed describe classification differentials _____
Provide explanation of how classification rates are determined and provide a sample calculation _____
Provide calculations showing how base rates are in compliance with N.J.S.A. 17:29A-36 _____
Base class not greater than 1.35 statewide average base rate (include expense fees) _____
Principal operator over 65 not greater than 1¼ times statewide average rate for principal operators over 65 _____
Comparison of avg. statewide variable rates & expense fees proposed & currently in use and # of exposures by coverage _____

INVESTMENT EARNINGS:

Amount of investment income earned on loss, loss adjustment expense & unearned premiums reserve to earned premium for the latest 2 yrs., estimated for current & two following yrs. _____
Reserves at beginning and end of specified yrs.:
Loss Reserve _____
Loss Adjustment Reserve _____
Unearned Premium Reserve _____
By coverage cash flow pattern from policy inception until premium received _____
Cash flow pattern from inception for commission & brokerage, other acq. expenses, general expenses, assessments, premium taxes, licenses, fees, other expense payments _____
Cash flow pattern from inception for losses, allocated loss adj. expense, and unallocated loss adj. expense _____

STATISTICAL PLANS

Identify plans used or consulted in preparing filing _____
Describe data compiled by each plan _____
Certification by officer that data was collected by such plans & is true & accurate _____
Identify data not collected in accordance with plan & used in filing _____
Using the underwriting profit & contingency loadings selected for use in the filing, provide the rate of return on equity & assets by coverage _____
Provide justification that rates of return are fair & reasonable _____
Provide premium to policyholders surplus for latest 3 yrs., and comparable ratios & their derivation for current & following 2 yrs. _____
Provide the loss plus loss adj. reserve to policyholders surplus for the latest 3 yrs., and comparable ratios & their derivation for current & following 2 yrs. _____
Provide copy of most recent annual report and the latest 10-K statement _____
Provide amount of finance & other miscellaneous charges collected in NJ for auto _____
Provide a description of all products and services supplied between filer and a parent company _____

(11) STANDARD RATEMAKING METHODOLOGY

INVESTMENT INCOME

Underwriting profit calculated using the Clifford Formula so that after tax profit from underwriting & investment income on loss & LAE & unearned premium reserve is 3.5% of premium _____

If there is deduction for prepaid expenses or delayed remission of premiums support is provided _____

The ratio of unearned premium reserves to premium from Pg. 14 of annual statement. (Direct E.P. divided by Direct Prem. Written) is provided _____

The ratio of loss reserves to incurred losses from Pg. 14 of annual statement for 4 yrs. (Avg. of LR at beg. of yr. & at end of yr. divided by incurred losses during yr.) Monotonic trend use latest ratio, otherwise use avg. of 4 yrs. _____

The ratio of loss adj. expense reserves to loss reserves from annual statement for 4 yrs. (Unpaid LAE divided net losses unpaid exc. LAE) Monotonic trend use latest ratio, otherwise use avg. of 4 yrs. _____

The expected loss & LAE ratio 1—(Underwriting Exp. Ratio + Underwriting Profit & Cont. Ratio) _____

Interest Rate = latest value published by IRS + 200 basis pts. _____

UNDERWRITING EXPENSE PROVISIONS

NJ data for commission & brokerage _____

NJ data for taxes, licenses, fees _____

Basis of allocation for gen. exp. if NJ data is not used _____

Provision for other acq. & general expense based on separate trending of dollar amounts for these items. (50/50 weighting of trend using AICP index & MAWWFCIE index & regression analysis) _____

Historic Exp. Provisions limited by % in Best Aggregates & Avgs. for comparable company _____

UCJF loading = 3.3% _____

Fines against cos, lobbying expenses charitable & political contributions awards against co. for punitive dam., advertising & expenses in connection with changes in regulation of ins. are "not included" Company must show dollar amt. of expense excluded separately & by yr. _____

Commissions for BI for $0 & verbal threshold are equalized _____

DATA BASE

Accident yr. used for liab. & phy. dam. _____

Most recent data yr. ends no more than 15 months prior to submission PIP limited to direct exposure retained by co. _____

Change in basic rates in filing should also include experience review of increased limits data _____

TREND

Separate determinations of loss severity and frequency trends _____

Adjustment for symbol drift & model yr. rating _____

TOTAL RATE OF RETURN

Demonstrate reasonable rate of return from capital investment will result from proposed rates. _____

(12) ALTERNATIVE RATEMAKING METHODOLOGY

Is one used? _____

If yes, provide: all data reviewed, worksheets used, description of methodology to arrive at selective loading _____

Description of alternate methodologies used in other states _____

Description of criteria used to select one of the methodologies _____

Details on application of selected methodology used for this filing _____

Details on application of methodology to this filing _____

(13) GENERAL & FORMAT REQUIREMENTS

Separate insurance companies affiliated by a parent or other groups relationship must submit data shown in (3-9) & (10) and make rate calculation as shown in (11) separately and combined as a group _____

Form AMB 10 must be included _____

Certification by company officer (meets statutory & regulatory requirements) _____

Loose leaf binder, one side of page, consecutively numbered _____

Filer's name shown _____

Filer's identifying numbers _____

Filer's NAIC # _____

Group NAIC # _____

(14) List of items the filer states are not included and the reason why. _____

EXHIBIT B

CAUSE OF LOSS REPORT

COMPREHENSIVE

NEW JERSEY CALENDAR YEAR ENDING 12/31_____

	WRITTEN EXPOSURES	EARNED EXPOSURES	WRITTEN PREMIUM	EARNED PREMIUM	NO. OF LOSSES	LOSSES PAID	% LOSS PAID	LOSS FREQ.	AVG. LOSS	PURE PREMIUM (LOSS COST)
FIRE										
THEFT										
GLASS										
PERSONAL EFFECTS										
MALICIOUS MISCHIEF VANDALISM										
WINDSTORM, EARTHQUAKE, ETC.										
FLOOD & RISING WATERS										
ALL OTHER CAUSES										
TOTAL										

EXHIBIT C

Worksheet to Determine Zero Threshold Premium and Commission for BI and UMBI

Insurance Group Name _____

Insurance Company Name _____

Group NAIC Number _____

Company NAIC Number _____

Check one:	This is a filing for (check one):
BI _____	Flex Rating Increase _____
UMBI _____	Prior Approval Increase _____
	Prior Approval Decrease _____

BEFORE COMPLETING THIS FORM, PLEASE READ THE INSTRUCTIONS ON PAGE 4.

Section A

Section A develops the revised verbal threshold base rate after the rate change.

Item 1A: Current verbal threshold base rate

State the territory number _____
Number of exposures _____
Percent of statewide total _____

Item 2A: Verbal threshold rate change, expressed as a multiplicative factor _____

NOTE: For a flex filing rate increase, the maximum value of Item 2A is 1.049.

Item 3: Revised verbal threshold base rate _____
(Item 1A multiplied by Item 2A)

NOTE: Item 3A is the new verbal threshold base rate after the rate change.

Section B

The dollars of commission for the verbal threshold base rate and the zero threshold base rate are to be identical after the rate change. Section B develops the dollars of commission which can be included in the rate. The insurer may pay a higher commission. However, the portion of the commission above the amount stated in Item 2B is not to be included in the rate and is not to be charged to the policyholder.

Item 1B: Current filed and approved commission rate for the VERBAL threshold base rate, expressed as a decimal and rounded to the third decimal place _____

State the relevant DOI filing number: _____

Item 2B: Dollars of commission for the increased/decreased verbal threshold base rate _____
(Item 3A multiplied by Item 1B)

NOTE: Item 2B is the dollars of commission for the verbal threshold base rate after the rate change, and it is also the dollars of commission for the zero threshold base rate after the rate increase/decrease.

Section C

Section C develops the zero threshold rate change.

For a prior approval rate increase, or a flex rating increase, complete Item 1C, Item 2C, Item 3C, and Item 4C. For a rate decrease, complete Item 5C, Item 6C, Item 7C, and Item 8C.

COMPLETE ITEMS 1C, 2C, 3C, AND 4C ONLY FOR A PRIOR APPROVAL RATE INCREASE, OR A FLEX RATING RATE INCREASE, BUT NOT FOR A RATE DECREASE.

Item 1C: Item 2A minus 1.000 _____

Item 2C: Item 1C times 2.000 _____

Item 3C: Item 2C plus 1.000 _____

Item 4C: Zero threshold rate increase expressed as a multiplicative factor

NOTE: Item 4C is the amount the insurer selects as the zero threshold rate increase. However, for a flex filing rate increase, Item 4C cannot be smaller than Item 3C. For a flex filing rate increase, Item 4C cannot be larger than 1.098.

COMPLETE ITEMS 5C, 6C, 7C, AND 8C ONLY FOR A PRIOR APPROVAL RATE DECREASE, AND NOT FOR A PRIOR APPROVAL RATE INCREASE, AND NOT FOR A FLEX RATING INCREASE.

Item 5C: 1.000 minus Item 2A _____

Item 6C: Item 5C divided by 2.000 _____

Item 7C: 1.000 minus Item 6C _____

Item 8C: Zero threshold rate decrease expressed as a multiplicative factor

NOTE: Item 8C is the amount the insurer selects as the zero threshold rate decrease.

Section D

Item 5D of Section D is the zero threshold base rate with the rate increase/decrease.

Item 1D: Current zero threshold base rate _____

Item 2D: Filed and approved dollars of commission for the current zero threshold base rate _____

State the relevant DOI filing number: _____

Item 3D: Current zero threshold base rate excluding commissions (Items 1D minus Item 2D) _____

Item 4D: Increased/decreased zero threshold base rate, excluding commissions _____
(Item 3D multiplied by Item 4C, or Item 3D multiplied by Item 8C, as appropriate.)

Item 5D: Increased/decreased zero threshold base rate, including commissions _____
(Items 2B plus Item 4D)

Instructions:

1. Data are for base rates for the territory with the largest number of the filer's exposures. Following Item 1A state the number of the territory in question; the number of exposures in that territory; and the portion of the statewide exposures for the filer in that territory.
2. File one worksheet for BI and one for UMBI.
3. For combined single limits, fill out the worksheets using the BI and UMBI portions of the rate.
4. Item 2A is to be expressed as a decimal and rounded to the third digit. For example, if the rate change is an increase of 2%, Item 2A is 1.020. As another example, if the rate change is a decrease of 3.2%, then Item 2A is 0.968. IN A FLEX RATE INCREASE FILING, THE MAXIMUM FOR ITEM 2A IS 1.049.
5. The commission rate in Item 1B to be expressed as a decimal and rounded to the third digit. For example, if the commission rate is 15.3%, Item 1B is 0.153. As another example, if the commission rate is 19%, Item 1B is 0.190.
6. The commission allowable in the zero threshold base rate is Item 2B. The insurer may pay a higher commission. However, the portion of the commission above the amount stated in Item 2B is not to be included in the rate and is not to be charged to the policyholder.
7. Following Items 1B and 2D, provide the DOI filing number of the filing in which the commission rate was approved.

EXHIBIT D

New Jersey Department of Insurance — General Filing Questionnaire

(complete for property and casualty filings submitted for approval)

COMPLETE ITEMS 1, 2, and 3 FOR ALL FILINGS.

1 Name all filing companies (and group, if applicable) and their NAIC identification code.

	Grp.	Company	NAIC Code
1 ▶ ____ 20.	____	____	21. ▶ ____ 28.
1 ▶ ____ 20.	____	____	21. ▶ ____ 28.
1 ▶ ____ 20.	____	____	21. ▶ ____ 28.
1 ▶ ____ 20.	____	____	21. ▶ ____ 28.
1 ▶ ____ 20.	____	____	21. ▶ ____ 28.
1 ▶ ____ 20.	____	____	21. ▶ ____ 28.
1 ▶ ____ 20.	____	____	21. ▶ ____ 28.
1 ▶ ____ 20.	____	____	21. ▶ ____ 28.
1 ▶ ____ 20.	____	____	21. ▶ ____ 28.
1 ▶ ____ 20.	____	____	21. ▶ ____ 28.

2 A. Indicate type of filing: place "x" for all applicable items.

Rate	Deviation	Rule	Form • End't.	Other • Explain –
☐ ◀ 37.	☐ ◀ 38.	☐ ◀ 39.	☐ ◀ 40.	☐ ◀ 41.

2 B. Indicate category of filing: place "x" for all applicable items.

New	Revision	Reference	Withdrawal
☐ ◀ 42.	☐ ◀ 43.	☐ ◀ 44.	☐ ◀ 45.

2 C. Indicate kinds and lines of insurance affected by this filing.

Kind	Line
46 ▶ ☐☐ 47.	48 ▶ ☐☐ 49.
46 ▶ ☐☐ 47.	48 ▶ ☐☐ 49.

2 D. Indicate overall percent rate impact, if any.

% ☐ Indeterminable

3 A. Is this filing similar to filing previously approved in New Jersey?

☐ Yes ☐ No ☐ Unknown

3 B. If answer to 3 A. is yes, complete the following:

Name of Filer	Dept. File No.	Effective Date
▶	▶	▶

♦ Stop Here if the Answer to 3 A. is Yes ♦

COMPLETE ITEM 4 FOR FORMS OR ENDORSEMENTS AFFECTING EXISTING OR NEW COVERAGES – USE ADDITIONAL SHEETS AS REQUIRED. IF INFORMATION IS DESCRIBED IN FILING IDENTIFY EXHIBIT AND SPECIFIC PAGES.

4 A. Does this filing change coverages provided in the policy?
☐ Yes ☐ No • Explain "No" Answer

4 B. If answer to 4 A. is yes, describe the coverages affected.
1 ☐ Added ☐ Changed ☐ Deleted
▶

2 ☐ Added ☐ Changed ☐ Deleted
▶

3 ☐ Added ☐ Changed ☐ Deleted
▶

4 ☐ Added ☐ Changed ☐ Deleted
▶

5 ☐ Added ☐ Changed ☐ Deleted
▶

• State Below Amount of Business Written for Each Enumerated • Coverage, Using Direct Written Premiums for Latest Year Available.

New Jersey Premiums	Countrywide Premiums
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

4 C. State the reasons for the described coverage changes.
1.

2.

3.

4.

5.

4 D. State the estimated premium impact of the described coverage changes.
1 ☐ None ☐ Indeterminable Other ▶
2 ☐ None ☐ Indeterminable Other ▶
3 ☐ None ☐ Indeterminable Other ▶
4 ☐ None ☐ Indeterminable Other ▶
5 ☐ None ☐ Indeterminable Other ▶

COMPLETE ITEM [5] FOR FILINGS AFFECTING EXISTING OR NEW RULES - USE ADDITIONAL SHEETS AS REQUIRED. IF THE INFORMATION IS DESCRIBED IN FILING, IDENTIFY EXHIBIT AND SPECIFIC PAGES.

[5] A. Does this filing change rules of the approved rating system?
☐ Yes ☐ No • Explain "No" Answer

[5] B. If answer to [5] A. is yes, describe the rules affected
1 ☐ Added ☐ Changed ☐ Deleted
▶

2 ☐ Added ☐ Changed ☐ Deleted
▶

3 ☐ Added ☐ Changed ☐ Deleted
▶

4 ☐ Added ☐ Changed ☐ Deleted
▶

5 ☐ Added ☐ Changed ☐ Deleted
▶

♦ State Below Amount of Business Written for Each Enumerated ♦ Rule, Using Direct Written Premiums for the Latest Year Available.

New Jersey Premiums	Countrywide Premiums
1.	1.
2.	2.
3.	3.
4	4.
5.	5.

[5] C. State the reasons for the described rule changes.
1.

2.

3.

4.

5.

[5] D. State the estimated premium impact of the described rule changes.
1 ☐ None ☐ Indeterminable Other ▶
2 ☐ None ☐ Indeterminable Other ▶
3 ☐ None ☐ Indeterminable Other ▶
4 ☐ None ☐ Indeterminable Other ▶
5 ☐ None ☐ Indeterminable Other ▶

EXHIBIT E

DEVIATION APPLICATION FORM
(All Items based on Direct premiums & expenses)
Latest 3 Years Of Data

DATE:

COMPANY:

RATING ORGANIZATION:

KIND OF INSURANCE:

PERCENTAGE OF DEVIATION REQUESTED:

COUNTRYWIDE

	Dollar Amt 19___	%*	Dollar Amt 19___	%*	Dollar Amt 19___	%*
1. Premiums written						
2. Premiums earned						
3. Losses, excluding all adjustment expense						
4. All loss adjustment expense						
5. Total (lines 3 and 4)						
Underwriting Expenses						
6. Commission						
7. Other Acquisition						
8. General Expense						
9. Taxes, fees, et al						
10. Total (lines 6 to 9)						
11. Total (lines 5 & 10)						
12. Net Underwriting gain or loss						
New Jersey						
13. Premiums written						
14. Premiums earned						
15. Losses incurred						
16. Loss Ratio						
17. Average Countrywide Deviated Rate Level						
18. Average N.J. Commission						
19. Maximum N.J. Commission						
20. N.J. Taxes & UCJF assessment						

*Note: All lines (except 6 & 9) related to premiums earned; lines 6 & 9 related to premiums written. All based on direct premiums and expenses.

(a)

DIVISION OF ACTUARIAL SERVICES, PROPERTY/LIABILITY

Notice of Suspension of Changes Upon Adoption and Opportunity for Public Comment
Notice of Proposed Amendment
Residual Market Equalization Charges (RMEC's) Applied to Motorcycles and Private Passenger Automobiles Registered But Not Principally Garaged in New Jersey
Adopted Changes Suspended: N.J.A.C. 11:3-25.4(a)
Proposed Amendment: N.J.A.C. 11:3-25.4(c)

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance
Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1 and 17:30E-1 et seq.
Proposal Number: PRN 1989-422

Submit comments by September 6, 1989 to:
Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

The New Jersey Automobile Full Insurance Underwriting Association (hereafter "Association") provides insurance coverage to persons who are unable to obtain it through ordinary market channels.

Pursuant to N.J.S.A. 17:30E-8 (P.L. 1983, c.65), the Association is permitted to submit to the Department of Insurance (hereafter "Department") a filing for a residual market equalization charge (hereafter "RMEC") in an amount necessary to offset the anticipated cash shortfall of the Association when other sources of income are found to be insufficient. A RMEC is a variable dollar charge which is applied to various types of automobile insurance policies the amount of which, when added to all other sources of Association income, will cause the Association to operate on a no profit, no loss basis.

On May 15, 1989, the Department adopted new rules that would uniformly assess RMEC's on all private passenger automobiles as therein defined (see 21 N.J.R. 1361(a)). In addition to other changes, the adopted new rules contained additions to the definition of "private passenger automobile" which applied the RMEC to private passenger automobiles registered but not principally garaged in this State and motorcycles. These changes sought to make uniform the application of RMEC charges to those vehicles which satisfy the definition of "automobile" set forth in N.J.S.A. 17:30E-3.

The Department believes that the addition of private passenger automobiles registered but not principally garaged in New Jersey and motorcycles to the types of vehicles to which the adopted new rules apply was such a change from the rules as proposed that the public should be afforded further opportunity to be heard (see N.J.A.C. 1:30-4.3). The purpose of this notice and proposed amendment is to suspend the operation of these changes upon adoption and to allow public comment on the changes as if they were being proposed as amendments to the pertinent part of N.J.A.C. 11:3-25.4(a), as that subsection was proposed in the February 6, 1989 New Jersey Register at 21, N.J.R. 278(a). Accordingly, pending the expiration of the public comment period herein provided, the Department's review of the public comments and the subsequent publication in the New Jersey Register of a notice of termination of suspension and of a notice of adoption of the proposed amendment to N.J.A.C. 11:3-25.4(c), the rules as adopted in the May 15, 1989 New Jersey Register at 21 N.J.R. 1361(a) are suspended and will not be enforced by the Department to the extent that they impose RMEC's on private passenger automobiles registered but not principally garaged in New Jersey and motorcycles. No other provisions of the rules as adopted and appearing in the May 15, 1989 New Jersey Register are hereby suspended or proposed for amendment.

Prior to the publication of this notice, the Department issued Bulletin 89-4, dated July 3, 1989, which advises insurers transacting business in New Jersey that, pending the resolution of the instant matter, they should not bill nor collect from insureds any RMEC charges placed upon private passenger automobiles and motorcycles registered but not principally garaged in New Jersey. Additionally, by this notice, insurers are advised that where such an insured has already been billed by an insurer for a RMEC, he or she is entitled to a return of the RMEC paid or a credit against his or her outstanding balance.

Social Impact

Consistent with the legislative intent and the objectives of the Association, the changes upon adoption of N.J.A.C. 11:3-25.4(a) suspended by this notice made uniform the application of RMEC charges to all vehicles which satisfy the statutory definition of automobile, including private passenger automobiles registered but not principally garaged in New Jersey and motorcycles (see N.J.S.A. 17:30E-3b). The suspension of these changes and the proposed amendment will provide an opportunity for comment on those changes by the affected public without the need for such persons to pay RMEC's prior to further Department action.

Economic Impact

Insurers may experience a minimal increase in costs due to modifications in their surcharge systems which are needed to comply with the requirements of the suspension and proposed amendment.

Owners of motorcycles and private passenger automobiles registered but not principally garaged in New Jersey will be the most affected by the suspension and proposed amendment. For the duration of the suspension and prior to adoption of the proposed amendment, such owners will benefit by not having to pay the RMEC's imposed by the adopted rules. Such benefit will cease once the RMEC's are imposed upon termination of suspension and adoption of the amendment. Currently, there are approximately 75,000 motorcycles and an unknown number of private passenger automobiles registered but not principally garaged in New Jersey to which the suspension and proposed amendment will apply. The economic impact of the savings resulting from the suspension and the cost of the RMEC's once imposed will be most noticeable on affected owners who currently have low insurance premiums.

The Department does not expect to incur any significant additional expenses as a result of the suspension and proposed amendment. During the period of suspension, the JUA will not receive RMEC's from owners of motorcycles and private passenger automobiles registered but not principally garaged in New Jersey.

Regulatory Flexibility Analysis

Some insurers affected by the changes upon adoption suspended herein and the proposed amendment may be small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The changes upon adoption require all insurers to collect RMEC's from owners of motorcycles and private passenger automobiles registered but not principally garaged in New Jersey. This would require an alteration of present procedures for all insurers, regardless of whether they are a "small business." The statute clearly does not allow for differentiation or disparity between insurers that are "small businesses" and those that are not. Accordingly, to provide for uniform and consistent applicability of the adopted changes and to avoid granting any advantage to insurers which are small businesses, no differential treatment is afforded to them by the changes.

The proposed amendment requires all insurers to suspend collection of RMEC's from owners of motorcycles and private passenger automobiles registered but not principally garaged in New Jersey pending further Department action, and to return monies already collected in response to the changes upon adoption effective May 15, 1989. The latter action requires minimal, but necessary, cost in order to provide a public comment opportunity for the adopted changes, without imposing the cost of RMEC's on the affected public before that opportunity.

The changes upon adoption and the proposed amendment will not require insurers to hire or utilize professional services of any kind. Initial and annual compliance costs for RMEC collection are inestimable, but would be a function of the efficiency of an insurer in collecting RMEC's pursuant to the procedures in N.J.A.C. 11:3-25.

Full text of N.J.A.C. 11:3-25.4 follows (text added upon adoption, operation of which is suspended and for which public comment is invited, indicated in boldface italics ***thus***; text deleted upon adoption, operation of which is suspended and for which public comment is invited, indicated in bracketed italics *[thus]*; and proposed additions indicated in boldface **thus**):

11:3-25.4 Definition of private passenger automobile

(a) "Private passenger automoible" means an automoible [,] ***registered or*** principally garaged in the State of New Jersey, of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; or a motor vehicle with a pick-up body, a van, a delivery sedan, a panel truck, [*or*] a motorized camper type vehicle, ***or a motorcycle registered or*** principally garaged in the State of New Jersey, and owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation which is principally garaged on a farm or ranch and otherwise meets the definition contained in this section, shall be considered a private passenger automobile. Motor vehicles owned by a government entity, agency or instrumentality thereof, and motor vehicles owned by a religious or nonprofit institution, are not considered private passenger automobiles.

(b) (No change).

(c) **Insurers transacting automoible insurance in New Jersey shall not bill to nor collect from insureds any RMEC charges placed upon private passenger automobiles registered but not principally garaged in New Jersey or motorcycles until the effective date of this amendment. Insurers shall return or credit against any outstanding balance RMEC's collected from such insureds in cases where they have collected a RMEC prior to the receipt of Department of Insurance Bulletin 89-4.**

(a)

DIVISION OF FINANCIAL EXAMINATIONS
Division of Enforcement and Consumer Protection
Insurer Record Retention and Production for Examination by the Department of Insurance
Proposed New Rules: N.J.A.C. 11:1-27
Proposed Amendment: N.J.A.C. 11:4-11.6

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6e, 17:23-1 et seq., 17B:21-1 et seq., 17:44A-1 et seq., 17:45-1 et seq., 17:46B-1 et seq., 17:46C-1 et seq., 17:47-1 et seq., 17:48-1 et seq., 17:48A-1 et seq., 17:48B-1 et seq., 17:48C-1 et seq., 17:48D-1 et seq., 17:48E-1 et seq., 17:49A-1 et seq., 17:50-1 et seq., 17:29D-1 et seq., 17:37A-1 et seq., 17:30E-1 et seq., 17:30A-1 et seq., 15 USC 3901 et seq., 17:30A-1 et seq., 18A:18B-1 et seq., 40A:10-36, 39:6-52, 34:15-77; 26:2H-1 et seq., and 17:16A-1 et seq.

Proposal Number: PRN 1989-401.

Submit comments by September 6, 1989, to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Commissioner of Insurance is, by statute, given the responsibility to examine the financial and other operations and affairs of insurers to ascertain compliance with New Jersey statutory and regulatory law. The Commissioner presently fulfills this duty by conducting "financial examinations" and "market conduct examinations" as these terms are defined in the proposed new rules. Present procedure concerning the conduct of these examinations and the creation (or recordation), retention and maintenance of the information or records necessary to document with the law is not presently formalized or codified as an administrative rule. Rather, the Department notifies each insurer of the fact that an examination will take place, identifies the records subject to review (and, in agreement with each insurer, the form in which they may be produced for examination) and the time and place of the examination. Therefore, under current procedures, the Department must review an insurer's records as this term is ultimately defined by the insurer and according to the manner in which they are maintained and produced for examination by the insurer.

The proposed new rules systematize and clarify the procedures and standards for insurers concerning record retention and the production for examination by the Department of Insurance for records required to be maintained by insurers by Titles 17 and 17B of the New Jersey Statutes, Title 11 of the New Jersey Administrative Code and other applicable provisions of law. The proposed new rules are an expression of the Department's need to establish uniform standards of recordkeeping for all insurers subject to its regulatory control.

Specifically, the proposed new rules:

1. Identify the types of information which must be maintained as a "record";
2. Mandate that records required to be maintained be accessible and available to the Commissioner upon demand;
3. Identify the form in which records may be maintained and produced for examination;
4. Prescribe the period of retention and identify when documents may be destroyed;
5. Describe the location where records must be made available for inspection by the Commissioner;
6. Require that insurer records maintained by persons other than the insurers be maintained in a manner consistent with the proposed new rules;
7. Prescribe penalties for non-compliance; and
8. Require insurers to adopt written procedures for internal dissemination implementing the proposed new rules and to certify compliance with the proposed new rules on a yearly basis.

The rule proposed for amendment, N.J.A.C. 11:4-11.6, concerns life insurance solicitation and is inconsistent with the proposed new rules. It requires the maintenance of records for a period of three years. Since these records may be the subject of a "market conduct" or "financial examination," or may be required to be filed with the Commissioner, they must be maintained in conformity with the proposed new rules (see, for example, proposed N.J.A.C. 11:1-26.7).

Social Impact

The proposed new rules will require insurers to record, maintain and produce for examination by the Commissioner of Insurance certain information required to document compliance with the law. Although it is believed that all or most insurers presently adhere to all or most of the requirements of the proposed new rules, the rules will impose compliance burdens on those insurers not presently in substantial compliance. The publication of the proposed new rules will assist insurers in identifying and complying with the procedures of the Department in advance of a Departmental examination. Insurers will no longer need to inquire as to the period of record retention, the acceptable form of record maintenance and production for examination, and other substantive and procedural requirements related to recordkeeping.

The proposed new rules will benefit the Department of Insurance by identifying in one subchapter the procedures relevant to record maintenance and examination, which procedures are currently identified in sundry statutes, letters, bulletins or informal determinations of the Department. To the extent that the proposed new rules assist insurers as noted above, benefits will inure to the Department in the form of less time and effort required to be devoted to identifying record maintenance requirements and procedures. The proposed new rules will also enable the Department to implement provisions of statutory law. Further, the proposed new rules will enable the Department to more easily identify instances of insurer misconduct and abuse as well as insurer compliance with the requirements of law.

The consumer public will benefit by the promulgation of the proposed new rules since they will enable the Department to more efficiently and effectively fulfill its statutory public duty to regulate the business of insurance in New Jersey. Compliance with the rules will help ensure that the Department can identify financially-troubled insurers and those insurers whose conduct is in violation of claims settlement and other trade practices which directly affect the consumer in the form of the premium he pays or the service he receives.

The proposed new rules also identify the penalties to which persons who violate the rules may be subject.

Economic Impact

By clearly but broadly defining the categories of information that must be maintained as a "record," the proposed new rules may require the maintenance by insurers of documents not presently maintained or produced for examination, with attendant costs. Also, in the unlikely event that insurers are not maintaining records in a manner sanctioned by the proposed new rules, costs will be incurred to transfer data to a new recordkeeping system. To the extent that the proposed new rules do not correspond to the requirements of other states presently being adhered to, an insurer will incur costs in meeting any disparate requirements required by New Jersey while simultaneously meeting the requirements of other states.

The Department of Insurance does not anticipate incurring any substantial costs associated with enforcing the proposed new rules. However, costs may be incurred to the extent that the Department conducts periodic audits for compliance pursuant to proposed N.J.A.C. 11:1-26.5(c). These costs may be only partially offset by the economic efficiencies associated with centralizing and clarifying the procedures concerning record retention and production for examination. The Department anticipates that the enforcement of compliance with the proposed new rules will be alleviated by requiring insurers to certify compliance on a yearly basis and to develop written procedures for internal dissemination and use (see, for example, proposed N.J.A.C. 11:1-25.11).

The consumer public will derive an economic benefit from the proposed new rules because they will enable the Department to more efficiently monitor the solvency and general operations and affairs of insurers, which will provide a more fiscally-sound, efficient and consumer-responsive insurance system in New Jersey.

The rules impose civil and criminal penalties upon insurers or persons who violate their requirements.

Regulatory Flexibility Analysis

The proposed new rules are applicable to all insurers as herein defined. t is believed that some insurers to whom the rules apply are "small ›usinesses" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The reporting, recordkeeping and compliance requirements proposed or adoption are clearly expressed in the proposed new rules. Most nsurers likely employ recordkeeping professionals on staff. If this is not ›resently the case for any insurer, the proposed new rules will not necess-rily require the addition of such staff since original records are permitted o be retained and produced for examination. Accordingly, the need for he services of recordkeeping specialists is not an inexorable requirement ›r by-product of the proposed new rules.

Initial and annual capital costs are incalculable, but are largely within he control of the insurer, since the proposed new rules provide a substan-ial amount of acceptable recordkeeping alternatives. Indeed, no ad-itional costs may be incurred in cases where an insurer chooses to keep riginals only. Initial costs will be incurred to the extent that an insurer oes not presently maintain the records required by the rules to be aintained or does not maintain them in a form approved by the roposed new rules.

The proposed new rules attempt to minimize any adverse economic mpact by providing alternative methods of recordkeeping and pro-uction for examination. Also, the proposed new rules place a limit on ie length of time records must be maintained, thus enabling insurers › destroy records when permitted.

The proposed new rules do not provide an exemption for "small usinesses" since the authorizing statutory provisions do not so provide r allow.

Full text of the proposed new rules and amendment follows (ad-itions indicated in boldface **thus**; deletions indicated in brackets hus]):

SUBCHAPTER 27. INSURER RECORD RETENTION AND PRODUCTION FOR EXAMINATION

1:1-27.1 Purpose and scope

(a) This subchapter describes the requirements for recordkeeping and roduction for examination by the Department of Insurance for records equired to be maintained by Titles 17 and 17B of the New Jersey tatutes, any plan of operation promulgated pursuant thereto, Title 11 f the New Jersey Administrative Code, including this subchapter and ther applicable provisions of law, by insurers as defined in this ubchapter.

(b) This subchapter applies to all insurers as this term is defined in .J.A.C. 11:1-27.3.

1:1-27.2 Applicability of subchapter

Unless otherwise specifically provided by Title 17, 17B or other rovisions of the New Jersey Statutes, or any plan of operation romulgated pursuant thereto, or any other applicable and controlling tatutory law, records as defined in this subchapter shall be maintained t the manner and form prescribed by this subchapter.

1:1-27.3 Definitions

The following words and terms, when used in this subchapter, shall ave the following meanings, unless the context clearly indicates other-ise.

"Commissioner" means the Commissioner of Insurance of the De-artment of Insurance of the State of New Jersey or his or her uthorized or designated representative(s).

"Department" means the Department of Insurance of the State of ew Jersey.

"Financial examination" means an examination, investigation, in-pection or audit of an insurer, conducted by the Commissioner pursuant › Titles 17 or 17B of the New Jersey Statutes, or any plan of operation romulgated pursuant thereto, or other provisions of the New Jersey tatutes or Title 11 of the New Jersey Administrative Code, during hich are examined records concerning the financial condition, affairs nd operations of the insurer and all records related thereto. Such an xamination shall include, but not be limited to, verification of an nsurer's financial statements filed with the Commissioner.

"Hard copy" means any information which is procured from an alternate storage method approved by this subchapter which is reproduced in paper form in original size.

"Insurance producer" means an "insurance agent," "insurance broker" or "insurance consultant" as defined at N.J.S.A. 17:22A-2.

"Insurer" means:

1. Any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, legal services insurer, fraternal benefit society, mutual benefit association, eligible surplus lines insurer or other person engaged in the business of insurance as an indemnitor or contractor pursuant to Title 17 or 17B of the New Jersey Statutes Annotated (N.J.S.A. 17:17-1 et seq.; N.J.S.A. 17B:17-1 et seq.) and any joint or self-insurance fund, group or pool permitted by any provision of New Jersey law whose records and affairs the Commissioner has authority to examine.

2. Any medical service corporation operating pursuant to N.J.S.A. 17:48A-1 et seq.;

3. Any hospital service corporation operating pursuant to N.J.S.A. 17:48-1 et seq.;

4. Any health service corporation operating pursuant to N.J.S.A. 17:48E-1 et seq.;

5. Any dental service corporation operating pursuant to N.J.S.A. 17:48C-1 et seq.;

6. Any dental plan organization operating pursuant to N.J.S.A. 17:48D-1 et seq.;

7. Any automobile insurance plan operating pursuant to N.J.S.A. 17:29D-1 et seq.;

8. The New Jersey Insurance Underwriting Association or any servicing carriers operating pursuant to N.J.S.A. 17:37A-1 et seq.;

9. The New Jersey Automobile Full Insurance Underwriting Association or any servicing carriers operating pursuant to N.J.S.A. 17:30E-1 et seq.;

10. Risk retention groups authorized by and defined in the Liability Risk Retention Act of 1986, 15 USC §§ 3901 et seq.;

11. The New Jersey Property Liability Insurance Guaranty Association operating pursuant to N.J.S.A. 17:30A-1 et seq.;

12. The New Jersey Surplus Lines Insurance Guaranty Fund, operating pursuant to N.J.S.A. 17:22-6.70 et seq.; and

13. Investment companies operating pursuant to N.J.S.A. 17:16A-1 et seq.

"Jacket" means a transparent plastic carrier with a single or multiple sleeve or pocket which contains microfilm in flat strips.

"Market conduct examination" means an examination, investigation, inspection or audit of the method of conducting business and all other affairs of an insurer conducted by the commissioner pursuant to Titles 17 or 17B of the New Jersey Statutes, or any plan of operation promulgated pursuant thereto, or other provisions of the New Jersey Statutes or Title 11 of the New Jersey Administrative Code, during which are examined records concerning, but not limited to, claims, complaints, policies, underwriting, rating, policyholder service, policy termination practices, sales, advertising, agent/broker relations, and all records reasonably related thereto.

"Master reel" means the original microfilm reproduction of the original record.

"Microfiche" means a sheet of microfilm containing multiple images in a grid pattern.

"Microfilm" means a fine grained high resolution film containing images greatly reduced in size from the original.

"Person" means a person as defined at N.J.S.A. 1:1-2.

"Photocopy" means a photographic reproduction of a publication, excluding microcopy, produced by exposing the image of an original, where copies are the same size as or slightly reduced from the original.

"Record" means all books, accounts, papers and documentary material, regardless of physical form or characteristics, made, produced, executed or received by any insurer pursuant to the requirements of law or in connection with the transaction of its insurance business as evidence of the organization, function, policies, decisions, procedures, obligations, affairs, operations and business activities of the insurer. Examples of records include, but are not limited to, internal audit reports, files, correspondence, activity logs, investigative reports, payment vouchers, transactions, notices, policy memoranda, workpapers,

financial statements, journals, management advice, CPA reports and ledgers. Any doubt as to whether certain information or material is a "record" shall be decided in favor of the information or material being considered a "record" (see N.J.A.C. 11:1-27.5).

11:1-27.4 Record accessibility and availability; inspection by the Commissioner

(a) The Commissioner shall have access to all records required to be maintained pursuant to this subchapter for the purpose of examination, audit and inspection.

(b) All records shall be available for review by the Commissioner within the time period specified in his or her demand, which shall be reasonable considering the circumstances of each particular case.

(c) The Commissioner may conduct periodic audits of an insurer for the sole purpose of determining whether it is in compliance with the requirements of this subchapter.

11:1-27.5 Identification of specific records required to be maintained

Upon his or her own initiative or the request of an insurer, the Commissioner may periodically identify specific records which are required to be maintained pursuant to this subchapter.

11:1-27.6 Form of record; maintenance and production for examination

(a) Records shall be maintained by an insurer in such a manner and form that its compliance with the law can be readily ascertained and verified by the Commissioner.

(b) Records shall be maintained and produced for examination by the Commissioner as originals; except that 16mm microfilm, microfiche, jackets, photocopy, photographs, or other process or method which accurately reproduces or forms a durable medium for reproducing the original may be used if, in the opinion of the Commissioner, the reproduction is credible, usable and trustworthy and accurately and legibly reproduces the original record for at least the period of time for which records are required to be maintained by this subchapter. Such reproductions shall also be capable of being made into hard copy and shall be certified in accordance with (f) below.

(c) When a process or method other than 16mm microfilm, microfiche, jackets, photocopy or photographs is selected for use in accordance with (b) above, an insurer shall first seek and secure from the Commissioner his or her approval of this method. Approval by the Commissioner of such a method shall not be considered approval of the reproduction of the specific records which are ultimately reproduced by this method if they do not fully conform to the requirements of this subchapter.

(d) When microfiche copies are made, only the master reel of microfilm which is certified in accordance with this subchapter shall be used. The certified master reel shall thereafter be maintained in accordance with the requirements of this subchapter.

(e) When jackets are made, they shall be made from a duplicate of the certified master reel of microfilm, which shall be required to be made for such purposes. The certified master reel shall be maintained in accordance with the requirements of this subchapter.

(f) The certification procedures and requirements for reproductions permitted to be made pursuant to (b) above are as follows:

1. For microfilm, the certification shall appear at the beginning and at the end of each reel and there shall be no cuts or splices between the certifications.

2. For all forms of reproduction other than microfilm, the certification shall be a separate written document which shall list each record being certified.

3. For jackets and microfiche, the certification shall state as follows:

CERTIFICATE OF AUTHENTICITY

This is to certify that this reproduction is an exact copy of th certified and uncut master reel of microfilm identified as (insert exac identification number and language).

Date: _____

Authorization:

_____
Signature of Reproduction Supervisor

_____
Signature of Reproducer

4. For all forms of reproduction other than microfiche and jacket the certification shall state as follows:

CERTIFICATE OF AUTHENTICITY

This is to certify that this reproduction is a complete and accura reproduction of the original records and has been reproduced accordi to the requirements of N.J.A.C. 11:1-27.

Date: _____

Authorization:

_____
Signature of Reproduction Supervisor

_____
Signature of Reproducer

5. For all forms of reproduction, certifications shall be made aft each update to a reproduced record.

(g) In exceptional circumstances, the Commissioner may, in his her discretion and for good cause shown, permit the use of reproducti methods other than those permitted by (b) above upon the request an insurer. The use of such reproductive methods shall be permitt only where, in addition to any other requirements which the Co missioner may impose pursuant to his or her discretion, the requir ments in this section have been satisfied.

11:1-27.7 Period of retention; destruction

(a) Unless otherwise required by law, for the purpose of a mark conduct examination, records shall be maintained for a period of least five years after termination of the record or the final entry is mad whichever is later, or after final settlement of a claim has been issue as the case may be. Where a record is reopened, the five year peri shall run from the date of reclosing.

(b) Unless otherwise required by law, for the purpose of a financi examination, records shall be maintained for the years for which financial examination by the Department has not been completed a filed by the Commissioner.

(c) Any record required to be filed with or by the Commissione or approved by him or her, including any record evidencing the fili or approval thereof, shall be required to be maintained indefinitely as otherwise provided by the Commissioner.

(d) Where a record may be subject to review during either a mark conduct examination or a financial examination, and is not otherwi required to be maintained pursuant to (c) above, it shall be maintain in accordance with (a) or (b) above, whichever is the longer period time.

(e) Originals, or any parts thereof, which have been reproduced accordance with the requirements of this subchapter, may be dispos of or destroyed by an insurer in the regular course of business or may otherwise be required by law.

(f) For purposes of litigation or for other good cause, the Co missioner may extend the time periods in (a) and (b) above.

11:1-27.8 Location of records for examination

Records shall be made available for examination by the Co missioner at any location(s) requested by him or her. The request location(s) may be in any state or country in which the insurer examin

s incorporated, is authorized to transact the business of insurance, or ıas an office, agent or place of business.

11:1-27.9 Insurer records maintained by other persons

Where the records of an insurer are maintained by an insurance ›roducer, limited insurance representative, manager, managing general ıgent, reinsurance intermediary or any other person or entity, they shall ›e maintained in accordance with the requirements of this subchapter. Compliance with the requirements of this subchapter shall be the re-ıponsibility of the insurer, except that the persons or entities by whom ın insurer's records are maintained may also be liable according to ıpplicable provisions of law.

11:1-27.10 Falsification of records; penalties

(a) Any officer, director, agent or employee of any insurer who nakes or causes to be made any false entry in or on any record with ntent to deceive the Commissioner or any agent or examiner appointed ›y him or her, and any person who with like intent aids or abets any ›fficer, director, agent or employee, shall be subject to the penalties ›rovided by law (see, for example, N.J.S.A. 2C:21-4).

(b) Insurers failing to comply with the provisions of this subchapter hall be subject to the penalties and procedures provided by N.J.S.A. 7:33-2, 17:29B-1 et seq., 17B:30-1 et seq. and any other applicable ›rovisions of law.

(c) Insurers whose records indicate non-compliance with any ›rovisions of Titles 17, 17B or other provisions of the New Jersey Statutes Annotated, Title 11 of the New Jersey Administrative Code, ›r any other applicable provision of law, shall be fined or otherwise ›enalized in accordance with applicable provisions of law (see, for xample, N.J.S.A. 17:33-2).

1:1-27.11 Compliance

(a) At the time required for the filing of an annual statement, or ıot later than March 1 of each year in cases where an annual report s not required to be filed with or by the Commissioner, an insurer shall ile with the Department of Insurance a certificate, executed by an ıuthorized officer of the insurer, stating that to the best of his or her :nowledge, information and belief the insurer complied in all respects ›ith the requirements of this subchapter in the preceding calendar year.

(b) Within 60 days of the effective date of this subchapter, each ınsurer shall adopt written procedures to implement its provisions. These ›rocedures shall be available for review by the Department.

1:1-27.12 Severability

If any provision of this subchapter or its application to any person r circumstances is held invalid, the remainder of this subchapter and ts application to other persons or circumstances shall not be affected hereby.

1:4-11.6 General provisions

(a) Each insurer shall maintain at its home office or principal ›ffice, a complete file containing one copy of each document uthorized by the insurer for use pursuant to this regulation. Such ile shall contain one copy of each authorized form for a period of three years following the date of its last authorized use] **time consis-ent with N.J.A.C. 11:1-27.7.**

(b)-(1) (No change.)

(a)

)FFICE OF THE COMMISSIONER

lotice of Public Hearing

ledical Malpractice Reinsurance Recovery Fund

leproposed New Rules: N.J.A.C. 11:18

Take notice that, pursuant to N.J.S.A. 52:14B-4(a)3, the New Jersey ›epartment of Insurance will conduct a public hearing on a reproposed ıle concerning the New Jersey Medical Malpractice Reinsurance Re-›very Fund Surcharge. The reproposed rule was published in the June), 1989 New Jersey Register at 21 N.J.R. 1642(a).

The hearing will be held on August 22, 1989, at 9:00 A.M. at the following location:

Department of Insurance
Mary G. Roebling Building
20 West State Street
Second Floor
Conference Room 218C
Trenton, New Jersey 08625

Persons intending to testify at the hearing are required to provide written prior notice of their intention to Verice M. Mason, Assistant Commissioner, Division of Legislative and Regulatory Affairs, Department of Insurance, by the close of business on August 11, 1989. The notice must include a brief summary of the testimony. Testimony will be limited to five minutes.

Persons intending to ask questions at the hearing are requested to provide Assistant Commissioner Mason with their intended questions or areas of interest for questioning by August 11, 1989. Questions may also be permitted from the floor.

Notice of this hearing has previously been provided to interested persons by means other than publication in the New Jersey Register.

The hearing will be conducted in accordance with the provisions of N.J.S.A. 52:14B-4(g).

LABOR

(b)

DIVISION OF VOCATIONAL REHABILITATION SERVICES

Vehicle Modification Requirements

Proposed New Rules: N.J.A.C. 12:45-3

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:16-20 et seq., 29 U.S.C.A. §701 et seq. and 34 CFR §361.1 et seq.

Proposal Number: PRN 1989-413.

Submit comments by September 6, 1989 to:

Alfred B. Vuocolo, Jr.
Chief Legal Officer
New Jersey Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

Within the Department of Labor (Department), the Division of Vocational Rehabilitation Services (Division) was established to implement the Federal and State vocational and rehabilitation laws and rules. Under the Federal and State requirements, the Division provides vocational rehabilitation and independent living rehabilitation services to individuals with handicaps (clients).

In certain situations, it is absolutely essential that a client be able to operate a motor vehicle to achieve vocational and independent living goals. In order to accommodate a client who needs to operate a motor vehicle, the Division provides for the cost of modifying the motor vehicle to be used by the client.

Businesses that perform modifications on vehicles that are used by Division clients must adhere to strict construction, installation and safety requirements. These construction, installation and safety requirements were established in 1981 by the Division based on comprehensive research in the field of vehicle modifications.

The Department proposes to codify the construction, installation and safety requirements used by the Division since 1981.

N.J.A.C. 12:45-3.1 sets forth the purpose and scope of the rules.

N.J.A.C. 12:45-3.2 sets forth the definitions of words and terms used in the rules.

N.J.A.C. 12:45-3.3 sets forth the requirements for construction and installation of the exterior switch control box.

N.J.A.C. 12:45-3.4 sets forth the requirements for construction and installation of automatic door openers.

N.J.A.C. 12:45-3.5 sets forth the requirements for construction and installation of automatic hydraulic or electric foldout wheelchair lifts.

N.J.A.C. 12:45-3.6 sets forth the requirements for construction and installation of semi-automatic lifts.

N.J.A.C. 12:45-3.7 sets forth the requirements for construction and installation of rotary lifts.

N.J.A.C. 12:45-3.8 sets forth the requirements for construction and installation of wheelchair flooring.

N.J.A.C. 12:45-3.9 sets forth the requirements for extension of the wheelchair flooring.

N.J.A.C. 12:45-3.10 sets forth the requirements for construction and installation of standard hand controls.

N.J.A.C. 12:45-3.11 sets forth the requirements for construction and installation of the steering column extension.

N.J.A.C. 12:45-3.12 sets forth the requirements for construction and installation of the wheelchair lowering pan.

N.J.A.C. 12:45-3.13 sets forth the requirements for construction and installation of wheelchair tiedowns.

N.J.A.C. 12:45-3.14 sets forth the requirements for construction and installation of electric parking brakes.

N.J.A.C. 12:45-3.15 sets forth the requirements for construction and installation of the manual brake extension.

N.J.A.C. 12:45-3.16 sets forth the requirements for construction and installation of steering wheel devices.

N.J.A.C. 12:45-3.17 sets forth the requirements for construction and installation of extensions.

N.J.A.C. 12:45-3.18 sets forth the requirements for construction and installation of the left foot accelerator.

N.J.A.C. 12:45-3.19 sets forth the requirements for construction and installation of horns/dimmers switches.

N.J.A.C. 12:45-3.20 sets forth the requirements for construction and installation of mirrors.

N.J.A.C. 12:45-3.21 sets forth the requirements for construction and installation of a six-way powered transfer driver seat base.

N.J.A.C. 12:45-3.22 sets forth the requirements for construction and installation of raised lift entry doors.

N.J.A.C. 12:45-3.23 sets forth the requirements for construction and installation of raised fiberglass roofs.

N.J.A.C. 12:45-3.24 sets forth the requirements for construction and installation of reduced effort steering.

N.J.A.C. 12:45-3.25 sets forth the requirements for construction and installation of reduced effort brakes.

N.J.A.C. 12:45-3.26 sets forth the requirements for construction and installation of remote gear shifts.

N.J.A.C. 12:45-3.27 sets forth the requirements for construction and installation of power windows.

N.J.A.C. 12:45-3.28 sets forth the requirements for construction and installation of door consoles.

N.J.A.C. 12:45-3.29 sets forth the requirements for construction and installation of center consoles.

N.J.A.C. 12:45-3.30 sets forth the requirements for construction and installation of quadrings.

N.J.A.C. 12:45-3.31 sets forth the requirements for construction and installation of horizontal steering.

N.J.A.C. 12:45-3.32 sets forth the requirements for construction and installation of powered back-up steering.

N.J.A.C. 12:45-3.33 sets forth the requirements for construction and installation of zero/no effort steering.

N.J.A.C. 12:45-3.34 sets forth the requirements for construction and installation of zero/no effort brakes.

N.J.A.C. 12:45-3.35 sets forth the requirements for construction and installation of special controls.

N.J.A.C. 12:45-3.36 sets forth the requirements for construction and installation of a vacuum brake/gas system.

N.J.A.C. 12:45-3.37 sets forth the requirements for construction and installation of air brake/accelerator servo systems.

N.J.A.C. 12:45-3.38 sets forth the requirements for construction and installation of general electrical specifications.

N.J.A.C. 12:45-3.39 sets forth the requirements for construction and installation of general mechanical and assembly specifications.

N.J.A.C. 12:45-3.40 sets forth the requirements for construction and installation of transfer bars.

N.J.A.C. 12:45-3.41 sets forth the requirements for construction and installation of the instructor's brake.

N.J.A.C. 12:45-3.42 sets forth the requirements for construction and installation of automotive wheelchair roof carriers/loaders.

N.J.A.C. 12:45-3.43 sets forth the requirements for construction an installation of special communication systems for wheelchair transfe vans.

The "SP" references throughout the rules are computer code reference for administrative use by DVRS.

Social Impact

The proposed new rules will benefit clients in that the rules help ensur that modified vehicles are safe and reliable. The proposed rules als ensure that the modified vehicle is one that meets the needs of th particular client.

The proposed new rules also benefit the businesses that perform vehicl modifications in that the rules provide guidelines for these businesses t follow.

The proposed new rules also will benefit the Department in that th rules provide requirements which the Department inspectors can us when they check for compliance.

Economic Impact

The proposed new rules will have a positive economic impact on clien in that they will be able to achieve vocational rehabilitation and indepen dent living goals.

Businesses that perform vehicle modifications will benefit from th proposed new rules in that the rules establish guidelines which allo businesses to perform the necessary modifications efficiently. Th proposed new rules will save the Division time and money since it wi be easier to inspect modified vehicles using published guidelines.

Regulatory Flexibility Analysis

Currently, there are approximately 15 businesses that perform vehic modifications. These businesses employ fewer than 100 full-time em ployees.

The New Jersey Regulatory Flexibility Act defines small business a "any business which is resident in this State, independently owned an operated and not dominant in its field, and which employs fewer tha 100 full-time employees." (N.J.S.A. 52:14B-17). Under this definition, th approximately 15 businesses that perform vehicle modifications are co sidered to be "small businesses". Consequently, the proposed new rul impact on them.

The proposed new rules will not impose any reporting or recordkeepin requirements on small businesses. They do impose compliance requir ments in the form of vehicle modification standards; however, as the standards have been followed by the businesses concerned since 1981, n capital costs should be incurred nor should there be a need to enga professional services. Also, as the purpose of the rules is to promote th safety of client vehicle operators and their passengers, no requireme differentiation based upon business size is possible.

Full text of the proposed new rules follow:

SUBCHAPTER 3. VEHICLE MODIFICATION REQUIREMENTS

12:45-3.1 Purpose and scope

(a) The purpose of this subchapter is to establish requiremen which will ensure quality of equipment design, fabrication, install tion or modification purchased by the State of New Jersey for th mobility impaired. The specifications are not intended to discoura new devices, techniques or equipment but to ensure that mobili impaired residents of New Jersey, who are clients of Division Vocational Rehabilitation Services (DVRS), receive equipment whic is functional, safe, and durable.

(b) Any vendor who contracts with DVRS to perform vehic modifications shall comply with the requirements set forth in th subchapter.

12:45-3.2 Definitions

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

"Auto door openers" means using power, usually electric moto to open rear or side cargo door(s).

"Automatic lift" means a wheelchair lift which has been power for all modes of operation.

"Automatic wheelchair roof carrier/loader" means a devi mounted on the roof of a standard passenger vehicle which loa and stores a manual wheelchair.

"Consoles" means a modular unit which moves OEM switches within range of motion of individual with limited range of motion.

"DMV" means the New Jersey Division of Motor Vehicles.

"DOT" means the United States Department of Transportation.

"DVRS" means the New Jersey Division of Vocational Rehabilitation Services.

"Electrical emergency brake" means the powering of the emergency parking brake due to the fact that the driver cannot apply or disengage it because of physical limitations.

"Extensions" means devices added to required controls, such as turn signals, shift lever, brake pedal, accelerator pedal, etc., to allow use by a disabled driver.

"External switch control box" means outside switches or devices to control lift door and/or wheelchair lift.

"FMVSS" means Federal Motor Vehicle Safety Standard.

"Horizontal steering" means replacement of the original OEM steering column with a modified unit which adjusts with power right and left, up and down, and tilts on various planes to allow wheelchair driver easier entry and exit to driver station, and is prescribed when an individual lacks sufficient strength (and usually range of motion or reach) to make use of a standard size OEM steering wheel.

"Horn/dimmer switches" means movement of control devices to within operational reach of driver using hand controls.

"Instructor's brakes" means a modification employing duplicate brake activator, usually located in area of right passenger seat in a standard passenger vehicle.

"Manual parking brake" means addition of hand lever to the parking brake which allows an individual to engage the brake when they have limited or no use of lower extremities.

"OEM" means original equipment manufacturer and part or component of the vehicle which is identical to the original part or component and is supplied by the manufacturer of the vehicle.

"Powered back-up steering" means a redundant power system for the steering mechanism which is designed to automatically actuate in emergencies such as engine power loss or power steering pump failure.

"Raised fiberglass/roof" means the removal of standard OEM roof on a van, and replacement with molded fiberglass unit to allow greater head room.

"Raised lift entry door" means increasing the height of the side cargo door to allow entry of wheelchair-bound driver or passenger who cannot bend his or her upper body or neck.

"Reduced effort brakes" means a modification which reduces the amount of force necessary to activate the brakes on a motor vehicle with OEM power brakes.

"Reduced effort steering" means a modification which reduces the amount of force necessary to turn the steering wheel of a vehicle equipped with OEM power steering.

"Remote gear shift" means a modification using a cable which allows an individual with limited range or strength to set transmission in a selected gear.

"Rotary lift" means a lift which is automatic and rotates from vehicle rather than folding/unfolding, as in a platform lift.

"SAE" means the Society of Automatic Engineers.

"Semi-automatic lift" means a wheelchair lift which has been powered only in the up/down mode, and not in the fold/unfold mode.

"Six-way powered transfer driver seat base" means a set base which has three modes, up/down; forward/backward; and rotates—clockwise/counter-clockwise, in order to allow a wheelchair user to transfer from a higher or lower position (as appropriate) into or from the driver's seat.

"Special controls" means any specialized custom unit other than standard hand controls and/or vacuum assist, to control gas and brake.

"Standard hand controls" means mechanical devices which use rods or cable to control brake and accelerator of a passenger vehicle for an individual not having use of lower extremities.

"Steering column extension" means the process of bringing steering wheel closer to wheelchair driver via add on or other means.

"Steering devices" means an adaptive item added to a standard vehicle steering wheel to permit steering control when an individual drives with hand controls.

"Vac brake/gas control" means a system employing a servo/slave unit, using vacuum as the source of power, to control brake and throttle when an individual lacks sufficient strength to utilize "standard hand controls."

"Wheelchair flooring" means the use of steel or wood to give a smooth, flat surface for a wheelchair access.

"Wheelchair lowering pan" means a lowering device in driver's station which lowers a driver to a level which gives an adequate field of vision when the individual is driving from a wheelchair.

"Wheelchair tiedown" means a device or devices used to secure a wheelchair in a motor vehicle.

"Zero (no) effort brakes" means a modification similar to reduced effort brakes which gives a greater reduction in force necessary to activate brakes than either standard OEM power brakes or reduced effort brakes modification.

"Zero (no) effort steering" means a modification to OEM power steering which reduces force necessary to turn steering wheel in vehicle to eight ounces or less.

12:45-3.3 Exterior switch control box (SP.1.1)

(a) The requirements for construction and installation of the exterior switch control are as follows:

1. The control box shall be located in such a manner so that opened vehicle doors do not interfere with end user's access to use of switches.

2. The control box shall have a key lock which can be operated by an individual with limited finger dexterity.

3. The control box shall be constructed of rigid plastic, aluminum or stainless steel.

4. The control box shall be secured to vehicle with noncorrosive rivets or equivalent fasteners.

5. The rear of the control box shall be enclosed.

6. The door of the control box shall be constructed of rigid plastic, aluminum or stainless steel.

7. The door of the control box shall have a weather seal to seal out any rain or moisture.

8. All switches shall be the long arm toggle type, securely attached.

9. All switches shall possess a water tight seal to prevent moisture from penetrating below the switch mounting surface.

10. No switch shall extend behind the depth of the control box.

11. All switches shall be minimally located on one and one half inch centers.

12. The working end of each switch should not be set back more than one inch.

13. All switches shall be labeled as to function, order and direction of use.

14. Switches shall control:

i. The lift door;

ii. The unfolding/closing of lift platform; and

iii. The up/down operation of lift platform.

15. The operating surfaces shall be free of sharp edges or burrs.

16. Any radio control system shall have a manual back-up system. Magnetic or other alternative exterior controls, such as magnetic control or switch for opening, may be accepted.

17. If the control box contains a magnetic system, a security cut-off shall be supplied.

18. The security cut-off shall deactivate the exterior switch control system.

19. If the vehicle is used for a non-driving user, the controls may be mounted as a console in the right front seat.

12:45-3.4 Automatic door openers (SP.2.1)

(a) The requirements for construction and installation of automatic door openers are as follows:

1. Door opening devices shall not compromise the mechanical integrity of the fit between the doors and vehicle body.

2. All automatic door openers shall have an interior emergency quick release mechanism in case of power failure or malfunction. The quick-release mechanism shall permit opening and closing of doors (lift) if power fails, to ensure exit.

3. All doors shall be moisture sealed to prevent moisture or water entry when in "full powered" closed position.

4. All doors shall have an override to prevent physical damage and complete closing when lift is extended beyond the side of the vehicle.

5. Automatic lighting shall be installed in conjunction with automatic power doors to illuminate the lowest lift platform position when the auto doors are opened.

6. An automatic interior light shall work in conjunction with the power doors to illuminate the van interior and specifically the lift operating switches just inside the lift door opening.

7. An automatic interior light shall go on when the doors open, and shut off when the doors close.

8. If cable is used on sliding doors, the cable shall be vinyl covered or encased.

9. If chain is used on sliding doors, the chain shall have an insulation strip installed on door to prevent slap or chain wear.

10. The interior emergency quick-release mechanism shall be conspicuously red-tagged.

12:45-3.5 Automatic hydraulic or electric foldout wheelchair lift (SP.3.1)

(a) The requirements for construction and installation of automatic hydraulic or electric foldout wheelchair lifts are as follows:

1. The automatic foldout wheelchair lift shall meet the basic specifications drafted by the U.S. Veteran's Administration (Federal Register Volume 43, No. 96-P21390, 17 May 1978) and/or standards established by the Society of Automotive Engineers (SAE), incorporated herein by reference.

2. The wheelchair lift platform shall be equipped with a safety end gate which is a minimum of three and one-half inches in height.

3. The three and one-half inch end gate shall have a nonslip surface.

4. In the closed position, the end gate shall withstand a distributed force of 1,600 pounds applied parallel to, and three inches above the platform ground plane without opening.

5. The end gate control system shall operate to prevent the safety end gate from opening unless the lift platform is resting securely upon the ground.

6. During raising/lowering, the safety end gate shall be locked in the closed position by a clamp or other industry acceptable manner. The locking and/or release of the clamp shall be by a fail safe mechanical, electrical or hydraulic means.

7. The locking action of the safety end system shall occur before the lift platform reaches a height of six inches maximum above the ground plane.

8. The safety end clamp shall release automatically only as a result of coincidence of the lift platform with the ground.

9. A fail safe element should be incorporated in the lift design so that the lift platform cannot be raised more than six inches from the ground without the safety end gate closed and locked by the system.

10. The outside lip/side edge of the platform shall be a minimum height of two inches.

11. The lift platform shall be a minimum of:

i. 29 inches wide; and

ii. 45 inches in length at a minimum with the safety end gate in the down position, unfolded (open to discharge or to receive the wheelchair). Any exception dictated by the size of the OEM door may be considered.

12. The lift platform shall be constructed to allow the wheelchair-bound user to mount the platform from inside the vehicle by driving their chair forward or from outside by driving the chair forward or backward.

13. The automatic lift shall have a manually operated emergency back-up system to release, lower, and raise the lift if power fails. The back-up system shall be labeled and instructions supplied in the area of operation.

14. The wheelchair lift shall remain stationary in the fully closed position unless activated by the controls.

15. The raising or lowering of the lift platform shall be positive. Lift downward drafting shall be unacceptable.

16. All hydraulic reservoirs of the automatic lift shall be equipped with a dipstick or sight gauge to ascertain fluid levels. A pressure gauge may be included.

17. The lift platform and all exposed structure shall be treated with a coating to prevent corrosion for a period of three years under normal usage.

18. The automatic lift shall have a safety switch to prevent the lift from opening if the doors are closed.

19. The automatic lift shall have a control handrail with a switch to control the horizontal operation of the lift by the wheelchair user.

20. The control switches for the lift and auto doors shall be located inside of the vehicle adjacent to the door opening through which the lift operates.

21. All electric motors and hydraulic pumps shall be covered to prevent exposure to client or other passengers.

22. The control switches for the automatic lift shall be the long arm toggle type switches or pressure contact switches spread apart so that a high level C-5 Quad may utilize them.

23. All lift control switches shall be marked as to function and direction of operation.

24. All connecting hydraulic lines shall not exceed the width of a folded lift or control stanchion box.

25. The warranty for the anticorrosive treatment shall be in writing on the manufacturer/installer's letterhead and signed by an officer of the manufacturer/installer's company when the user or purchaser is a State agency.

26. The manufacturer/installer shall certify in writing that the lift meets the general specifications as noted in (a)1 above. If the lift has not been tested by the Veterans Administration at Texas A & M University, then a private independent engineering test certified by an independent qualified engineering firm will suffice. A copy of the report shall be filed with the DVRS Office of Vehicle Modification within 10 days of the DVRS request for a clarification of meeting (a)1 above.

12:45-3.6 Semi-auto lift (SP.3.2)

(a) The requirements for construction and installation of semi-auto lifts are as follows:

1. Semi-auto lifts shall meet the same standards set forth in N.J.A.C. 12:45-3.5(a)1, 3, 4, 5, 10, 11, 13, 14, 15, 16, 17, 21, 23, 24, and 25.

2. The lift shall unfold from vertical position to horizontal and vice versa by hand.

3. The end flap shall be opened by and resecured by the attendant.

4. The tether cord shall be supplied with switches to control the up/down motion of the lift platform.

5. The stationary position of the tether cord when not in use, shall be marked (place cord here) so that the unit cannot be entangled in the lift mechanism.

6. The pressure required to close the wheelchair platform from the horizontal to the vertical position shall not exceed more than 35 pounds.

12:45-3.7 Rotary lifts (SP.3.3)

(a) The requirements for construction and installation of rotary lifts are as follows:

1. Rotary lifts which meet the general Veteran's Administration specifications are acceptable as an option.

2. All the requirements for an automatic lift (N.J.A.C. 12:45-3.5 shall also pertain to a rotary except N.J.A.C. 12:45-3.5(a)11, 16 and 24.

12:45-3.8 Wheelchair flooring (SP.4.1)

(a) The requirements for construction and installation of wheelchair flooring are as follows:

1. Wheelchair flooring shall be either plywood or flat steel plate.

2. If plywood is used, the plywood shall be either marine or exterior grade at least three-eighths of an inch in thickness.

3. If flat steel plate is used, the plate or sheet shall be a minimum of 16 gauge galvanized steel.

4. Plywood or steel flooring shall be securely fastened to vehicle ensuring no movement.

5. Covering material shall be low-pile commercial carpet or indoor/outdoor carpet securely fastened to wheelchair flooring.

6. If carpet is not supplied, nonskid material shall be supplied (such as RCA Rubber) with prior notification as an option.

7. Wheelchair flooring shall cover entire floor of vehicle, excluding engine box and right front passenger seat area, unless specified.

8. Filling of driver's step well shall be included as part of wheelchair flooring.

9. Plywood sub-floor is not required on a dropped floor as long as the dropped floor has heat shielding over the catalytic converter exhaust pipe and muffler to prevent the transmission of excess heat to the dropped floor.

12:45-3.9 Extension of wheelchair floor

(a) The requirements for the extension of the wheelchair flooring are as follows:

1. Extension of the wheelchair floor shall be of same material as set forth in N.J.A.C. 12:45-3.8(a)1 through 6.

12:45-3.10 Standard hand controls (SP.5.1)

(a) The requirements for construction and installation of standard hand controls shall be as follows:

1. All standard hand controls shall meet the specifications drafted by the Veteran's Administration (VAPC-A-75058) 31 March 1978 and/or standards established by the SAE, incorporated herein by reference.

2. Standard hand controls may be of three types:

i. Push/Right Angle Push (SP.5.2(b));

ii. Push/Pull (SP.5.2(a)); or

iii. Push/Twist (SP.5.2(c)).

3. The type of standard hand control selected depends on the individual's functional limitation.

4. No modifications shall be made to carburetor, carburetor springs or fuel injection system.

5. All installed standard hand controls shall be securely fastened.

6. No standard hand controls shall be mounted on a vehicle lacking power brakes, power steering and automatic transmission.

7. Standard hand controls as installed shall be capable of full throttle.

8. Standard hand controls shall be installed so that during operation there is no interference with any parts of the vehicle or driving system in any motion or combination of motions.

9. Standard hand controls should be installed so as not to interfere with a nonhandicapped operator as dictated by vehicle OEM design.

10. Any return forces needed to counteract the weight of the hand control shall be made at or near the hand control.

11. All fulcrum pins located at various pivot points shall be case hardened, and shall be secured with castilated and pinned nuts or self-locking nuts.

12:45-3.11 Steering column extension (SP.6.1)

(a) The requirements for construction and installation of the steering column extension are as follows:

1. The steering column extension shall not interfere with the normal collapsibility of the steering column as governed by FMVSS.

2. The steering column extension may be integral or add on. If add on, the steering column extension shall be of polished/brushed aluminum, stainless steel or chrome plated steel.

3. The length of the extension shall be determined by the physical needs of the handicapped individual.

4. The bolts securing the add on extension shall be equal to, or of OEM quality, to ensure proper securement according to acceptable safety standards.

5. Steering columns which have been extended either by the integral modifications or add on spacers, shall be equivalent functionally and structurally to the original column as supplied by the OEM manufacturer.

12:45-3.12 Wheelchair lowering pan

(a) The requirements for construction and installation of the wheelchair lowering pan are as follows:

1. A powered wheelchair lowering pan shall be capable of positioning the wheelchair-bound driver at their optimal height for driving.

2. The optimal height for a wheelchair-bound driver shall be determined by the physical needs of the individual with handicaps.

3. The entry to the wheelchair lowering pan shall have a nonskid surface.

4. The lowered pan area shall be welded together with a continuous bead and welded to vehicle body in a manner consistent with acceptable welding standards.

5. The lowered pan area shall be waterproof, and sealed.

6. The entire lowered pan unit must be rustproof and the underside coated with an automotive type undercoating material. The installer shall supply documentation of this requirement.

7. Any device or unit used to power the pan shall be protected to prevent moisture or water damage.

8. Any undercarriage modification necessary to install the lowering mechanism shall not compromise the integrity of the vehicle's structural frame.

9. On any vehicle with a separate frame, the drop pan shall not be attached to the frame except in a manner consistent with the concept and design of the OEM's attachment.

10. On a van, the longitudinal frame member shall not be modified unless it is restored to the original strength of the OEM unit and is of comparable design.

11. The entire lowered pan and attachment area shall be waterproofed, sealed, primed and painted inside and out prior to undercoating with required ziebart material or automotive equivalent.

12. Only steel shall be used in pan fabrication. The gauge must be a minimum of 12 gauge.

13. Frame cutting is not allowed. An exception can be requested if no alternative is available and the frame cutting has been recommended by a driver evaluation as absolutely necessary to insure safe driving. The recommendation shall be in writing.

i. If an exception is recommended and approved, the method shall be certified by the installer that the frame modification is statically and structurally sound as the original unmodified vehicle as was delivered by Ford, GMAC, or Chrysler Corp. The certification shall be in writing. Documented testing may be requested.

(b) The standards for construction and installation of dropped floors (SP.7.2) is as follows:

1. A dropped floor may be requested only on a vehicle with a separate body and chassis.

2. In a dropped floor proposal, N.J.A.C. 12:45-3.12(a)4 through 13 shall also apply.

3. Coverings shall be low-pile commercial grade carpet, which is flame retardant and fire resistant.

4. All dropped floors shall have heat shielding over catalytic converter exhaust pipe and muffler, to prevent transmission of excess heat to dropped floor.

5. An auxiliary tank shall have heat shielding over catalytic converter exhaust pipe and muffler, to prevent the transmission of excess heat to the dropped floor.

6. Dropped floors must be minimally fabricated out of 12 gauge steel. No other material, other than steel, is acceptable.

7. In vehicles without a separate body and frame (unibody, monobody, etc.), a dropped floor may be requested. The manufacturer shall certify (that is, professional engineer review) that the floor modification is as structurally sound as original OEM unmodified vehicle.

8. If the fuel tank has been relocated by modification, the modification manufacturer shall recertify the fuel system integrity (FMVSS 301 and 302) in writing with sign-off by a professional engineer.

9. The relocated tank shall be structurally encased.

10. The relocated tank shall be heat shielded from any exhaust pipe and muffler.

11. In any front wheel drive floor modification, an additional external transmission cooler shall be installed.

12. In all dropped floors, the vehicle's original strength shall be maintained. All body or frame cross members shall be retained or replaced in a manner similar to original design.

12:45-3.13 Wheelchair tiedowns (SP.8.1)

(a) The requirements for construction and installation of wheelchair tiedowns are as follows:

1. All wheelchair tiedowns shall be through-bolted into a structural member or sheet metal of at least 16 gauge, which has been securely attached (that is, through-bolted or welded) to the remainder

of the body. All fasteners shall have washers of at least two inches in diameter and 1.25 inches in thickness, or the equivalent steel plating.

2. All wheelchair tiedowns shall be designed to be stable for normal driving and to secure the wheelchair during impacts.

3. A driver's wheelchair tiedown system (SP.8.1(f)) shall be designed so that the end user employing the system can independently maneuver the wheelchair into and out of the driving position, secure the tiedown, and be able to determine that it is secure. If the driver's wheelchair tiedown is electrically or hydraulically powered, a manual release shall be supplied in case of a power failure. The manual release shall be conspicuously red-tagged.

4. Wheelchair tiedowns (intended for use when the wheelchair is occupied) shall not be attached to any part of the wheelchair designed for easy removal (for example, footrests or armrests).

5. All vehicles equipped with transfer seats shall have transfer tiedowns (SP.8.1(e)) to secure the unoccupied wheelchair. The transfer seats shall be placed in such a position to allow adequate driver transfer.

6. A driver's wheelchair tiedown (SP.8.1(f)) in conjunction with a safety belt system shall keep the wheelchair and occupant securely restrained in the driver's station in the event of a 30 miles per hour (mph) frontal collision into an immovable barrier. For the purpose of this requirement, the de-acceleration level present at the floor of the vehicle during the 30 mph collision shall be 20G's (G=32.2 ft/sec^2).

i. Manufacturers or installers may be required to produce documentation of their drive tiedown meeting the 30 mph, 20G criteria when tested dynamically on an impact sled simulator equal to the sled facility at the Highway Safety Research Institute, University of Michigan.

ii. Documentation shall be a copy of successful attainment criteria of standard at the University of Michigan or a notarized report by a licensed mechanical engineer or independent engineering test facility, that the tiedown has been fully tested under identical conditions as University of Michigan, and has successfully attained the required criteria at 30 mph, 20G set by the University of Michigan in the accepted configuration used for driving.

7. With regard to nondriver wheelchair tiedown placement, the preferred wheelchair tiedown position shall place the nondriver parallel to the sides of vehicle, facing forward.

8. A safety belt system shall be provided at each passenger or driver occupied wheelchair tiedown location.

9. All safety belt systems shall be installed per FMVSS 209 and 210, incorporated herein by reference, and attached to the van.

10. The safety belt system shall be accessible and independently operable by the intended handicapped driver.

i. Where practical, the safety belt system shall apply to nondriver wheelchair-bound passengers.

11. Chest straps or other restraints may be required as determined by the driver's physical needs.

12. Passenger wheelchair tiedowns for a nondriver (SP.8.1(p)) shall meet the criteria established by University of Michigan Transportation Sled Testing.

13. Wheelchair tiedowns in private passenger vehicles and private custom vans shall be forward-facing.

14. Tiedowns which meet the criteria established by the University of Michigan (30 mph, 20G) may be used as a passenger tiedown, in lieu of the four point tiedown.

15. All driver tiedowns shall have a labeled manual release within reach of the driver.

16. All driver tiedowns shall have a visual signal to indicate "Locked in Place."

17. Any tiedown which has not been dynamically tested and attained a criteria of 30 mph, 20G without bending, breaking or prematurely releasing shall not be accepted. The dynamic testing and success of the listed criteria shall be in writing. Documentation may be required to assure compliance.

12:45-3.14 Electric parking brake (SP.9.1)

(a) The requirements for construction and installation of an electric parking brake are as follows:

1. The power parking brake shall be installed so that it is free from all mechanical interference and the cables will not be obstructed by the power pan (if on vehicle).

2. The control switch for power parking brake shall be clearly marked as to the engaged and disengaged positions.

3. Electrical cables for electric parking brake shall be firmly secured to vehicle undercarriage by an automotive metal clamp with vinyl insulator ties capable of withstanding harsh and abusive weather and road conditions.

4. The operating switch shall be installed on a console location or other location according to the driver's physical needs.

12:45-3.15 Manual brake extension (SP.10.1)

(a) The requirements for construction and installation of the manual brake extension are as follows:

1. A non-powered brake extension shall meet the specification established by the Veteran's Administration (M-2 Part IX G-9) published March 31, 1978, incorporated herein by reference.

2. An extension shall be positioned by the installer so that it can be operated safely and efficiently by handicapped or mobility impaired driver, taking into account the OEM dash design.

12:45-3.16 Steering wheel devices (SP.11.1)

(a) The requirements for construction and installation of steering wheel devices are as follows:

1. Only devices which meet the Standards set by Veteran's Administration (M-2 Part IX G-9) published March 31, 1978 and periodically updated shall be accepted.

2. Steering wheel devices which shall be considered acceptable are as follows:

i. Spinner Knob (SP.11.2(a));
ii. Sierra Driving Ring (SP.11.2(b));
iii. Quad Cuff (SP.11.2(c));
iv. Quad Bipin (SP.11.2(d));
v. Quad Tri Pin (SP.11.2(e)); and
vi. Quad Flat Bipin (SP.11.2(f)).

3. All steering devices shall be securely fastened. Quick release cross bars are not acceptable unless the manufacturer guarantees in writing that the item will not disengage inadvertently. A permanently fastened cross bar may be accepted if it is prescribed due to physical condition.

4. All steering devices shall be removable for compliance and used by a driver with a non-restricted license. Only case-hardened pins and/or knurled fasteners shall be acceptable.

12:45-3.17 Extensions (SP.12.1)

(a) The requirements for construction and installation of extensions are as follows:

1. All extensions shall be securely fastened.

2. All extensions shall be positioned so that the driver can easily operate without difficulty, taking into account accepted safety practices.

3. All extensions shall have sufficient strength to withstand the stresses incurred under general conditions of operation.

4. All extensions shall be constructed and installed, so as to maintain the normal function of control.

12:45-3.18 Left foot accelerator (SP.12.3)

(a) The requirements for construction and installation of the left foot accelerator are as follows:

1. The left foot accelerator shall have the capability of inactive placement when not needed for the mobility impaired.

2. The left foot accelerator shall be fastened, attached and secured in an acceptable manner.

3. The installation shall be identified for "Non-intended" user.

4. The weight of the left foot activator shall not cause the accelerator to engage at higher revolutions per minute (RPM) than the "standard" neutral/drive position RPM.

5. The left foot accelerator shall give sufficient clearance for the appropriate operation of a standard foot brake by the driver operator.

6. The installation should not interfere with operation of standard foot brake and OEM accelerator by an able-bodied driver based on the vehicle OEM design.

12:45-3.19 Horn/dimmer switches

(a) The requirements for construction and installation of horn/dimmer switches are as follows:

1. Each horn/head light dimmer shall be installed and positioned to allow a driver to actuate the switch without removing his or her hand from the standard driving controls.

2. No horn/dimmer switch shall be installed in such a manner which would cause the driver to jerk, pull or move his or her steering hand.

12:45-3.20 Mirrors (SP.13.4/5)

(a) The requirements for construction and installation of mirrors are as follows:

1. A multi-view mirror (SP.13.4) shall not compromise the driver's forward vision.

2. Remote mirrors (SP.13.5) shall be installed in an appropriate manner.

3. Switches for remote mirrors shall be positioned for a setting on the console or any other accessible location for the mobility impaired driver.

12:45-3.21 Six-way powered transfer driver seat base (SP.14.1)

(a) The requirements for construction and installation of a six-way powered transfer driver seat base are as follows:

1. The six-way powered transfer driver seat base shall have the capability of electrically powered movement:

i. Up/down;

ii. Back/forward; and

iii. Rotate right/left.

2. The six-way powered transfer driver seat base shall have electrical connections of the plug type or other Underwriters Laboratories acceptable positive electrical securement method.

3. The six-way powered transfer driver seat base shall be secured with automotive type bolts (OEM type used for seat fastening in vans) held firmly in place with nyloc nuts or an industrial equivalent.

4. The six-way powered transfer driver seat base shall be bolted through into a cross member or sheet metal of at least 16 gauge which has been securely attached (that is, through-bolted or welded) to the remainder of the body and fish-plated for stress distribution.

5. All wires shall be protected when the seat moves in any given direction against entanglement or possible disengagement.

6. The six-way powered transfer driver seat base shall be securely fastened to driver's van seat with automotive type bolts unless a special driver's seat is required by the DMV attached licensed endorsement.

7. Seat cushions shall allow maximum utilization of height/lowering capability of driver base, to ensure proper end user transfer.

8. Installation position shall allow maximum utilization of forward/backward travel of seat cushion to ensure most appropriate transfer position for end user.

9. The controls shall be placed to permit convenient, efficient and safe utilization by the driver, taking into account the driver's physical limitations.

10. All control switches shall be long arm toggle type or pressure contact switches. Switches shall be mounted on long tether cord to ensure access for the mobility impaired driver.

11. Switches shall be labeled as to their function and direction of use.

12. The seat base shall be free from excessive wobble or flexing, giving driver adequate support as required by end user's physical disability.

13. The six-way powered transfer driver seat base shall be mounted in a manner consistent with FMVSS 207, incorporated herein by reference, or minimum of one-half inch grade 5 bolts, back-plated with washers of minimum one and one-half inch outside diameter.

14. Six-way power switches shall be accessible to the disabled driver when seated both in the seat base and in the wheelchair at the transfer location.

15. No six-way powered transfer seat base shall compromise its forward or rearward distance capability in its up/down sequence.

16. Every four-way powered transfer seat base and right side transfer seat base shall be constructed and installed pursuant with all previous provisions to the standards set forth in this section.

17. Every custom seat shall meet general automotive industry accepted practices for seat construction and applicable FMVSS standards, incorporated herein by reference.

18. Supplemental cushions shall have velcro material on the bottom and a fixed seat surface to reduce "Inadvertent movement."

19. A transfer driver seat base (SP.14.1(t)) shall be required for all wheelchair drivers. The transfer driver seat base shall have wheels and be mounted pursuant to (a)1 above.

12:45-3.22 Raised lift entry doors (SP.15.1)

(a) The requirements for construction and installation of raised lift entry doors are as follows:

1. Extended doors and door frames shall be braced in a manner consistent in strength to the original door and doorway.

2. Refinishing shall be equal to original automotive finish.

3. All paint work shall be according to American Auto Body Association standards, incorporated herein by reference.

4. No air or water leaks under air or water hose pressure shall be acceptable.

5. No exposed burrs or sharp metal edges shall be acceptable.

6. All metal shall be thoroughly clean, properly primed, and corrosion treated prior to installation and final finishing. The contractor shall provide documentation.

12:45-3.23 Raised fiberglass roofs (SP.16.1)

(a) The requirements for construction and installation of raised fiberglass roofs are as follows:

1. Any van which has had the factory top removed shall have structural reinforcement added to compensate for the reduced structural rigidity.

2. The structural reinforcement design shall be primarily aimed at restoring rigidity to the van body.

3. The structural reinforcement may also serve as a roll bar.

4. The structural reinforcement shall be composed of two horizontal bars.

i. One bar shall be mounted forward of the side doors. The other shall be mounted aft of the door opening.

ii. The front and rear bar shall be connected by three equal spaced bars running parallel to sides of the vehicle at the new roof line prior to mounting of fiberglass top.

5. All bars shall be steel tubing one inch by one inch of minimum 14 gauge.

6. Tubing of structural reinforcing shall be welded together and fastened to one inch by one inch steel tube header (a minimum of 14 gauge) installed along top interior sides of the van to which the reinforcement is attached. The reinforcing structure shall be tied to the vehicle's main body structure.

7. All bars shall be encased in rubber, carpet or other sealer to prevent slap against fiberglass top.

8. Front and rear bars fastened to side header shall be fastened in such a manner to prevent front or rear shearing in rollover.

9. Side bars shall be tied to the original van structure.

10. All main frames removed shall be replaced.

11. Other structural designs may be considered on an individual basis.

12. The interior roof insulation and lining shall be supplied unless deleted by the user. Customized carpet shall be unacceptable.

13. The lining shall be OEM automotive grade.

14. The exterior shall be painted to match the OEM vehicle.

15. The fiberglass roof shall meet the acceptable Recreational Industry Vehicle Association strength standard for possible rollover, incorporated herein by reference.

12:45-3.24 Reduced effort steering (SP.17.1)

(a) The requirements for construction and installation of reduced effort steering are as follows:

1. Reduced effort steering shall reduce effort to 24 ounces or less (standard OEM wheel) to qualify as reduced effort steering.

2. The manufacturer shall set forth the force necessary (with its product) to turn the wheel on dry asphalt with tire pressure and type of tire defined.

3. The manufacturer shall set forth on the invoice, the type and source of modification done to achieve the reduced effort steering, and the actual force value necessary to turn vehicle's steering wheel.

4. The steering wheel shall have maximum of four turns lock to lock.

5. Modified steering shall not require frame cutting.

6. Only steering wheels (preferably deep dish) fully padded from nine inches to 16 inches shall be acceptable.

7. Back-up steering shall be required in all modifications requiring reduced effort or zero effort steering.

8. Back-up steering shall be required in all cases where a smaller than OEM original wheel is prescribed as necessary.

9. Reduced effort steering shall be removed and replaced with OEM components upon resale of vehicle to an individual not requiring this device.

12:45-3.25 Reduced effort brakes (SP.18.1)

(a) The requirements for construction and installation of reduced effort brakes are as follows:

1. Reduced effort brakes shall reduce force to 11 ft/lb or less to qualify as reduced effort brakes.

2. The manufacturer shall set forth on the invoice the force needed to operate the brakes for a rapid stop (that is, just prior to or at initiation of wheel lock-up) on dry asphalt at 30 mph.

3. The manufacturer shall set forth on the invoice the type and source of modification.

4. The manufacturer shall use lines, hoses and other components identical or equivalent in performance to original equipment, and meet all applicable FMVSS on all brake system modifications, incorporated herein by reference.

5. Reduced effort brakes shall be removed and replaced with OEM components upon resale of the vehicle to an individual not requiring this device.

6. A reserve system shall be required for all vehicles containing brake modifications. (SP.18.2)

12:45-3.26 Remote gear shift (SP.19.1)

(a) The requirements for construction and installation of remote gear shifts are as follows:

1. The remote gear shift shall be mounted in driving console, usually center console.

2. Each position, reverse, neutral and drive shall have lighted visual signals.

3. The reverse position shall have an audio signal that notifies the driver that the vehicle's transmission is in reverse.

4. All transmission positions shall have positive stop.

5. The lighted visual signal for reverse shall be red.

6. The lighted visual signal for neutral shall be amber or orange.

7. The lighted visual signal for drive shall be green.

8. The lever or handle shall be designed so that the shift lever or handle is readily usable by a paraplegic or quadriplegic with limited dexterity.

9. The design of the lever or handle shall take into prime consideration safe and efficient driving standards and the physical limitations of the driver.

10. Lighted visual signals shall not be required if shift quadrant remains on column and is in a position to be visible to both a disabled and non-disabled driver.

11. The remote gear shift shall be removed and replaced with OEM components upon resale of the vehicle to an individual not requiring this device.

12:45-3.27 Power windows (SP.20.1)

(a) The requirements for construction and installation of power windows are as follows:

1. Power windows shall be of either the add-on or integral type.

2. The driver's physical limitations shall determine which type product is acceptable.

3. All switches in the console shall be placed so as not to reflect in the driver's eyes when driving.

12:45-3.28 Door consoles (SP.21.1)

(a) The requirements for construction and installation of door consoles are as follows:

1. A door console shall be securely fastened to the driver's door with automotive type rivets or similar fasteners.

2. All switches shall be labeled as to function and direction of operation.

3. A door console shall be constructed of fiberglass, aluminum or stainless steel.

4. All edges on the door console shall be curved or padded.

5. The entire housing of the door console shall be enclosed and sealed against moisture and water entry.

6. All switches shall be of long toggle type securely fastened at the top and bottom. Contact pressure switches shall be acceptable if they are useable by the driver.

7. The console wiring harness shall be properly secured and grommeted at entry into housing.

8. The housing cover shall be easily removeable for trouble shooting.

9. The arrangement of switches shall be in a manner consistent with the operational need in changing terrain, taking into account the driver's physical limitations, safety and driving efficiency.

10. All switches shall be positioned to be easily utilized by an individual with limited hand and/or finger dexterity and as such, shall be spread apart at a distance to ensure proper driver utilization.

11. Electronic consoles shall be acceptable if they comply with requirements of this section.

12. All switches shall be identified.

12:45-3.29 Center consoles (SP.22.1)

(a) The requirements for construction and installation of center consoles are as follows:

1. All center consoles shall be properly secured and braced to the floor of the vehicle. Any quick release system for servicing shall have a locking pin or device.

2. All required switches shall be listed on request on invoice.

3. All center consoles shall be at a specific height to ensure proper utilization by the driver, taking into account the driver's physical limitations.

4. The requirements of N.J.A.C. 12:45-3.28(a)1 through 10 shall apply to center consoles.

5. All center consoles shall have knock away feature to reduce driver contact in the event of a collision.

12:45-3.30 Quad key rings (SP.23.1)

(a) The requirements for construction and installation of quad key rings are as follows:

1. All quad key rings shall allow utilization and ensure key operation by an individual with little hand dexterity.

12:45-3.31 Horizontal steering (SP.24.1)

(a) The requirements for construction and installation of horizontal steering are as follows:

1. The steering wheel shall have no more than four turns lock to lock.

2. A horizontal steering shall not compromise the collapsibility of the steering column or the telescoping safety feature of OEM manufacturer's unit.

3. If the original steering column is removed from vehicle, then the replacement steering column shall have the same collapsibility feature as the OEM column.

4. The horizontal steering system shall have the capability of being consistently set at a position beneficial to the driver.

5. The horizontal steering unit from dash to wheel including any replacement smaller diameter steering wheel shall be fully padded.

6. All horizontal steering columns shall be powered up and down with a switch located so that an individual with little dexterity can reach and utilize the switch with relative ease.

7. Horizontal steering shall be installed only under a manufacturer's supervision.

8. Horizontal steering shall be removed and replaced with OEM components upon resale of vehicle to an individual not requiring this

device. The OEM removed components shall be returned with the vehicle.

12:45-3.32 Powered back-up steering (SP.25.1)

(a) The requirements for construction and installation of powered back-up steering are as follows:

1. All powered back-up steering shall activate automatically in the event of an engine power failure, stall, a wet power steering belt, lower pressure or a damaged power steering belt.

2. Upon activation of the powered back-up steering, the driver shall receive an audio and visual notification that system has been activated.

3. The powered back-up steering system shall have the capability of being pre-tested prior to need to ensure that the system is functioning.

4. The powered back-up steering system shall have a manual override system safety switch.

5. The manual override safety switch shall be mounted on the same side as the driver's brake/accelerator control.

6. All control relays shall be similar or equal to standard automotive industrial relays.

7. All relays shall be mounted to ensure reasonable freedom from vibration/moisture failure.

8. All hoses, lines, fittings shall be of OEM quality/standard or superior.

9. The hydraulic pump shall be of similar quality as used in wheelchair lifts or a similar automotive utilization.

10. Powered back-up steering system shall allow a minimum of 180 seconds use under the most adverse emergency condition.

11. The back-up steering system shall meet the general specifications determined by the Veteran's Administration in their Texas A & M Testing Program, incorporated herein by reference.

12. Back-up steering (SP.25.1) is required in all wheelchair user vehicle modifications.

12:45-3.33 Zero/no effort steering (SP.26.1)

(a) The requirements for construction and installation of zero/no effort steering are as follows:

1. Zero/no effort steering shall reduce the torque effort at the standard steering wheel to eight ounces or less to qualify as zero/no effort steering and should be matched to the use in the pre-fitting.

2. The manufacturer shall set forth on the invoice the torque necessary for its product to turn the wheel on dry asphalt with tire pressure and type of tire defined.

3. The manufacturer shall state on the invoice the type and source of modification done to achieve the zero/no effort steering and the actual torque force necessary to turn the vehicle's steering wheel.

4. The steering wheel shall have a maximum of four turns lock to lock.

5. Only steering wheels (preferably deep dish) fully padded from nine inches to 16 inches shall be acceptable.

6. Back-up steering shall be required in all modifications requiring reduced effort or zero/no effort steering.

7. Zero/no effort steering shall be removed and replaced with OEM components upon resale of the vehicle to an individual not requiring this device.

12:45-3.34 Zero/no effort brakes (SP.27.1)

(a) The requirements for construction and installation of zero/no effort brakes are as follows:

1. Zero/no effort brakes shall reduce force to seven ft/lb or less to qualify as zero/no effort brakes.

2. N.J.A.C. 12:45-3.25(a)2 through 4 shall apply to zero/no effort brakes.

3. A back-up reserve brake system shall be required on all zero/no effort brakes.

4. Zero/no effort brakes shall be removed and replaced with OEM components upon resale of the vehicle to an individual not requiring this device.

12:45-3.35 Special controls (SP.28.1)

(a) The requirements for construction and installation of special controls are as follows:

1. All special controls shall be examined by the Division of Motor Vehicles for safety.

2. Special hand controls shall be defined as any specialized custom unit other than:

i. Standard controls;

ii. Vacuum-assist (SP.29.1); and

iii. Pneumatic controls (SP.28.2).

3. Foot steering shall be classified as a special control and shall be examined on an individual basis by the DMV.

4. Special controls shall be removed and replaced with OEM components upon resale of the vehicle to an individual not requiring this device.

12:45-3.36 Vacuum brake/gas system (SP.29.1)

(a) The requirements for construction and installation of a vacuum brake/gas system are as follows:

1. All vacuum brakes/gas systems shall be examined on an individual basis.

2. All vacuum brakes/gas systems shall have minimum travel to operate.

3. All vacuum brakes/gas systems shall have capability of custom resistance settings.

4. All vacuum brakes/gas systems shall be closed loop with an emergency reserve in case of engine failure.

5. All vacuum brakes/gas systems shall have precheck operational capability with visual monitoring.

6. All vacuum brakes/gas systems shall have an audio and visual warning in case of malfunction.

7. All vacuum brakes/gas systems shall have an integral emergency back-up in case of engine failure.

8. A vacuum brake/gas system tank shall be minimum of 14 gauge steel.

9. Air valves shall be lapped spool and sleeve construction or other commonly accepted industrial practices to ensure reliability.

10. The handle shall have the capability of adaption for quad knobs and specific limits.

11. All bearings shall be sealed with bronze oil-lite bushings or industrial equivalent.

12. All housings shall be corrosion resistant.

13. All cables shall be corrosion resistant with at least a 420 pound breaking strength.

14. In most cases, a vacuum brake/gas system shall be installed in conjunction with the horizontal steering. The manufacturer of the horizontal steering shall supervise the installation.

i. A written certification of compliance may be required.

15. A back-up brake reserve shall be required on all vacuum brake/gas systems.

16. A vacuum brake/gas system shall be removed and replaced with OEM components upon resale of vehicle to an individual not requiring this device.

12:45-3.37 Air brake/accelerator servo systems (SP.28.2)

(a) The requirements for construction and installation of air brake/accelerator servo systems are as follows:

1. All air brake/accelerator systems shall be examined on an individual basis.

2. Pneumatic shall be equipped with an air reservoir safeguarded by check valves or equivalent devices so that the reservoir is not depleted in the event of a failure or leakage in connections to the source of compressed air.

3. The air reservoir shall comply with SAE Standard J10 Sep. 80, incorporated herein by reference.

4. The air brake/accelerator servo system air hose and hose assemblies shall comply with SAE Standard J1402 Oct. 80, incorporated herein by reference.

5. It shall be equipped with proportional driver controls which require minimum travel to operate.

6. It shall be equipped with an air pressure gauge which indicates to the driver the pressure in pounds per square inch available for braking.

7. It shall be equipped with a device that provides a readily audible warning to the driver whenever the pressure of the compressed air

in the primary or back-up system is below one-half of the compressor governor cutout pressure.

8. It shall be completely equipped with an independent emergency reserve device which will provide sufficient energy for at least one full brake application in case of failure of the primary brake actuating mechanism.

9. The compressed air supply line from air operated reserve devices shall be connected to the primary system as close as is practicable to the brake actuating unit. The junction of the primary and back-up system shall be equipped with check valves which protect either system from air losses caused by failure of the primary system.

10. The primary air reservoir shall have a volume which is not less than 12 times the volume of the brake actuating device.

11. The air brake/accelerator servo system shall have precheck operational capability with visual monitoring.

12. Air valves shall be lapped spool and sleeve construction or other industry accepted practice to ensure reliability.

13. A control handle shall have the capability of adaption for quad knobs and specific limits.

14. All bearings shall be sealed.

15. All housings shall be corrosion resistant.

16. Air brake/accelerator servo systems shall be removed and replaced with OEM components upon resale of vehicle to an individual not requiring this device.

12:45-3.38 General electrical specifications

(a) The requirements for construction and installation of general electrical systems are as follows:

1. All switches in the driver's compartment shall meet the requirements of FMVSS 101, incorporated herein by reference.

2. All wiring shall be automotive stranded type and color coded with no wires of the same color in the same loom or harness.

3. All wiring to the same equipment shall be grouped together and protected by an aircraft type loom to withstand abrasion.

4. Wire size shall be sufficient to minimize voltage drop (maximum five percent) and to prevent overheating.

5. All wiring shall have sufficient slack to accommodate the normal motion of parts or equipment to which it is attached.

6. All wiring shall be supported and located to prevent enmeshing in moving parts.

7. All wiring under the vehicle shall be in an encased loom and attached to the vehicle every 18 inches so as not to chafe or swing more than four inches in any given direction. These wires shall not be fastened to the brake or fuel lines. The loom shall be fastened with metal insulated rubber or vinyl clamps.

8. All wire passing near mufflers, exhaust pipes, exhaust manifold and catalytic converters shall be shielded and rerouted if possible.

9. No wires shall pass within two inches of a muffler, exhaust pipe, exhaust manifold and catalytic converter.

10. All holes through which wires pass shall be grommetted (top and bottom).

11. All holes through which wires pass shall be water and moisture sealed.

12. Each electrical circuit shall have a self-resetting circuit breaker close to the power supply. Fuses or fused wire is unacceptable.

13. All circuits protected by self-resetting circuit breakers shall be labeled at the switch as being protected in that manner.

14. If a circuit can be subject to a temporary, inadvertent overload an override emergency switch within reach of the driver but protected by a second nonself-resetting circuit breaker, is mandatory.

15. Adequate provisions shall be made by the installer for proper grounding of electrical equipment and fuel system.

16. All additional wiring shall be to a terminal (bus bar) with only one wire to the main terminal from the battery (usually at the solenoid).

i. The primary cable shall be large enough to carry all additional loads, per specifications.

ii. No more than two wires can be attached to each terminal on the terminal strip.

17. All electrical connections and terminals shall utilize crimp connectors of the type which crimp the insulator as well as the wire.

18. All main power connectors for #0 or larger wire shall use swaged rather than crimped fittings.

19. All wires between the van body and doors shall be properly harnessed, protected and grommetted to prevent chafe, work hardening, pinching and related problems caused by the motion.

20. Any added electrical systems which must be activated by the ignition switch shall protect the ignition switch by having them (electrical systems) routed through a relay.

21. The preferred wiring material shall be copper. If aluminum is used, the appropriate wiring methods shall be utilized to prevent oxidation and cold flow difficulties or other complications.

22. If dual batteries are specified, the second battery shall be placed in the engine compartment. If the battery cannot be placed there due to other equipment, then the battery shall be placed under the floor in a separate battery compartment.

23. All manufacturers/installers shall supply to the user with the vehicle on delivery, documentation of wiring compliance, including approved exceptions. The required wiring documentation shall consist of a wiring diagram showing the major components and subassemblies by name, location and wire color. The diagram shall be supplied to the driver with the modified vehicle (a copy to the Automotive Engineering Office of DMV, one copy to the servicing dealer, and a copy at manufacturer's/installer's headquarters). All copies shall identify the specific vehicle, the purchaser and date of delivery. The purchaser shall sign for this diagram on the delivery invoice.

24. The separate battery compartment shall:

i. Be sealed from passenger compartment;

ii. Have an access door/plate with a seal for service;

iii. Have a separate vent tube to allow proper venting of battery gases into the open air; and

iv. Have a battery cable entry point into compartment grommetted.

25. All wiring, components, and wiring installation shall meet the standards and recommended practices for motor vehicle wiring established by the Society of Automotive Engineers.

12:45-3.39 General mechanical and assembly specifications

(a) The standards for construction and installation of general mechanical and assembly specifications are as follows:

1. All interior/exterior refinishing shall be of automotive original quality with no rough/burr edges or surfaces.

2. Welding surfaces shall be free from cracks, serious undercuts, overlap, surface holes or slag inclusions. The width of the bead shall be uniform throughout the weld.

3. All fasteners shall be of automotive quality either bolts and as specified in specifications rivets.

4. All nuts shall be fastened with an effective locking device. When nuts are used which utilize a fiber or nylon locking insert, at least one entire round of the bolt thread shall extend through the nut.

5. All exterior joints shall be assembled, sealed and insulated to protect water or air passages.

6. All manufacturer/installer installed items shall have a provision for securement. The manufacturer/installer shall ensure that the modifications do not result in the incursion of exhaust gases into the passenger compartment as a result of the supplied modifications and installations. Compliance shall be mandatory and may be checked on DMV inspection of the completed modifications.

7. All modifications and related vehicle equipment shall be accessible for servicing.

8. The manufacturer/installer shall supply and install a permanent certification label placed in the vicinity of the original vehicle manufacturer's label which indicates that the vehicle complies with all applicable FMVSS. The label shall contain the following information:

i. Name and address of modification corporation;

ii. Date of modification;

iii. Telephone number of modifier; and

iv. A statement that the modifications meet the requirements of the State of New Jersey.

9. A list of all modifications made to the vehicle shall be furnished to the user and one in glove box, the other given to the user. The

list shall be on the manufacturer's invoice and signed by an officer of the company.

10. The written information on the use and maintenance of all major equipment additions shall be furnished to user.

11. The certification label, list of modifications and written information on the use and maintenance of the vehicle shall be acknowledged by the driver on delivery. The manufacturer shall keep duplicate copies for his or her records.

12. Any items removed from a vehicle shall be returned to the user. The user shall acknowledge the returned items by signing a receipt. If owner declines, manufacturer/installer shall secure a signed release to dispose of the items.

13. All modified vehicles shall be subject to the DMV inspection to ensure compliance with regulations. Non-compliance with this subchapter may result in the vehicle being rejected at the annual inspection.

14. All clevis pins, axles or connectors employed at pivot points on various control and servo systems shall be case hardened steel, and shall be secured with mechanical locking devices.

15. All vacuum, air, hydraulic lines shall be routed or mounted as not to chafe, swing or kink.

16. All vacuum, air, hydraulic lines should comply with the standards for electrical wires.

17. All mechanical and assembly techniques shall meet the standards and recommended practices established by SAE, incorporated herein by reference.

18. Air, vacuum and hydraulic lines and hoses shall meet all applicable FMVSS and/or SAE standards, incorporated herein by reference.

12:45-3.40 Transfer bars (SP.34.1)

(a) The requirements for construction and installation of transfer bars are as follows:

1. A transfer bar shall not be attached to fiberglass raised tops or to an unreinforced sheet metal area.

2. A transfer bar shall be attached to a structural member.

3. Through-bolting with back plating shall be required if the attachment hardware comes under tension during transfer.

12:45-3.41 Instructor brake (SP.34.4)

(a) The requirements for construction and installation of the instructor's brake are as follows:

1. An instructor brake may be requested on a modified vehicle as deemed necessary for driver safety (via consultation with evaluator) due to the engine box blocking access to the brake pedal by an individual in the right front seat.

2. The instructor brake shall be installed to meet all safety requirements of the DMV and the general installation specifications of NJDVRS for modified vehicles, incorporated herein by reference.

3. The instructor brake shall have a locking arm or a strap to prevent accidental use by a passenger when use is not needed or required.

4. All instructor brakes must be through-bolted into a structural member or sheet metal of at least 16 gauge which has been securely attached (that is, through-bolted or welded) to the remainder of the body. All fasteners shall have washers of at least two inches in diameter and 1.25 inches in thickness or the equivalent steel plating.

12:45-3.42 Automotive wheelchair roof carriers/loaders (SP.34.2)

(a) The requirements for construction and installation of automotive wheelchair roof carriers/loaders are as follows:

1. The unit case shall be fiberglass, aluminum or other DVRS prior approved non-corrosive metal or fiber.

2. The power shall be electrical employing 12 volt DC.

3. All switches shall be long toggle type spaced to prevent accidental employment. Surface contact switches may be considered.

4. All switches shall be installed to coincide with the direction of use.

5. All wires shall be color coded. All switches shall be marked as to function and direction of use.

6. The lift mechanism shall employ chain or cable. The chain shall have no rough edges which may cut user if touched when in operation. If cable is used, the cable shall be vinyl encased to prevent cutting if accidentally touched.

7. When opening or closing, the cover shall be securely fastened to main frame, rails.

8. The lift hook shall be capable of being custom set for depth of the driver's chair.

9. The case shall have rubber or equivalent moisture seal.

10. The case shall have rubber or acceptable lower edge moldings.

11. The fastening plates shall be fastened with rivets or equivalent fasteners.

12. All roof entry points shall be moisture sealed and waterproofed.

13. The fastening pads shall be placed as far out as possible so as not to cause roof to dent or flex over one-eighth inch.

14. The unit shall have momentary switches which demand continuous pressure by the driver.

15. The electrical power cord shall not be exposed. The entry point from the unit shall be grommetted and water/moisture sealed.

16. The switch location shall not interfere with driver's entry or exit from the wheelchair to the driver's seat.

17. All control switches shall be placed in a position most convenient to ensure driver's independent operation, to be determined at time of installation.

18. The standards for general electrical and mechanical specifications shall apply to automotive wheelchair roof carriers/loaders.

19. The lower plate of the case shall have rain drain holes.

20. The roof loader may require capabilities of entry from either right side (passenger side) or left side (driver side) according to the individual need of the user.

12:45-3.43 Special communication systems for wheelchair transfer van (SP.91.1)

(a) The requirements for the construction and installation of special communication systems for wheelchair transfer vans are as follows:

1. The mobile communication unit shall be hands free enabling a mobility impaired driver to operate the primary motor vehicle control surfaces and to keep his or her eyes on road without the need to disengage from primary control surfaces after activating system.

2. The unit shall have an A/B switch.

3. The unit shall have a mini transceiver which permits greater flexibility for installation. Mini shall mean less than 75 cubic inches.

4. The unit shall have a signal strength indicator.

5. The unit shall have a call-in progress protection which enables the user to continue in an existing system conversation when the ignition is turned off.

6. The unit shall have a duration alert of one minute intervals for a minimum of five minutes.

7. The unit shall have a data transmission memory function (DTMF) feature.

8. The unit shall have a call-in absence indicator.

9. The unit shall have a repertory memory scroll and an automatic storing into vacant memory address.

10. The unit shall have a maximum 1.9 amp draw in use and 0.2 amp in standby.

11. Power output shall not be less than three watts (50 ohms) conducted.

12. The antenna supplied shall be vehicle matched and suitable to yield maximum coverage and stronger signal strength as required in use.

13. The vendor shall supply a system that has direct access to and relationship with a landline base phone organization for stability reasons.

14. The vendor shall have a formal certification program that all technicians must pass in order to install cellular communication equipment.

15. The system shall have a limited warranty for a period of not less than three years.

16. The vendor, in order to give maximum service shall have direct access and relationship with mobile phone centers owned and operated by the vendor's supplier to allow easy access for required and

routine service of the system. At a minimum these centers should be in north, central and southern New Jersey such as Bergen, Middlesex, Mercer and Burlington counties.

17. The system shall have an assurance policy for minimum of one year with ongoing assurance policy available at minimal cost.

18. The system shall not have a fee for a documented emergency call.

19. The system shall be supplied only by a vehicle modifier vendor in conjunction with vehicle modification.

(a)

DIVISION OF WORKPLACE STANDARDS

Safety and Health Standards for Public Employees

Proposed Readoption: N.J.A.C. 12:100

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20; 34:1A-3(e); 34:6A-25 et seq., specifically 34:6A-30.

Proposal Number: PRN 1989-414.

Submit comments by September 6, 1989 to:

Alfred B. Vuocolo, Jr.
Chief Legal Officer
Office of the Commissioner
CN 110
Trenton, New Jersey 08625-110

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 12:100 will expire on November 5, 1989. The Department of Labor has reviewed the rules proposed for readoption, and determined them to be necessary, reasonable and proper for setting forth standards for the protection of employees in the public sector. The Department proposes that the existing chapter be readopted without change.

All provisions of N.J.A.C. 12:100 were adopted by the Commissioner of Labor and became effective January 1, 1970. On April 1, 1975, former Commissioner Joseph A. Hoffman announced the withdrawal of the New Jersey State Plan for Occupational Safety and Health, and jurisdiction was vested fully with the United States Department of Labor for the regulation of occupational safety and health under the Federal Occupational Safety and Health Act of 1970 (OSHA; 29 U.S.C. § 651 et seq.). Therefore this chapter became ineffective as of April 1, 1975. The rules were subsequently repealed effective August 16, 1978, and a new chapter was filed and became effective November 5, 1984.

The rules were subsequently amended on July 21, 1986, subchapter 9 became effective September 19, 1988 and subchapter 11 was adopted on May 1, 1989. Additionally, numerous Federal rules have been adopted by reference at N.J.A.C. 12:100-4.2, pursuant to N.J.S.A. 34:6A-30.

The chapter provides an indispensable set of occupational safety and health standards designed to protect all employees in the public sector. The chapter consists of 10 subchapters. Subchapter 1, General Provisions, has rules relating to the authority, purpose, scope and validity of the chapter. Subchapter 2 covers definitions for terms used throughout the chapter. Subchapter 3 discusses the administration of the chapter, including the interrelation of the State agencies involved with enforcement of the chapter.

Subchapter 4 sets forth general standards, including a section for standards which are adopted from the Federal rules by reference. Subchapter 5 addresses construction standards, and subchapter 6 provides agricultural standards.

Subchapter 9 sets forth procedures to protect employees from the hazards of entry into and work within confined spaces. Subchapter 11 addresses hazardous energy sources. Subchapter 12 provides standards for all employers and employees who may be directly exposed to asbestos. Subchapter 17 lists the standards and publications which are referred to throughout the chapter.

Social Impact

The proposed readoption will enable the Department to continue to help protect the safety and health of public employees in the workplace. Enforcement of the rules will provide safe and healthful work environments free from recognized hazards, which is in the best interest of both employers and employees.

Economic Impact

Pursuant to N.J.S.A. 34:6A-26, the legislature mandated that all public employees be provided with a safe and healthful work environment free from recognized hazards. The safety and health standards contained in the proposed readoption were promulgated in accordance with this legislative mandate.

The proposed readoption, by providing a safe and healthful workplace, will decrease the number of personal injuries and illnesses arising out of work situations. This, in turn, will decrease the amount of lost wages, medical expenses and workers' compensation benefits, and will increase worker productivity. The Depatment incurs costs in the workplace monitoring process and in operating the complaint mechanism. Public employer compliance costs arises from several areas, such as equipment modification or replacement to comply with the standards, and worker training. While the Department acknowledges the costs resulting from these rules, the Department is constrained by the law which requires these programs to be adopted, and feels that the benefits provided by the rules outweigh any costs associated with implementing the standards.

Regulatory Flexibility Statement

The proposed readoption does not impose any reporting, recordkeeping or compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since only public employers are affected by the rules.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:100.

(b)

DIVISION OF WAGE AND HOUR COMPLIANCE

Field Sanitation

Proposed New Rules: N.J.A.C. 12:102-1

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:9A-37 et seq., specifically 34:9A-39.

Proposal Number: PRN 1989-412.

Submit comments by September 6, 1989 to:

Alfred B. Vuocolo, Jr.
Chief Legal Officer
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 34:9A-39, the Department of Labor is authorized to promulgate rules concerning field sanitation for seasonal farm workers when there are fewer than 10 workers in the field. The Department has decided to propose these rules to provide reasonable operating and maintenance standards for drinking, toilet and handwashing facilities.

N.J.A.C. 12:102:1.1 sets forth the purpose and scope of the new subchapter.

N.J.A.C. 12:102-1.2 is a definitions section.

N.J.A.C. 12:102-1.3 addresses the availability of water to field workers.

N.J.A.C. 12:102-1.4 sets forth standards concerning water containers.

N.J.A.C. 12:102-1.5 lists the requirements for toilet facilities, and provides a table with specifications for the number of seat-type facilities which must be provided.

N.J.A.C. 12:102-1.6 discusses handwashing facilities.

N.J.A.C. 12:102-1.7 is a penalty section.

N.J.A.C. 12:102-1.8 is an exception section.

Social Impact

The proposed new rules will establish procedures to govern the provision of sanitary water, toilet and handwashing facilities for seasonal farm workers. By so doing, the rules will promote cleaner, more convenient facilities to workers, which will make their workplace more com-

fortable and which will reduce the amount of complaints filed against farm operators for not providing these facilities.

Economic Impact

The proposed new rules will have little economic impact on farm operators, as few of them will have to install new facilities or upgrade existing ones to be in compliance with the new standards. The Department believes that many farm operators are already in compliance with the Federal OSHA requirements with regard to field sanitation, and thus will not experience any degree of significant economic impact.

The Department does not expect to be affected economically by the proposed new rule.

Regulatory Flexibility Analysis

The proposed new rules will impose compliance requirements on businesses, especially on small business pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as it is designed to provide standards for farm operators who employ 10 or fewer farm workers. The rules are necessary because they set forth standards for field sanitation which are crucial for the health and safety of all seasonal farm workers. Additionally, the Department is required by statute to promulgate rules which address the situation in which 10 or fewer farm workers are working. Therefore, no differentiation in requirements based upon business size can be provided.

Full text of the proposal follows:

CHAPTER 102
SEASONAL FARM WORKERS

SUBCHAPTER 1. FIELD SANITATION

12:102-1.1 Purpose and scope

(a) The purpose of this subchapter is to provide reasonable standards for drinking, toilet and washing facilities for seasonal farm workers when working in a field.

(b) This subchapter shall be applicable to all farms subject to N.J.S.A. 34:9A-37 et seq. when 10 or fewer seasonal farm workers are working in a field.

1. If, at any time during a one-year period from the date of inspection, more than 10 seasonal farm workers have been employed, the Federal Occupational Safety and Health Act (OSHA) standards pursuant to 29 CFR 1928.110, shall be applicable.

12:102-1.2 Definitions

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

"Approved" means acceptable to the Commissioner. Any product certified, or classified, or labeled by a nationally recognized testing agency may be deemed to be acceptable, unless specifically banned by order of the Commissioner.

"Central facilities" means drinking, toilet and washing facilities housed at a central location which comply with Federal, State and local regulations and are at least equivalent in all respects to the facilities required by this subchapter.

"Commissioner" means the Commissioner of the Department of Labor of the State of New Jersey or his or her designee.

"Cool" means water which is maintained at a temperature of not more than 60 degrees Fahrenheit.

"Farm operator" means any individual, family member, corporation, partnership, joint venture, firm, company, or other legal entity, or any officers or agents thereof, in immediate possession of any farm as owner or lessee, and, as such, responsible for its management and condition.

"Seasonal farm worker" means any person who is engaged in seasonal or temporary farm work and is a term that may be used interchangeably with the terms "migrant laborer" and "temporary farm worker".

"Unreasonable distance" means a travel distance from a working area in a field of more than 500 feet for drinking facilities and a travel distance of more than 1,300 feet for toilet or washing facilities.

"Potable water" means water which has been tested and approved for compliance with the potable water standards of the New Jersey Department of Health.

12:102-1.3 Availability of water

(a) An adequate supply of fresh, cool, potable water shall be provided for workers in the working area, except when cool potable water facilities are available to the workers:

1. At a central facility within 500 feet travel distance of the working area in the field; or

2. At a location, separate from a central facility, within 500 feet travel distance of the working area in the field.

(b) Upon request of the Commissioner, a farm operator shall provide evidence of the quality of drinking water provided from a non-public water supply system for compliance with (a) above.

12:102-1.4 Water containers

(a) Portable containers used to dispense drinking water shall be capable of being tightly closed, and shall be equipped with a tap.

(b) Water shall not be dipped from containers.

(c) Any container used to distribute drinking water shall be clearly marked as to the nature of its contents and shall not be used for any other purpose.

(d) A common drinking cup shall be prohibited.

(e) Where single service cups are supplied, a sanitary container for the unused cups and a receptacle for disposing of the used cups shall be provided.

1. Single service cups shall not be used more than once.

12:102-1.5 Toilet facilities

(a) Toilet facilities shall be provided for workers in the working area, except when toilet facilities:

1. Are available to the workers at a central facility within 1,300 feet travel distance or a five-minute walking time of the working area in the field;

2. Are available to the workers at a location, separate from a central facility, within 1,300 feet travel distance or a five-minute walking time of the working area in the field; or

3. Are accessible and immediately available to all the workers at all times within five minutes travel time by approved transportation provided by the farm operator.

(b) Toilet facilities required in (a) above shall be separate for each sex and provided in accordance with Table 1.5(b) below:

TABLE 1.5(b)

1-20 males	1 seat
1-20 females	1 seat

(c) Toilet facilities shall be a suitable type acceptable for the elimination of bodily wastes and may consist of the following types:

1. Pit privies;
2. Chemical toilets (fixed or portable);
3. Combustion toilets;
4. Composting toilets;
5. Recirculating toilets; or
6. Other generally accepted facilities.

(d) Toilet facilities shall be equipped with an adequate supply of toilet paper.

(e) Toilet facilities shall be maintained in a clean and sanitary condition, and in good working order.

(f) Toilet facilities shall be so constructed and designed so as to afford reasonable privacy to the user. Where applicable, doors with inside locking capability shall be provided.

12:102-1.6 Handwashing facilities

(a) Adequate handwashing facilities shall be provided for workers in the working area and in the vicinity of toilet facilities required by this subchapter, except when handwashing facilities:

1. Are available to the workers at a cental facility within 1,300 feet travel distance of the working area in the field and in the vicinity of toilet facilities required by this subchapter;

2. Are available to the workers at a location, separate from a central facility and in the vicinity of toilet facilities, within 1,300 feet travel distance or five minutes walking time of the working area in the field; or

3. In the vicinity of toilet facilities are accessible and immediately available to all the workers at all times within five minutes travel time by approved transportation provided by the farm operator.

(b) Washing facilities shall provide potable water, soap or other cleansing agent and individual towels.

(c) Waste water shall be disposed of in a sanitary and safe manner.

12:102-1.7 Penalties

Failure to comply with the provisions of this subchapter shall, in the discretion of the Commissioner, subject the farm operator to a fine pursuant to N.J.S.A. 34:9A-40.

12:102-1.8 Exceptions

(a) The Commissioner may grant exceptions from this subchapter, provided that it shall be clearly evident that such exception will provide for conditions that are equal to or better than the literal requirements set forth in this subchapter.

(b) Toilet and washing facilities are not required where:

1. Workers perform work in a given field for a period of three hours or less, including travel time, provided that at the conclusion of such period the workers are at a location where the facilities are available; or

2. Workers operate mobile equipment, as such workers can carry an adequate supply of potable water on the equipment and are able to travel to toilet and handwashing facilities in accordance with the timeframes set forth at N.J.A.C. 12:102-1.5 and 1.6.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF DENTISTRY

Dental Insurance Forms

Proposed Amendment: N.J.A.C. 13:30-8.12

Authorized By: State Board of Dentistry, Samuel Furman, D.D.S., President.

Authority: N.J.S.A. 45:6-3.

Proposal Number: PRN 1989-393.

Submit comments by September 6, 1989 to:
William Gutman, Executive Director
Board of Dentistry, Room 321
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

In order to assure accuracy in the completion of insurance claim forms, the Board of Dentistry proposes an amendment to N.J.A.C. 13:30-8.12, which will require licensees to personally sign all forms to be submitted to a third party payor. This means that the signature cannot be delegated or rubber-stamped, nor can it be substituted by a mechanical signature. In requiring an original signature on such documents as predetermination forms, insurance claim forms, governmental assistance forms, etc., the Board wishes to make clear that the treating dentist has the responsibility for accurate completion of these forms; if a patient receives treatment from more than one member of a multi-dentist practice, the duty develops upon the dentist of record.

Social Impact

The proposed amendment will ultimately benefit the public because the dentist who personally signs all insurance forms will have reviewed them to ensure accuracy of the data and details of the treatment program that has or will be rendered. Also, clear delineation of responsibility, as expressed in the amendment, is necessary in order to maintain the high standards of professional practice that protect the consumer.

Economic Impact

The Board does not anticipate any economic impact upon the public, since the amendment only requires a personal signature by the dentist, a task involving minimal time. Most, if not all dentists currently review the information submitted on third-party claim forms; the few additional seconds needed for a manual signature are economically insignificant.

Regulatory Flexibility Analysis

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

Approximately 10,000 of the licensees presently regulated by the Board of Dentistry are dentists in active practice. All of them will be affected by the proposed amendment. Since the sole compliance requirement is a personal, original signature, the only additional cost incurred by the treating dentist will be the value of a few additional minutes of his or her time, in order personally to sign all third party insurance claim forms. The amendment involves no capital costs or reporting or recordkeeping requirements, and no professional services are needed in order to comply. No exemptions, whether for small or large practices, are possible since this would frustrate the intent of the amendment.

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

13:30-8.12 Dental insurance forms; professional misconduct

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

(d) All submissions to a third party payor, including, but not limited to, predetermination forms, claim bills, or governmental assistance forms, shall be manually signed by the patient's treating dentist. The form may be completed by an employee for the signature of the treating dentist, but the treating dentist shall be responsible for the accuracy of all information contained on the form. In the event the patient is treated by more than one dentist in a multi-dentist practice, the duty to verify the accuracy of the information on the form and to manually sign the form shall be that of the designated dentist of record pursuant to N.J.A.C. 13:30-8.17.

(b)

DIVISION OF CONSUMER AFFAIRS BOARD OF MEDICAL EXAMINERS

Board of Medical Examiners Rules

Proposed Readoption with Amendments: N.J.A.C. 13:35

Authorized By: Board of Medical Examiners, Frank J. Malta, M.D., President.

Authority: N.J.S.A. 45:9-2.

Proposal Number: PRN 1989-415.

Submit comments by September 6, 1989 to:
Charles A. Janousek, Executive Director
Board of Medical Examiners, Room 602
28 West State Street
Trenton, New Jersey 08608

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 13:35 is scheduled to expire on November 19, 1989. The current rules have been reviewed updated and revised by the Board, and Committees thereof, over the last year. The Board has found the rules contained in the readoption to be reasonable, necessary and effective for the purposes for which they were promulgated. The current rules proposed for readoption have had an advantageous impact on the regulation and conduct of the medical profession by enabling the Board to have in place procedures which maintain high standards of practice, thus serving and protecting the public's best interests; the Board believes that its proposed changes further that purpose, inasmuch as they largely clarify and update present wording.

Many of the revisions contained in this proposed readoption delete statutory and regulatory citations in anticipation of future statutory changes. Those deletions are replaced with the following: "law"; "applicable rule or law"; "required by law"; the name of a specific act, such as the Podiatric Practice Act; or the name of specific department such as the Department of Health.

Other revisions are merely technical changes which include the following: punctuation and spelling corrections; replacing the term "secretary" with the term "Executive Director"; clarifying the name of an association such as the American Podiatric Medical Association rather than the American Podiatry Association and updating footnotes.

More specific amendments include the following:

N.J.A.C. 13:35-1.2 Fifth pathway

It appears that at least five U.S. medical schools still accept Fifth Pathway students. The re-draft of the fifth pathway rule is intended to

anticipate the requests of potential applicants. Changes have been made to the substance of the current version of this rule as follows: (1) the term Fifth Pathway is defined; (2) the foreign school must be not merely "recognized" as functioning in the foreign country but authorized to confer a medical degree; (3) the applicant must have completed "all" requirements for a matriculated student (instead of "all the formal requirements") since the Board is requiring that students have met all standard obligations including tuition; and (4) the rule is now laid out in a more chronological fashion.

N.J.A.C. 13:35-1.3 Postgraduate training

The Board is deleting a more specific requirement relating to the minimum content of postgraduate training and substituting for that requirement one which states that an acceptable postgraduate training program must be taken under the auspices of an accredited institution acceptable to the Board. The program should additionally take into account the standards adopted by the Advisory Graduate Medical Education Council (AGMEC).

N.J.A.C. 13:35-1A.11 Clerkship program approvals: effective date; limited waiver; no new applications

This rule applies only to those clinical training programs already in operation. Wording which requires programs to be "completed no later than December 31, 1983" has been deleted and new wording which states, "No new applications for clinical clerkship programs shall be accepted" has been added.

N.J.A.C. 13:35-2.2 Podiatry internship or postgraduate work

Current wording is being deleted and reworded to state that acceptable residency programs are those not only approved by the American Podiatric Medical Association and acceptable to the Board, but additionally the Board will taken into account standards adopted by the Advisory Graduate Medical Education Council (AGMEC).

N.J.A.C. 13:35-2.4 Requirements for approval of colleges of chiropractic

In N.J.A.C. 13:35-2.4(h), amendments are proposed to retain flexibility and avoid inconsistency with anticipated statutory changes which would require a baccalaureate degree or its equivalent prior to entering chiropractic education.

In N.J.A.C. 13:35-2.4(k) the addition of the words "Federally recognized," as they relate to accrediting agencies, clarifies what the board considers to be an acceptable accrediting agency.

Additional amendments to this section will ensure that anyone graduating from a college of chiropractic which was approved by the Board prior to March 18, 1988 (but is no longer approved) shall be deemed eligible to sit for the licensing exam so long as they meet other statutory requirements.

N.J.A.C. 13:35-2.4(1) is being deleted as moot since the rule is already effective.

N.J.A.C. 13:35-2.7(a)5 (Certified Nurse Midwife) Qualifications

The Board, upon petition, recognized that sufficient clinical experience is already included in the education of a Certified Nurse Midwife and therefore the phrase "minimum of two years of obstetrical clinical experience" is being deleted.

N.J.A.C. 13:35-3.1 Federal licensing examination (FLEX)

N.J.A.C. 13:35-3.1(b) is being amended because the Board believes that it is acceptable to take the FLEX examination in more than one way. The proposed amendment would allow the exam to be taken as a complete unit or in separate units so long as component one is taken and passed first.

N.J.A.C. 13:35-3.1(e) is being deleted since, by its terms ("shall be inoperative after June 1985") it is no longer applicable.

N.J.A.C. 13:35-3.3 Endorsement of sister-state M.D. or D.O. license . . .

The amendment to N.J.A.C. 13:35-3.3(a) makes it clear that the Board has the discretion as to whether to grant licenses by endorsement of sister-state licenses.

The words "in English," as they relate to non-FLEX plenary examinations, are added in N.J.A.C. 13:35-3.3(a)2 and 3 to ensure that physicians are conversant in English.

N.J.A.C. 13:35-3.6 Bioanalytical laboratory director license, plenary or specialty granted to physicians

The amendment to N.J.A.C. 13:35-3.6(b) clarifies that it is appropriate to require an individual certified in anatomical pathology to complete "a residency program in pathology in a laboratory or laboratories acceptable to the Board."

The words "and such other specialties as may be hereafter authorized by law" in N.J.A.C. 13:35-3.6(c) have been added to permit flexibility in anticipation of possible future statutory changes.

N.J.A.C. 13:35-3.9 Postponement of or absence from examination; refund or transfer of fee

The current language is being deleted and replaced by wording which is consistent with the Board's current policy relating to application fees.

N.J.A.C. 13:35-4.1 Major surgery; qualified first assistant

The words "who may be," referring to a duly qualified surgical resident, have been added to clarify that a duly qualified assisting professional in a major surgery procedure can include a duly qualified surgical resident.

N.J.A.C. 13:35-6.4 Prohibition of kickbacks, rebates or receiving payment for services not rendered

The words "purchasing or" have been added in N.J.A.C. 13:35-6.4(a)3 to clarify that it is inappropriate to receive anything of value in exchange for the purchase of items to be utilized in one's medical practice.

N.J.A.C. 13:35-6.9 Referral for radiological services

The terms "podiatry" and "podiatric" have been added to include podiatrists as physicians who may refer patients for radiological services.

N.J.A.C. 13:35-6.11 Excessive fees

The Board has determined that N.J.A.C. 13:35-6.11(c)4 is an unnecessary factor and noted that it has not been utilized since the rule became effective.

N.J.A.C. 13:35-6.13 Fee schedule

Two years ago, the Board voted to increase by 100 percent its fees for various categories for licensure. Upon further consideration, the Board deemed it inappropriate to increase the fees of athletic trainers, who have only recently been licensed, and who are typically compensated by a fixed (frequently part-time) salary and who, unlike other practitioners, do not work on a fee for service basis. The Board has therefore decreased the biennial registration fee for athletic trainers from $120.00 to $60.00, the level of the fee prior to 1987.

The previously "reserved" fee for an athletic trainer endorsement is proposed as $60.00. The Board has determined that it is appropriate to introduce a fee for endorsement at this time to facilitate practice in New Jersey by holders of out-of-State athletic training licenses.

N.J.A.C. 13:35-6.14 Delegation of physical modalities to unlicensed physician aides

The requirement in N.J.A.C. 13:35-6.14(d)2 that "The doctor shall assure that the aide administering the treatment is identified in the patient chart on each such occasion" has been added for ease of identification of those persons who may perform medical services without medical licenses.

The phrase "who shall be at least 18 years of age" has been added in N.J.A.C. 13:35-6.14(d)3 to insure that all those to whom medical responsibilities are delegated have at least reached the age of majority.

N.J.A.C. 13:35-7.1 Standards and scope

N.J.A.C. 13:35-7.1(c)2 is amended to clarify other appropriate health care licensees to whom chiropractors may refer patients when they are not referring them to plenary licensees.

Additional amendments to this chapter are expected sometime in the future. Those amendments include to subchapter 6, General Rules of Practice, at 6.2, Pronouncement of death; 6.5, Patient records; 6.6, Requirements for issuing prescriptions for and dispensing all medications, special requirements for prescribing or dispensing controlled drugs; and 6.7, Prescribing of amphetamines and sympathomimetic amine drugs.

Amendments to N.J.A.C. 13:35-6.10, Advertising and solicitation practices, were proposed on March 20, 1989 at 21 N.J.R. 696(a). The corresponding adoption, which will become a part of the final readoption of this subchapter, was published and became effective on June 19, 1989 at 21 N.J.R. 1710(b).

A proposed new rule relating to the continuing professional education of Hearing Aid Dispensers (N.J.A.C. 13:35-8.18) was published on June 19, 1989 at 21 N.J.R. 1648(a).

Social Impact

The rules proposed for readoption provide various procedures for the orderly administration of the Board's operations to ensure that truly qualified individuals are practicing in the medical profession. The current rules have satisfied the Board's desire to protect and serve the public with high levels of professionalism. It is therefore anticipated that this readoption will have an advantageous social impact in that it will maintain these high standards as well as update and clarify present wording.

Many proposed amendments anticipate statutory changes. Other amendments will have a foreseeable social impact. Through these amendments, the public will be assured of a licensee's awareness of relevant medical trends; his or her ability to communicate with patients in English; use of suitable medications, commodities or products, which are not the result of a kickback or rebate for the licensee's purchase of same; and the identification of non-licensed personnel performing medical duties. For example, N.J.A.C. 13:35-1.3 and 2.2 set forth educational criteria consistent with current professional standards; N.J.A.C. 13:35-3.3(a)2 and 3 require that licensure by non-FLEX plenary examination be taken in English to assure that a physician is fluent in English; N.J.A.C. 13:35-6.4(a)3 adds the prohibition of receiving any type of kickback, rebate or anything of value for doctor's purchase of a drug, commodity or product; and N.J.A.C. 13:35-6.14(d)2 and 3 requires that an unlicensed physician aide be at least 18 years old and be identified on a patient chart on each occasion when treatment is administered by such an aide, to identify non-licensed persons performing medical services.

Economic Impact

The readoption with amendments will have no significant adverse economic impact on the general public or Board licensees. It is anticipated that, for those rules having any financial impact, the benefits to the public will be real and substantial albeit not always quantifiable. Where there is any possible adverse economic impact on a Board licensee, that impact is deemed to be substantially outweighed by the anticipated benefit to the public.

Since funding of the Board's operation is partially attained by the fee structure now in place, failure to readopt would place such operation in jeopardy. The Board believes the fees already contained in N.J.A.C. 13:35-6.13 do not impose an unreasonable burden upon candidates or licensees. In fact, the biennial registration fee for athletic trainers has been reduced from $120.00 to $60.00. A fee of $60.00 has been proposed for an endorsement of an athletic trainer with an out-of-state license.

Regulatory Flexibility Analysis

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

The Board of Medical Examiners currently licenses or registers individuals in the following areas (numbers are approximate): medicine and surgery (M.D.—36,243, D.O.—2,875); chiropractic (2,838); podiatry (1,286); bio-analytical laboratory directorship (514); certified nurse midwifery (142); athletic trainer (220); hearing aid dispenser (555); and acupuncturist (32). The specific number of small businesses is impossible to determine, since the Board licenses individuals and not entities.

The rules proposed for readoption do contain, for example, reporting (N.J.A.C. 13:35-1.5), recordkeeping (N.J.A.C. 13:35-6.5) and compliance requirements relating to licensure and practice which may affect licensees who practice as small businesses. Because these rules seek to promote and protect the public health and welfare through regulation, no differentiation in compliance based upon business size is provided.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:35.

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

13:35-1.2 Fifth [pathway] **Pathway**

[(a) Students who have completed the academic curriculum in residence in a foreign medical school and who:

1. Have studied medicine at a medical school located outside of the United States, Puerto Rico and Canada, which school is recognized by the country of domicile and which is listed in the World Health Organization Directory; and

2. Have completed all the formal requirements of the foreign medical school except internship and/or social service, may substitute for the internship or social service required by a foreign country, an academic year of supervised clinical training (clinical clerkship) prior to entrance in the first year of A.M.A. or A.O.A.-approved graduate education.

(b) The supervision clinical training must be under the direction of a medical school approved by the Liaison Committee on Medical Education.

(c) Before beginning the supervised clinical training said students must have their academic records reviewed and approved by the medical schools supervising their clinical training and shall pass a screening examination acceptable to the Education Commission of Foreign Medical Graduates which examination will be conducted by the supervising medical school with the approval of the State Board of Medical Examiners.

(d) Said students who are judged by the sponsoring medical schools to have successfully completed the supervised clinical training shall be eligible to enter the first year of A.M.A. or A.O.A.-approved graduate training programs without completing social service or internship obligations required by the foreign country and without obtaining E.C.F.M.G. certification.]

(a) The Board shall accept application for licensure from an applicant who does not meet the usual statutory prerequisites for educational background, in the following circumstances to be known as the Fifth Pathway:

1. The applicant has completed the entirety of the academic curriculum in residence at a medical school in a foreign country located outside of the United States, Puerto Rico or Canada or in a school-authorized clinical training program;

2. The medical school was approved throughout the applicant's period of education by the government of the country of domicile to confer the degree of Doctor of Medicine and Surgery or its equivalent, and was listed in the World Health Organization Directory;

3. The applicant has satisfactorily completed all the requirements for a matriculated student of that foreign medical school to receive a diploma, except for internship and/or social service;

4. The applicant has achieved a passing score on a screening examination acceptable to the Educational Commission on Foreign Medical Graduates (ECFMG) even though not eligible for ECFMG certification; and

5. The applicant has had his or her academic record reviewed and approved by a medical school approved by the Liaison Committee on Medical Education, which school has accepted the applicant in a one-academic-year program of supervised clinical training under its direction, and the applicant has satisfactorily completed that program as evidenced by receipt of a certificate issued by the sponsoring medical school.

(b) The applicant meeting the requirements in (a) shall thereafter be deemed by the Board to be eligible to enter a graduate training program approved by the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA). Upon satisfactory completion of the three years of post-graduate training required by N.J.A.C. 13:35-3.11, the applicant may apply for licensure in this State.

[13:35-1.3 Internships or postgraduate year 1 (PGY 1)

(a) A rotating internship is one which provides experience on a variety of services. The minimum requirement for a rotating internship is one year of internship or postgraduate training in a hospital approved by the Board which provides not less than 13 weeks of training in medicine, 13 weeks of training in surgery and six weeks of training in obstetrics. The remainder of the time may be spent in additional work in any of these three fields or in other surgical and medical specialties.

(b) A straight internship or postgraduate training program is one which provides experience on a single service, although one or more related subspecialties may be included. Straight internships are approved in internal medicine, surgery, pediatrics, obstetrics-gynecology and pathology. To offer satisfactory straight internships a hospital must be approved by the Liaison Committee on Graduate Medical Education or the American Osteopathic Association for postgraduate training in the specialties involved.

(c) A mixed internship or postgraduate year 1 (PGY 1) is one in which not less than six months nor more than eight months of the total time is spent on one of the major services of medicine, surgery, obstetrics and gynecology, pediatrics, psychiatry or pathology. Additional experience may be on one or two other services, but no assignments may be of less than two months' duration. Assignments to special field of less than two months' duration shall be incorporated with the six to eight month assignment on one of the above major clinical services. The services to be offered in the mixed internship may be varied in the case of the individual intern, provided

an approved postgraduate year 2 (PGY 2) or beyond program exists in at least the service offering six months' experience; no more than three assignments are made in a 12-month period; and none is of less than two months' duration. Each proposed combination of services must be approved in advance by the Board. If candidates have had a mixed internship, the board requires not less than one year of training and experience.]

13:35-1.3 Postgraduate training

Postgraduate training shall be taken under the auspices of a hospital or hospitals accredited for such training by the Accreditation Council for Graduate Medical Education (ACGME) or by the American Osteopathic Association (AOA) or by the American Podiatric Medical Association (APMA), as applicable to the profession. The program shall further be acceptable to the Board, which shall take into account the standards adopted by the Advisory Graduate Medical Education Council (AGMEC).

13:35-1.4 Military service in lieu of M.D. or D.O. internship or postgraduate training

The Board may grant a license to practice medicine and surgery to any person who shall furnish proof, satisfactory to the Board, that such person has fulfilled all of the formal requirements established by [N.J.S.A. 45:9-1 et seq.] **law**, and who has served at least two years in active military service in the United States Army, Air Force, Navy, Marine Corps, Coast Guard of the U.S. Public Health Service as a commissioned officer and physician and surgeon in a medical facility which the Board determines constitutes the substantial equivalent of the [one year] approved internship or residency training program required by [N.J.S.A. 45:9-8] **law**; provided, however, that such military service actively occurred subsequent to graduation from an approved medical school.

13:35-1A.11 **Clerkship program approvals:** [Effective] **effective** date [and]; limited waiver provision; **no new applications**

This rule shall apply to all clinical training programs, as defined in N.J.A.C. 13:35-1A.1, taking place in New Jersey on or after January 1, 1983. However, the Board recognizes that, prior to the adoption of this rule, it has granted to a number of foreign medical schools permission to sponsor modest clinical programs which were not required to meet the explicit standards now set forth herein, and which permission reserved all rights of the Board respecting the ultimate evaluation of the adequacy of any such program. [Those limited programs on file with the Board may proceed, but shall be completed no later than December 31, 1983.] **No new applications for clinical clerkship programs shall be accepted.**

13:35-2.1 Approved colleges of podiatry

[The requirement of N.J.S.A. 45:5-5.2 that the] **An** applicant for podiatric licensure shall have graduated from a college or colleges of podiatry approved [by the Board shall mean that the college or colleges were approved] during the entire course of the applicant's training by the American [Podiatry] **Podiatric Medical** Association **and approved by the Board**.

13:35-2.2 Podiatry internship or postgraduate work

[The requirement of N.J.S.A. 45:5-5.2(5) that the applicant for licensure has served an internship in a duly licensed clinic, hospital or institution, approved by the Board shall be deemed to have been met by the successful completion of an internship or postgraduate program fully approved by the American Podiatry Association.] **The applicant for licensure shall have successfully completed an internship or postgraduate program fully approved by the American Podiatric Medical Association in a duly licensed clinic, hospital or institution acceptable to the Board, which shall take into account the standards adopted by the Advisory Graduate Medical Education Council (AGMEC).**

13:35-2.3 Military service in lieu of internship in podiatry

The Board may grant a [licence] **license** to practice podiatry to any person who shall furnish proof, satisfactory to the Board, that such person has fulfilled all of the formal requirements established by **the Podiatric Practice Act,** N.J.S.A. 45:5-1 et seq., and has served at least two years in active military service in the United States Army, Air Force, Navy, Marine Corps, Coast Guard or the United States Public Health Service as a commissioned officer and podiatrist in a medical facility which the Board determines constitutes the postgraduate training program required by N.J.S.A. 45:5-5.2(5);] **law**; provided, however, that such military service actively occurred subsequent to graduation from an approved school of podiatry.

13:35-2.4 Requirements for approval of colleges of chiropractic

(a)-(g) (No change.)

(h) Requirements for admission: Prior to commencing a course of study in the approved school of chiropractic, the student shall have successfully completed [at least two years of] **academic** study in [a] **an accredited** school or college of arts and sciences [accredited or recognized by the New Jersey State Department of Education, no less than one and one half years of which shall have been completed prior to commencing his or her courses of study in the approved school of chiropractic pursuant to the terms of N.J.S.A. 45:9-41.7] **as required by the Chiropractic Practice Act, N.J.S.A. 45:9-41.1 et seq.**

(i)-(j) (No change.)

(k) [The requirement of N.J.S.A. 45:9-41.5 that a] **An** applicant for chiropractic licensure shall have graduated from an approved school(s), institution(s), or college(s) of chiropractic [shall mean that the school was] approved during the entire course of the applicant's training by the Council on Chiropractic Education or other **Federally recognized** accrediting agency having prior approval of the Board. Board approval of a college's accreditation shall be effective for a period not to exceed five years. Renewed approval may be sought prior to the end of that period. However, any graduate of a chiropractic college who was a bona fide student in good standing enrolled at a school which, prior to March [4, 1985] **18, 1988,** was approved by the Board, shall upon proof of satisfaction of all other statutory prerequisites, be deemed eligible to sit for the licensure examination in this State [until March 31, 1988 and not thereafter].

[(l) This rule shall become effective November 6, 1983.]

13:35-2.5 Standards concerning testing and diagnostic centers [Foreword]

(a) The performance of physical examinations accompanying diagnostic testing procedures on human beings is included within the practice of medicine. Such services are presently being offered to the public in both stationary and mobile facilities which are not in all circumstances regulated by the Department of Health. It is essential for a meaningful interpretation of test data that the underlying tests be administered competently and appropriately as determined and supervised by a licensed physician. The purpose of this rule is to define and establish minimum medical standards of operation for these centers, clinics or facilities which provide or purport to provide activities such as physical examinations and/or laboratory testing procedures, which are presently regulated by **the Medical Practice Act,** N.J.S.A. 45:9-1 et seq. and **the Bio-Analytical Laboratory and Laboratory Directors Act, N.J.S.A.** 45:9-42.1 et seq.

[(a)-(b)](b)-(c) (No change in text.)

[(c)](d) The licensed physician in charge of and responsible for the supervision and direction of the AHTC or the Center shall, prior to the operation of the facility, submit for approval of the Board of Medical Examiners a copy of the licensing application previously approved by the Department of Health, proof of current licensure of physician in charge and, if applicable, facility license pursuant to **the New Jersey Clinical Laboratory Improvement Act,** N.J.S.A. 45:9-42.26 **et seq.**

[(d)](e) (No change in text.)

13:35-2.6 Midwife and Certified Nurse Midwife Practice

(a) A midwife licensed by the Board of Medical Examiners, [pursuant to the provisions of N.J.S.A. 45:10-1 et seq. alone] **other than as a Certified Nurse Midwife**, shall be considered a lay midwife and shall perform only the functions expressly set forth [in this statute] **by law**: that is, attend a woman in childbirth without the use of any medications or surgical procedures.

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

13:35-2.7 Qualifications

(a) A Certified Nurse Midwife shall demonstrate the following qualifications in order to be registered by the Board:

1.-4. (No change.)

[5. A minimum of two years of obstetrical clinical experience in a licensed health care facility or comparable experience satisfactory to the Board.]

13:35-3.1 Federation licensing examination (FLEX)

(a) (No change.)

(b) Flex examination for medical licensure in New Jersey, [when taken for the first time, must] **may** be taken as a complete unit, that is, a consecutive three-day two component examination **or a candidate may take one component of the FLEX examination at a time as long as such candidate takes and passes component one first**.

(c) A candidate who attains a score of 75 or over in both Component I and Component II shall be adjudged to have successfully passed the examination, and the [executive] **Executive** [secretary] **Director** of the Board shall be authorized to issue a certificate of medical licensure in New Jersey to the successful candidate who has met all other requirements of [N.J.S.A. 45:9-1 et seq.] **law** for medical licensure in this State.

(d) (No change.)

[(e) Any candidate who took the FLEX examination given on or before December 1984 and who attained a 74 percent FLEX weighted average but who failed to pass Day 1 of the examination, shall be permitted to retake Day 1, provided that the reexamination shall be taken during the June 1985 test administration. If the candidate receives a score in Day I that would provide a weighted grade average of 75 or over, the Secretary of the Board shall be authorized to issue a certificate of medical licensure in New Jersey to such successful candidate as has met all the requirements of N.J.S.A. 45:9-1 et seq. for medical licensure in this State. This section shall be inoperative after June 1985.]

13:35-3.2 Endorsement; Federation Licensing Examination

The Board shall grant without examination a license to practice medicine and surgery to any person who shall furnish proof that he or she can fulfill the requirements [demanded in N.J.S.A. 45:9-1 et seq.] **of law** relating to applicants for admission by examination provided that satisfactory proof is presented by such applicant of licensure by FLEX examination to practice medicine and surgery in another state, territory or possession of the United States, or another country, with a FLEX weighted grade of 75 or better in an examination taken prior to June 1985, or **thereafter** a score of 75 or better in each of the two Components of the new FLEX examination, both Components of which were passed within a five year period.

13:35-3.3 Endorsement of sister-state M.D. or D.O. after extended practice or specialty board or national board certifications or by any combination of national boards and FLEX examinations; also, podiatry board endorsement and chiropractic endorsement

(a) The Board [shall] **may** grant without examination**, at its discretion,** a license to practice medicine and surgery to any person who shall furnish proof of satisfaction of the requirements [demanded in N.J.S.A. 45:9-1 et seq.] **of law** relating to applicants for admission by examination who shall further furnish proof of any of the following:

1. Certification of either the National Board of Medical Examiners or Osteopathic Examiners [in accordance with N.J.S.A. 45:9-13 certifying] that the applicant has attained a passing score in said examination; or

2. Licensure by non-FLEX written plenary examination taken **in English** prior to December 31, 1972 in a sister state, followed by proof of active engagement in the reputable practice of medicine and surgery for three or more **years** in all such other state or states; or

3. Licensure by non-FLEX [written] plenary examination **in English** in a sister state, and proof of certification as a diplomate of any of the specialty boards approved by the A.M.A. or the A.O.A.; or

4. (No change.)

(b) The Board shall grant without examination a license to practice podiatry to any person who shall furnish proof of satisfaction of the requirements [demanded in N.J.S.A. 45:5-1 et seq.] **of law** relating to applicants for admission by examination who shall furnish proof of certification of the National Board of Podiatric **Medical** Examiners [in accordance with N.J.S.A. 45:5-7] certifying that the applicant has attained a passing score in said examination.

(c) The Board shall grant a license to practice chiropractic, by endorsement, to any person who shall furnish proof of satisfaction of the requirements [demanded in N.J.S.A. 45:9-41.5] **of law** relating to applicants for admission by examination who shall furnish proof of:

1. Certification of the National Board of Chiropractic Examiners [in accordance with N.J.S.A. 45:9-41.10] certifying that the applicant has attained a passing score in said examination; and

2. Passing a clinical examination administered under the authority of this Board [pursuant to the provisions of N.J.S.A. 45:9-1 and 45:9-41.8].

13:35-3.4 Examination in FLEX Component Two after proof of passing **the** first two parts of National Boards of Medical or Osteopathic Examiners

An applicant who provides certification of passing the first two parts of the National Board of Medical Examiners or of Osteopathic Examiners examination as applicable and who satisfies the requirements of [N.J.S.A. 45:9-1 et seq.] **law** relating to admission by examination, shall be permitted to take FLEX Component II alone. Such applicant, upon attaining a passing score of 75 or better in the FLEX examination Component II, shall be granted a license to practice medicine and surgery. The license herein to be granted shall be a FLEX examination license.

13:35-3.5 Endorsement; certified nurse midwives

The Board shall grant a license to practice midwifery **so long as authorized by law** and registration to practice as a certified nurse midwife to such person who shall furnish proof of satisfaction of the requirements [demanded in N.J.S.A. 45:10-1 et seq.] **of law** and N.J.A.C. 13:35-2.6 relating to applicants for admission by examination, and furthermore provide with the application certification by the American College of Nurse-Midwives, or other evidence to the [board's] **Board's** satisfaction, that the person has been licensed to practice midwifery and has been certified as a nurse-midwife in a sister state where such license was granted by examination with a grade average of 75 percent or over.

13:35-3.6 Bioanalytical laboratory director license, plenary or specialty, granted to physicians

(a) The Board shall grant to any person licensed in this State to practice medicine and surgery a plenary license to direct and supervise a registered bioanalytical laboratory, without examination, provided that:

1. Such person is certified in clinical pathology by a specialty board approved by the A.M.A. or the A.O.A.; or

2. Such person, is certified in anatomical pathology or is Board-eligible, and can demonstrate to the satisfaction of the Board, following a personal appearance, appropriate training, **including completion of a residency program in pathology in a laboratory or laboratories acceptable to the Board**, and not less than three full years of post graduate general bioanalytical laboratory experience in a laboratory or laboratories acceptable to the Board.

(b) The Board shall grant to any person licensed in the State to practice medicine and surgery, a specialty license in one or more of the following fields: toxicological chemistry, microbiology, cytogenetics, biochemical genetics, [and] clinical chemistry, **and such other specialities as may be hereafter authorized by law**, without examination, provided that such person is certified by a national accrediting board in one of the above specialties, which board requires a doctorate degree plus experience, such as the American Board of Pathology, the American Osteopathic Board of Pathology, the American Board of Medical Microbiology, the American Board of Clinical Chemistry, the American Board of Bioanalysis [or the American Society of Cytopathology] and the American Society of Cytogenetics, or any other national accrediting board recognized by the Board of Medical Examiners. The specialty license shall authorize

the licensee to perform and supervise only those tests which are within the scope of the specific specialty license issued by the Board.

(c) (No change.)

13:35-3.7 Limited exemption from licensure

(a) (No change.)

(b) "Exemption" means the exercise of discretion granted to the State Board of Medical Examiners of New Jersey pursuant to [N.J.S.A. 45:9-21(n)] **law** to permit a physician unlicensed in the State of New Jersey to engage in the limited practice of medicine and surgery under the conditions set forth in said statute without being in violation of the Medical Practice Act, N.J.S.A. 45:9-1 et seq.

(c) As of the effective date of this rule, **August 1, 1983,** any physician employed or to be employed under an exemption from licensure must:

1. Satisfy all statutory and regulatory requirements, preceding licensure as [set forth in N.J.S.A. 45:9-6, 45:9-7 and 45:9-8,] **required by law** and N.J.A.C. 13:35-6.3;

2.-3. (No change.)

(d) (No change.)

13:35-3.8 Administrative processing of license application

(a) In the case of candidates who are graduates of professional schools or colleges approved by the Board and whose required documents (for example, complete application form, diploma, transcript and license in foreign countries, with attested translations thereof (if not in English) by an official translator approved by the Board) are in possession of the Board and apparently authentic, the [secretary] **Executive Director** of the Board shall be authorized to admit such candidate to the licensing examination.

(b) (No change.)

[13:35-3.9 Absence of a candidate from examination]

[(a) Upon absence of a candidate from a scheduled examination, the Board shall determine whether or not the candidate remains eligible for another examination.

(b) A candidate who, after applying for examination and having been notified of eligibility therefor, fails to appear for two successive examinations thereafter, shall be removed from the eligibility list unless and until such candidate has submitted reasons satisfactory to the Board for the nonappearance at such scheduled examinations.

(c) Such disqualified candidate shall present to the secretary of the Board, no later than 90 days before the commencement of the next examination following the determination of ineligibility, notice of intention to be examined at the next examination and submitting therewith reasons for the nonappearance at the two prior examinations.

(d) The Board, after receiving such notice and petition, shall determine if said candidate shall be considered eligible for the said next examination or, in the alternative, may summon said candidate for an appearance before the Board]

13:35-3.9 Postponement of or absence from examination; transfer or refund of fee

(a) An application for examination for any category of license may be postponed and transferred, along with the fee already paid, upon written request of the applicant, from the examination for which the applicant was scheduled, but only to the next subsequent examination. Any request for a transfer of fee must be supported by a reason accepted as valid by the Board. Request for transfer of fee and postponement of examination must be made prior to the first day of the examination.

(b) When an applicant has withdrawn from, or has failed to appear at, a scheduled examination, the Board may, at its discretion, authorize the refund of the paid examination fee. A request for refund must be made no later than 30 days after the scheduled date of the examination and must present good cause of an unusual personal nature. The Board shall review the particular circumstances of each case in determining the appropriateness of refund.

(c) No later than 90 days prior to the scheduled date of the next examination subsequent to the examination whose fee was transferred, an applicant whose request for postponement and transfer was granted pursuant to (a) above, shall submit to the Board notice of intention to take the said examination and to apply the transferred fee, along with any additional fee required by the then current fee schedule.

13:35-3.11 Standards for licensure of physicians graduated from medical schools not approved by American national accrediting agencies

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

(g) The applicant shall demonstrate satisfaction of all other requirements of [N.J.S.A. 45:9-1 et seq.] **law.**

(h) (No change.)

(i) An applicant who has successfully completed the full medical curriculum in a foreign medical school approved by the Board of Medical Examiners pursuant to [N.J.S.A. 45:9-8] **law** but who has completed clinical training in the United States in a program not specifically approved by the Board, must demonstrate prior licensure in a sister-state and compliance with all other provisions of this section and of [N.J.S.A. 45:9-1 et seq.] **law,** and may then be licensed in this State by endorsement. An applicant from a program specifically disapproved by the Board or conducted outside of an available [approve-] **approved-**program procedure, shall not be eligible under this subsection.

(j) A graduate of a foreign medical school satisfying each of the above subsections, as pertinent, but who has been licensed in a sister-state with a F.L.E.X. grade of less than 75, may be eligible for endorsement of license in this State upon demonstration of good and reputable clinical practice in the sister-states for no less than 10 years, and compliance with all other requirements of [N.J.S.A. 45:9-1 et seq.] **law.** Proof of good and reputable practice shall include, but not necessarily be limited to:

1.-3. (No change.)

(k) (No change.)

13:35-4.1 Major surgery; qualified first assistant

(a) A major surgical procedure is one with a substantial hazard to the life, health or welfare of a patient. By way of example, but not limitation, a major surgical procedure includes[;]:

1.-3. (No change.)

(b) A major surgical procedure shall be performed by a duly qualified surgeon with a duly qualified assisting physician [, or] **who may be** a duly qualified surgical resident in a training program approved by the Educational Council of the American Medical Association or the American Osteopathic Association, except in matters of dire emergency.

(c) A duly qualified surgeon, duly qualified assistant physician, and duly qualified resident shall be determined by the hospital credentials committee in conjunction with the chairman or chief of the appropriate committee in conjunction with the chairman or chief of the appropriate department or division consistent with the requirements of [the Medical Practice Act, N.J.S.A. 45:9-1 et seq., and the Uniform Enforcement Act, N.J.S.A. 45:1-14 et seq.] **law or applicable rule.**

(d) (No change.)

13:35-4.2 Termination of pregnancy

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

(e) [15] **Fifteen** weeks through 18 weeks LMP: After 14 weeks LMP and through 18 weeks LMP, a D & E procedure may be performed either in a licensed hospital or in a licensed ambulatory care facility (referred to herein as LACF) authorized to perform surgical procedures [in accordance with] **by the** Department of Health [chapter N.J.A.C. 8:33A]. The physician may perform the procedure in an LACF which shall have a Medical Director who shall chair a Credentials Committee. The Committee shall grant to operating physicians practice privileges relating to the complexity of the procedure and commensurate with an assessment of the training, experience and skills of each physician for the health, safety and welfare of the public. A list of the privileges of each physician shall contain the effective date of each privilege conferred, shall be reviewed at least biennially, and shall be preserved in the files of the LACF.

(f) [19] **Nineteen** weeks through 20 weeks LMP: A physician planning to perform a D & E procedure after 18 weeks LMP and through 20 weeks LMP in an LACF shall first file with the Board a certification signed by the Medical Director that the physician meets the eligibility standards set forth in (f)1 through 7 below and shall comply with its requirements.

1.-2. (No change.)

3. The procedure shall be done in a location which is designated by the Department of Health as a licensed ambulatory care facility (LACF) authorized to perform surgical procedures as in [subsection] (e) above. The LACF shall be licensed [pursuant to N.J.A.C. 8:33A and 8:43A] **by the Department of Health** as an ambulatory care facility authorized to perform surgical procedures. The facility shall be in current and good standing at all times when surgical procedures are performed there. The LACF shall have a written agreement with an ambulance service assuring immediate transportation of a patient at all times when a patient has been admitted for surgery and until the patient has been discharged from the recovery room.

4.-7. (No change.)

(g) After 20 weeks: A physician may request from the Board permission to perform D & E procedures in an LACF [and] after 20 weeks LMP. Such request shall be accompanied by proof, to the satisfaction of the Board, of superior training and experience as well as proof of support staff and facilities adequate to accommodate the increased risk to the patient of such procedure.

(h) (No change.)

13:35-6.3 Countersigning of orders and prescriptions of unlicensed physicians

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

. . .

"Unlicensed physician" shall mean any unlicensed graduate of a medical school such as, but not limited to, an intern or resident who is engaged in an approved program or a person possessing an exemption pursuant to [N.J.S.A. 45:9-21(n)] **law**.

(b) A doctor's order written for a patient's care by an unlicensed person engaged in an intern or residency training program in a hospital or institution approved by the Board, or the doctor's order written by a person exempted from the prohibitory provisions of the Medical Practice Act pursuant to [N.J.S.A. 45:9-21(n)] **law** shall be countersigned within 24 hours by a physician possessing a current unrestricted license to practice medicine and surgery in this State.

(c) (No change.)

13:35-6.4 Prohibition of kickbacks, rebates or receiving payment for services not rendered

(a) It shall be unprofessional or unethical conduct for any licensee or registrant of the State Board of Medical Examiners to:

1.-2. (No change.)

3. Receive directly or indirectly from any person, firm or corporation any fee, gift commission, rebate, free saleable products, anything of value or any form of compensation for **purchasing or** prescribing or promoting the sale of any drug, commodity or product;

4.-5. (No change.)

13:35-6.6 Requirements for issuing prescriptions for and dispensing all medications; special requirements for prescribing or dispensing controlled drugs

(a) (No change.)

(b) Physicians and podiatrists shall provide the following on all prescriptions:

1.-6. (No change.)

7. Prescriber's D.E.A. number when required for the prescribing of Controlled Dangerous Substances as scheduled under the Controlled Dangerous Substance Act of 1970. *Each prescription for a Controlled Dangerous Substance shall be written in a separate prescription blank;

8.-11. (No change.)

***NOTE: A practitioner must be separately and concurrently registered with the State Department of Health and the Federal Drug Enforcement Administration.**

(c)-(i) (No change.)

13:35-6.8 Prescribing, administering or dispensing amygdalin (laetrile)

(a) The prescription or administration of amygdalin (laetrile) is a medical procedure which may only be performed by a physician licensed to practice medicine and surgery in the State of New Jersey, or a physician duly licensed to practice medicine and surgery in another state provided the practitioner does not open an office or place for the practice of his profession in this State [(N.J.S.A. 45:9-21c)].

(b)-(f) (No change.)

13:35-6.9 Referral for radiological services

(a) "Physician" shall mean a physician possessing a plenary license to practice medicine and surgery and practitioners legally licensed to practice chiropractic **and podiatry**.

(b) A physician possessing a plenary license to practice medicine and surgery who provides diagnostic radiological services for other physicians possessing a plenary license to practice medicine and surgery shall, upon the request of a chiropractic **or podiatric** physician, provide diagnostic radiological services to such chiropractic **or podiatric** physician without discrimination on the basis of classification of license, provided the diagnostic radiological services requested pertain to skeletal areas of the body.

(c) (No change.)

13:35-6.11 Excessive fees

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

(c) Factors which may be considered in determining whether a fee is excessive, include, but are not limited to, the following:

1.-3. (No change.)

Renumber existing 5. to 8. as **4. to 7.** (No change in text.)

(e) (No change.)

13:35-6.12 Excessive fee review committees

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

(f) The Board may, as warranted, conduct such further inquiry or investigation as may be necessary or, after a prima facie finding, institute formal action after notice and hearing thereon and further order restitution and/or impose disciplinary sanctions upon such licensee in accordance with the provisions of the Medical Practice Act, N.J.S.A. 45:9-1 et seq. and the Uniform Enforcement Act, N.J.S.A. 45:1-14 et seq. [Bio-analytical laboratory directorship, specialty license]

13:35-6.13 Fee schedule

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

1.-7. (No change.)

8. Athletic Trainer (registration)		
i. Temporary registration or authorized registration without examination	60.00	
ii. Examination	(reserved)	
iii. Re-examination	(reserved)	
iv. Registration fee after examination	60.00	
v. Biennial registration	[120.00]	**60.00**
vi. Reinstatement fee	25.00	
vii. Endorsement	[(reserved)]	**60.00**

9.-11. (No change.)

13:35-6.14 Delegation of physical modalities to unlicensed physician aides

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

(d) A physician may direct the administration of the physical modality by the unlicensed assistant only where the following conditions are satisfied.

1. (No change.)

2. The doctor shall determine all components of the precise treatment to be given at the present therapy session, including type of modality to be used, extent of area to which it shall be applied, dosage or wattage, etc., length of treatment, and any other factors peculiar to the risks of that modality such as strict avoidance of certain parts of the body or of static placement of the applicator. This information shall be written on the patient's chart and made available at all times

to the assistant carrying out the instructions. **The doctor shall assure that the aide administering the treatment is identified in the patient chart on each such occasion.**

3. The doctor shall ascertain a satisfactory level of education, competence and comprehension of the particular assistant, **who shall be at least 18 years of age,** to whom instruction has been given by the doctor as to modalities used in that office. The doctor shall prepare and maintain a written document certifying as to the instructions given to each assistant, and both doctor and assistant shall sign it.

4.-5. (No change.)

(e)-(g) (No change.)

13:35-7.1 Standards and scope

(a) (No change.)

(b) The chiropractic diagnosis or analysis shall be based upon a pertinent chiropractic examination limited to the spine and contiguous musculoskeletal structures, **height and weight** and the vital signs which include pulse, respiration, blood pressure, [height and weight] and temperature, and an adequate history which will enable the chiropractic physician to determine either that chiropractic care is appropriate or that it is not appropriate. Should the evaluation indicate abnormality not generally recognized as treatable by chiropractic methods, the chiropractic physician shall refer the patient to a physician holding a plenary license, preferably a physician of the patient's choice.

1.-2. (No change.)

(c) The chiropractic physician shall prepare and maintain a proper patient record, including progress notes:

1. (No change.)

2. The record shall contain a working evaluation enabling the chiropractic physician either to establish a regimen of chiropractic treatment or to determine that the patient should be referred to a physician holding a plenary license [or to another appropriate health care provider] **or a podiatrist or a dentist.**

(d) (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS
LEGALIZED GAMES OF CHANCE CONTROL COMMISSION
Regulations Concerning Rentals
Proposed Amendment: N.J.A.C. 13:47-14.3

Authorized By: Legalized Games of Chance Control Commission, William J. Yorke, Executive Officer.
Authority: N.J.S.A. 5:8-1 et seq., specifically 5:8-6.
Proposal Number: PRN 1989-388.

Submit comments by September 6, 1989 to:
William J. Yorke, Executive Director
Legalized Games of Chance Control Commission, Room 518
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 13:47-14.3(j) sets forth procedures necessary to comply with a statutorily set fee of $5.00. Pursuant to N.J.S.A. 5:8-49.7, this fee is to be forwarded to the Legalized Games of Chance Control Commission ("Commission") for each occasion on which bingo games are held. The amendment specifically requires the payment of the fee to be by certified check made payable to the State of New Jersey. Payment is to be forwarded to the Commission no later than the 10th day of the month immediately following the month in which payment is received. The current requirement is that this fee be forwarded within seven days of receipt of a payment for the rental or use of premises for the conduct or playing of bingo. An additional requirement of filing a statement of disclosure remains unchanged.

Social Impact

There will be no discernable social impact as a result of the proposed amendment since it only clarifies statutory and regulatory requirements currently in effect. Bookkeeping duties of commercial renters, however, will be simplified since monies will be required to be forwarded to the Commission once a month instead of seven days after receipt.

Economic Impact

The $5.00 fee, referenced in this amendment, has been in effect since 1969 and remains unchanged. The amendment represents merely a technical change to increase the efficiency with which payments are made. Besides the codification of statutory fee, the only other cost resulting from the amendment would be the nominal fees, if any, charged by commercial renters' banks for the issuance of certified checks. By altering the reporting deadline from seven days after payment to monthly, some administrative savings may result to commercial renters.

Regulatory Flexibility Analysis

The proposed amendment places compliance requirements on all commercial renters receiving payment for the rental or use of premises for the conduct or playing of bingo, including those which are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to maintain the integrity and propriety of gaming operations, no differentiation in these requirements can be made based upon business size.

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

13:47-14.3 Regulations concerning rentals

(a)-(i) (No change.)

(j) [Within seven days after receiving a payment for the rental or use of premises for the conduct or playing of bingo, every person receiving any such payment shall file a statement thereof with the Commission disclosing:] **A $5.00 fee, in the form of a certified check payable to the State of New Jersey, shall be forwarded by the renter to the Commission for each occasion on which bingo games are held, pursuant to N.J.S.A. 5:8-49.7. Payment of this fee shall be made no later than the 10th day of the month immediately following the month in which payment is received for the rental or use of the premises for the conduct of playing bingo together with a statement disclosing:**

1.-5. (No change.)

(k)-(r) (No change.)

TRANSPORTATION

(b)

THE COMMISSIONER
Organization of the Department of Transportation
Procedure for Filing a Rulemaking Petition
Proposed New Rule: N.J.A.C. 16:1A-1.3

Authorized By: Robert A. Innocenzi, Acting Commissioner, Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 52:14B-4.
Proposal Number: PRN 1989-421.

Submit comments by September 6, 1989 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Under the provisions of N.J.S.A. 52:14B-4(f), the Administrative Procedure Act authorizes interested persons to petition any State Agency "to promulgate, repeal or amend any rule." The Administrative Procedure Act also directs State agencies to prescribe the form for the petition and the procedure for submission, consideration and disposition of any petition. The same is also prescribed at N.J.A.C. 1:30-3.6(d). The Department therefore proposes this rulemaking petition procedure to comply with these requirements.

The proposed new rule establishes the procedure to be followed for the filing and consideration of rulemaking petitions, that petitions must

be in writing and contain the substance or nature of the rulemaking which is requested, the reason(s) for the request and the petitioner's interest in the request, and reference to the specific authority of the agency to take the requested action.

The Department will file a notice, within 15 days of receipt of a petition, stating the name of the petitioner and the nature of the request, with the Office of Administrative Law for publication in the New Jersey Register.

The proposed new rule further requires the Department to take action within 30 days of receipt of a petition. This action may be either a denial of the petition; referral of the matter to the appropriate unit within the Department for further deliberation; or action upon the petition, which may include the initiation of a formal rulemaking proceeding.

Social Impact

The proposed new rule will have a positive social impact on the public, in that specific procedures have been established for the filing and consideration of rulemaking petitions.

Economic Impact

The proposed new rule will not have or result in any economic impact on the general public. Review of the petitions by the Department will be accomplished within available Department funding.

Regulatory Flexibility Analysis

The proposed new rule does not impose different or additional reporting, recordkeeping or other requirements, since it applies to any person seeking promulgation, repeal or amendment of Department rules, including small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A small business must meet the requirements of this rule in filing rulemaking petitions. No reporting, recordkeeping or compliance requirements beyond the petition's content requisites are imposed.

Full text of the proposal follows:

16:1A-1.3 Procedure for filing a rulemaking petition

(a) Unless otherwise provided in Title 16 of the New Jersey Administrative Code, this section shall constitute the Department of Transportation's rules regarding the disposition of all requests for rulemaking under N.J.S.A. 52:14B-4(f).

(b) Any interested person may petition the Department of Transportation for the promulgation, amendment or repeal of any rule of the Department of Transportation. Such petition shall be in writing, signed by the petitioner and must state clearly and concisely:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request;
4. The petitioner's interest in the request, including any relevant organization, affiliation or economic interests;
5. The statutory authority under which the Department of Transportation may take the requested action; and
6. Existing Federal and State statutes and rules which the petitioner believes may be pertinent to the request.

(c) The petition shall be addressed to the Commissioner, Department of Transportation, ATTN: Administrative Practice Officer, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625.

(d) Any document submitted to the Department of Transportation that is not in substantial compliance with this section shall not be deemed to be a petition for rulemaking requiring further departmental action.

(e) Upon acceptance of a petition which satisfies the requirements of (b) above, the Department shall file a notice of the petition within 15 days of receipt of the petition with the Office of Administrative Law for publication in the New Jersey Register.

(f) Within 30 days following receipt of a petition, the Department shall mail to the petitioner and file with the Office of Administrative Law for publication in the New Jersey Register, a notice of action on the petition which shall contain the information prescribed by N.J.A.C. 1:30-3.6(b).

(g) The Department's notice of action may include:

1. A statement denying the petition;
2. A notice of proposed rule or a notice of pre-proposal for a rule for publication in the New Jersey Register; or
3. A statement that the matter is being referred for further deliberations, the nature of which shall be specified and which shall conclude upon a certain date. The results of these further deliberations shall be mailed to the petitioner and shall be submitted to the Office of Administrative Law for publication in the New Jersey Register.

(h) The procedures outlined in this section to petition the Department for the promulgation, amendment or repeal of a rule shall apply to all Department rules, except in those cases where a special or alternative petition procedure is specifically designated.

(a)

LOCAL AID
State Aid Road System
County Operations
Construction Equipment Damage Program
Notice of Correction to Proposal Summary
Proposed Repeals: N.J.A.C. 16:14, 15 and 18

Take notice that inappropriate language appeared in the text of the proposal Summary published on May 15, 1989, at 21 N.J.R. 1282(a), concerning Proposed Repeals: N.J.A.C. 16:14, 15 and 18, State Aid Road System; County Operation and Construction Equipment Damage Program.

The last paragraph under the Summary portion of the proposal which read, "Additionally, the programs scheduled to be repealed are presently funded under the New Jersey Transportation Trust Fund Act, and funding under the previous programs has been depleted" should have read "Additionally, the programs are scheduled to be repealed because funding has been depleted".

(b)

DESIGN AND RIGHT OF WAY
DIVISION OF ROADWAY DESIGN
BUREAU OF UTILITY RAILROAD ENGINEERING
Utility Accommodation
Longitudinal Occupancy of Limited Access Highways
Rights of Way by Utility Facilities
Proposed Amendments: N.J.A.C. 16:25-1.1, 1.7 and 2.2
Proposed New Rules: N.J.A.C. 16:25-7A and 13

Authorized By: Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-13, 27:7-19, 27:7-44.1, 27:7A-7, 40:62-35, 40:62-65, 40:62-134, 48:7-1, 48:7-2, 48:9-17, 48:9-25.4, 48:13-10, 48:17-8, 48:17-10, 48:17-16, 48:19-17.

Proposal Number: PRN 1989-368.

Submit comments by September 6, 1989 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN-600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules and amendments will establish criteria to be followed in the use of fiber-optic cable by utilities along the limited access highways.

In February, 1988, the Federal Highway Administration (FHWA) revised its regulations concerning longitudinal occupancy of interstate highway rights-of-way by utility facilities. Prior to 1988, FHWA reviewed all the aforesaid applications for occupancy on a case-by-case basis and approved only those installations which met severe restricted safety criteria under conditions of extreme need. After extended study and in

recognition of national defense issues affected by a stable dependable communications network, the FHWA revised its regulations and transferred review and approval authority of longitudinal occupancy to the various state governments. The granting of this authority was subject to each state revising its individual utility accommodation policies to reflect same.

The proposed new rules and amendments to N.J.A.C. 16:25, Utility Accommodation, satisfy FHWA requirements, maintain highway and traffic safety, maintain the integrity of the interstate highway and freeway systems, and provide a relatively secure environment for intrastate and interstate telecommunications.

The proposed new rules and amendments are summarized as follows:

N.J.A.C. 16:25-1.1 and 1.7 have been amended to provide new definitions used throughout the rule, and criteria to be followed.

N.J.A.C. 16:25-2.2 is amended to depict the standards for fiber-optic communication facilities.

N.J.A.C. 16:25-7A, Underground Fiber-Optic Communication Lines and Other Utility Facilities Longitudinally Occupying Limited Access Highways, provides information concerning the general considerations, permitting requirements and fees, the location of utility facility installations, and the design of facilities.

N.J.A.C. 16:25-13, Severability, provides the severability requirements for the chapter.

Social Impact

The rules contained in this chapter apply to all public, private and cooperatively owned utilities. The proposed amendments and new rules will impact utility companies seeking to install fiber optic cables along limited access highways. The amendments establish specific guidelines wherein utilities adhere to criteria to be used to control the use of highway rights-of-way.

Economic Impact

The Department and utility companies seeking to install fiber optic communication lines will incur direct and indirect costs for personnel, mileage, administrative costs and equipment requirements. Additionally, the utility will incur costs involved in obtaining permits and shall bear all costs of any restoration and/or repairs to the utility facility and any highway property disturbed or damaged in the normal operations and requirements in the occupancy of highway rights-of-way or property.

Regulatory Flexibility Statement

The proposed amendments and new rules do not place any bookkeeping, or recordkeeping requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules primarily affect publicly, privately and cooperatively owned utilities, such as AT&T, U.S. Sprint, and MCI.

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

16:25-1.1 Definitions

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

...

"Fiber-optic cable" means a communication cable utilizing hair-thin strands of ultra-pure glass that can carry high volumes of traffic via lightwave signals.

"Fiber-optic system" means a utility facility consisting of either:

1. One four-inch galvanized steel pipe containing four each 1¼-inch PVC innerducts, buried directly in the ground, (hereinafter referred to as a multi-duct system); or

2. Four each of two-inch galvanized steel pipes, each pipe limited to use by one fiber-optic cable, buried directly in the ground, (hereinafter referred to as a single-duct system).

...

"Handhole" means a small chamber not large enough to permit personnel entry but which:

1. Provides access to a splice enclosure;

2. Is placed periodically along a conduit structure to provide smooth safe cable installation; or

3. Stores excess cable for maintenance purposes.

...

"Limited access highways" mean, for the purpose of N.J.A.C. 16:25-1.7 and 16:25-7A, freeways, parkways, and interstate highways.

...

16:25-1.7 [Freeways and parkways] **Limited access highways**

(a) The usage granting statutes discussed in N.J.A.C. 16:25-1.6 apply only to conventional highways, and any usage of [freeway and parkway] **limited access highways** right-of-way is subject to the discretion of the Commissioner of Transportation.

(b) The Department has excluded longitudinal facilities from [freeway and parkway] **limited access highway** rights-of-ways, unless extreme cases of need can be demonstrated to the satisfaction of the Department and can further be shown to be in the best public interest, and the Department has established [regulations] **rules** for crossings of such roads by utility facilities. **Further, in addition to extreme need, the safety criteria enumerated in (d) below shall be met.**

(c) The Department will take under consideration claims of extreme cases of need when a public utility can demonstrate that alternate locations are not available or cannot be implemented at reasonable cost, from the standpoint of providing efficient utility services in a manner conducive to safety, durability, and economy of maintenance and operations; that the accommodation will not adversely affect the design, construction, operation, maintenance, or stability of the limited access highway; and that it will not interfere with or impair the present use or future expansion of the limited access highway.

(d) The Department's safety criteria are as follows:

1. The utility facility shall be placed underground;

2. The utility facility shall not be used for transmitting gases or liquids under pressure, or for the transmission of products which are flammable, corrosive, expansive, energized or unstable;

3. The utility facility shall not emit any measurable radiation above the ground surface;

4. The utility facility shall present no hazard to life, health or property, if it fails to function properly, is severed, or otherwise damaged; and

5. After utility facility is installed, it will be virtually maintenance free.

(e) Should the Department determine that an extreme case of need exists, that the issuance of a longitudinal occupancy permit is in the best public interest, and that the safety criteria can be met, the installation shall be made in accordance with the provisions as specifically outlined in N.J.A.C. 16:25-7A.

(f) If the Department finds that utility projects for the installation of a fiber-optic cable or system meet the safety criteria established in (d) above, and if extreme cases of need are demonstrated, such projects will qualify for permit approval. The installation of a fiber-optic cable or system shall be in accordance with N.J.A.C. 16:25-7A.

[(c)](**g**) The Commissioner is [also] authorized to order the removal and relocation of utility facilities from [freeway or parkway] **limited access highway right-of-way** [at State expense].

16:25-2.2 Design of utility facilities

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

(c) Utility installations on, over, or under the rights-of-way of State highways and utility attachments to highway structures must meet the following minimum requirements:

1.-4. (No change.)

5. Fiber-optic communication facilities installation standards shall conform with the currently applicable sections of the Standard Codes of the American National Standard Institute (ANSI)—E1A472-B, 472B-XX0, incorporated herein by reference. Copies of the Standards may be obtained from the

American National Standards Institute
1430 Broadway
New York, N.Y. 10018

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

SUBCHAPTER 7A. UNDERGROUND FIBER-OPTIC COMMUNICATION LINES AND OTHER UTILITY FACILITIES LONGITUDINALLY OCCUPYING LIMITED ACCESS HIGHWAY

16:25-7A.1 General considerations

(a) Only public utility companies as defined by N.J.S.A. 48:2-13 shall be considered eligible for permission to longitudinally occupy limited access highway right of way.

(b) Installations shall be of the underground type only.

(c) Where the longitudinal occupancy will involve a fiber-optic cable, the public utility company shall provide, free of any cost, one fiber pair for the sole use of the Department.

(d) Where the longitudinal occupancy will involve a fiber-optic cable, the first public utility company, hereinafter "the installer", to be granted a longitudinal occupancy permit shall be required to install a fiber-optic system. The system may be either the multi-duct system or single-duct system, at the discretion of the installer. The installer shall, by virtue of the permit, be entitled to occupy one innerduct of the multi-duct system or one two-inch galvanized steel pipe of the single-duct system. The installer and future occupants of the multi-duct system shall be completely and equally responsible for the system. The unoccupied ducts of the multi-duct system shall be at the disposal of the Department and the Department may permit occupancy by future permittees. In the case of the single-duct system, the installer shall be completely responsible for any ducts occupied by the installer's fiber-optic cable and any unoccupied ducts, except that any unoccupied ducts shall be at the disposal of the Department and the Department may permit occupancy by future permittees. When, in the case of the single-duct system, ducts become occupied by a fiber-optic cable, the public utility company owner of the fiber-optic cable shall assume all responsibility of the occupied duct and the installer shall be relieved of its responsibility for that duct. The installer, in its initial permit application or in subsequent permit applications, or another public utility company in a future permit application, may apply for occupancy of one or more of the remaining three ducts. Each duct will be assessed an individual right of way occupancy permit fee. When all four ducts are occupied, the next permittee shall be considered the "first public utility company" and the above procedure shall be followed. In all cases, a permit issued for a duct shall be considered occupied by a fiber-optic cable and assessed in accordance with this subchapter.

(e) Access to the utility facilities for the purpose of installation, repair or maintenance shall not be achieved from highway ramps or roadways, but rather from local roads or points outside of the limited access highway's control of access line and in such a manner so as not to impede or disrupt highway traffic movements.

(f) The public utility company shall defend, indemnify, protect and, save harmless the State of New Jersey and the New Jersey Department of Transportation against any and all suits, claims, losses, demands or damages imposed by law as the result of the installation, operation or maintenance of the public utility company's facilities, including, but not limited to, any damage, disruption or interference of other public utility facilities within the limited access highway's right-of-way.

(g) The public utility company shall defend, indemnify, protect and save harmless the State of New Jersey and the New Jersey Department of Transportation from any claims or costs associated with damage to the public utility company's facilities or disruption of utility service resulting from Department personnel's operations within the limited access highway's right-of-way.

(h) Any and all actual costs incurred by the Department for inspection of the installation and repair, or relocation of the public utility company's facilities not resulting from a Department administered project, shall be reimbursed to the Department by the public utility company. An estimate of costs for Department forces shall be determined by the Department and shall be remitted to the Department by the public utility company prior to issuance of the permit. Final costs shall be remitted to the Department within 30 days of invoicing for same.

(i) A public utility company which is granted a longitudinal occupancy permit may not sell, lease or otherwise transfer any rights of the permit to another public utility company unless such a transfer is approved by the Department. Under no circumstances shall any transfer take place except with another public utility company.

16:25-7A.2 Occupancy permits

(a) Fees to occupy limited access highway rights-of-way shall consist of an administrative application fee and a yearly right of way occupancy permit fee.

(b) The non-refundable administrative application fee, in the amount of $750.00 per mile of proposed occupancy, shall accompany any application for a right-of-way occupancy permit. For the purpose of the administrative application fee, joint venture installations will be considered and assessed as a single applicant.

(c) The yearly right-of-way occupancy permit fee per duct shall be in the amount of $10,000 per mile or fraction thereof for the first year and for every year thereafter, except that the installer of the fiber-optic system shall be assessed at the annual rate of $5,000 per mile for one duct and shall be assessed at $10,000 per mile for subsequent ducts for which the installer receives an occupancy permit. The mileage shall be measured along the centerline of the highway. Each duct or fiber-optic cable shall be considered as an installation and shall be assessed accordingly. The installation shall consist only of those facilities that are covered and installed under each individual permit. Joint venture installations are encouraged. The joint venture may only be comprised of public utility companies and each public utility company shall be named in the permit application. No provision shall be made for future facilities or extensions. The right of way occupancy permit fee must be remitted in full prior to issuance of the occupancy permit. The annual right of way occupancy permit fee shall be remitted each year by the date specified in the permit.

(d) Installation of facilities covered by the permit must be completed within one (1) year of the date of the permit. One 6-month extension may be permitted for just cause. Should said installation not be completed, any fees remitted shall be forfeited in full. Should the public utility company wish to complete the installation, a new permit application and fee must be filed for the unfinished portion. A new right of way occupancy permit fee will be determined and payable in accordance with 16:25-7A.2(c).

(e) The right of way occupancy permit and administrative fees cited above may be adjusted annually for inflation, at a rate equal to the change in the Consumer Price Index as published July 1 for each year.

(f) Failure to pay permit fees as described in this subsection may result in the public utility company's forfeiture of all its rights and interests associated with its permit and the Department, at its sole discretion, may remove, transfer usage or otherwise dispose of such facilities covered by the permit.

(g) Application for a longitudinal occupancy permit shall be submitted to the Department in accordance with and subject to N.J.A.C. 16:25-10.1 et seq.

(h) The permittee shall include with its application, detailed plans which indicate the type of system to be installed; the location of the system within the right of way; the method of construction; the depth of cover; the materials to be used; the method of accessing the site the location and design of handholes; and any other data which the Department may request during the application review process. Within one month following the completion of the installation, the permittee shall provide a detailed set of as-built plans in no less than 100 scale drawn on a reproducible medium.

16:25-7A.3 Location

(a) Where the Department deems utility facility installation feasible, the Department will establish, within the right-of-way of limited access highways, a corridor, never closer than 30 feet to the edge of roadway, but contiguous to each side of the roadway's control or access line, for the installation of underground utility facilities.

(b) Prudent utilization of the corridor to provide for multiple occupancy will be required; however, the Department will not reserve space within said corridor for any facility or public utility company.

(c) At interchange areas, the installation corridor shall continue along the control of access boundary outside of the outermost roadway or ramp.

(d) Transverse installations associated with longitudinal occupancy of the limited access highway shall be normal to the roadway's alignment and shall only occur within interchange areas.

(e) Installations shall continue along the respective control of access ine even when encountering rest areas, scenic-overlook sites, truck veigh stations, and other such facilities.

(f) Installations shall not be placed longitudinally within the median rea of a limited access highway.

(g) Attachment to highway structures shall not be permitted.

(h) Installations crossing local, State or limited access highway amps or roadways shall be placed within a galvanized steel pipe casing.

(i) Where trees and/or shrubbery act as a buffer for the adjacent roperty, their removal shall not be permitted. Where removal of vegtation is otherwise necessary, replacement trees and shrubs shall be rovided by the permittee as required by the Department. Installation f facilities shall not be permitted in any environmentally sensitive ocation.

(j) Installation shall be in conformance with NJDOT Soil Erosion nd Sediment Control Standards (N.J.A.C. 16:25A).

6:25-7A.4 Design of facilities

(a) Installations shall be of the underground type only and no above round facilities of any kind will be permitted inside the limited access ighway right-of-way.

(b) Above or below ground regenerator or backup power enclosures r manholes shall not be permitted within limited access highway right-f-way.

(c) Handholes for the purpose of cable splicing and/or installation hall be permitted, provided that they shall be of a size that will not ermit personnel entry and shall be flush with the surrounding ground.

(d) Cable shall be encased in galvanized steel pipe.

(e) All permits required for facility installation, whether from the epartment or other outside parties or agencies, shall be the responsiility of the installing public utility company. Proof of permits must e supplied to the Department prior to issuance of the occupancy ermit.

(f) Above ground warning signs bearing the public utility owner's ame and contact number shall be mounted by the permittee upon djacent control of access fencing at line of sight intervals or as specified n the occupancy permit.

UBCHAPTER 13. SEVERABILITY

6:25-13.1 Severability

If any provision of this chapter is held invalid, the remainder of the hapter shall not be affected thereby, and shall remain in full force and ffect.

(a)

IVISION OF CONSTRUCTION AND MAINTENANCE ENGINEERING SUPPORT AINTENANCE SUPPORT

utdoor Advertising Tax Act Rules

roposed Amendments: N.J.A.C. 16:41A-1.1, 2.2, 2.4, 2.5, 2.9, 2.10, 2.11, 3.1, 3.2, 3,3, 3.15, 3.19, 3.20, 4.2, 4.4, 5.2, 5.4, 6.1, 6.4, and 7.1.

uthorized By: Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.

uthority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-52 and 54:40-52 et seq.

roposal Number: PRN 1989-392.

Submit comments by September 6, 1989, to:

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

The agency proposal follows:

Summary

The proposed amendments will effect changes to N.J.A.C. 16:41A, utdoor Advertising Tax Act, to reflect the Outdoor Advertising Program as is presently administered and conform to the recent Reorganization Plan of the Department.

The rules were additionally reviewed by the staff of the Department's Bureau of Maintenance Support, in compliance with the Department's ongoing rulemaking review procedure. The technical changes proposed do not change the purpose or intent for which the rules were promulgated.

The major effect of these amendments is changes in definitions, titles and procedures to comply with changes within the Department.

Social Impact

The proposed amendments will effect changes to reflect the Outdoor Advertising Program as is currently administered and to delete all references to the Department of Treasury, thus eliminating any confusion which might have been caused the users of said regulations. The users will benefit from the action taken by the Department to update the administrative aspects of the rules.

Economic Impact

The proposed amendments will cause the Department to incur direct and indirect costs for the administration of the rules. The outdoor advertisers will not experience any economic impact, because there has been no increase of fees nor changes in substantive actions required by these rules.

Regulatory Flexibility Analysis

The proposed amendments do not place any bookkeeping or recordkeeping requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, small businesses are required to comply with these rules. These amendments primarily effect technical changes in definitions, titles and procedures concerning outdoor advertising, none of which should result in increased costs to small businesses.

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

CHAPTER 41A
OUTDOOR ADVERTISING TAX ACT RULES

16:41A-1.1 Definitions

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

"Administrator" means the Administrator of Outdoor Advertising, New Jersey Department of Transportation.

. . .

["Bureau" means the Outdoor Advertising Tax Bureau, Division of Taxation, Department of the Treasury, State of New Jersey.]

. . .

"Directional sign" means any sign not exceeding two square feet in area intended to direct or point toward a place, or one that points out the way to a place which the [Director] **Administrator** determines not to be adequately designated by official signs.

["Director" means the Director of the Division of Taxation, Department of the Treasury, State of New Jersey.]

. . .

"Outdoor Advertising Section" means the New Jersey Department of Transportation Outdoor Advertising Section of the Bureau of Maintenance Support.

. . .

"Permit" means a certificate, issued by the [Bureau] **Outdoor Advertising Section** granting permission to erect a sign at the location described thereon.

16:41A-2.2 Application and fee

A license may be obtained by filing an application [on Form OA-1, with the Bureau] **for an outdoor advertising license with the Outdoor Advertising Section** accompanied by the annual fee of $200.00.

16:41A-2.4 Renewal

(a) An application for renewal is to be filed with the [Bureau on Form OA-1 before March 15, preceding its expiration] **Outdoor Advertising Section before March 31, each year.**

(b) Any licensee not intending to remain in the business of outdoor advertising beyond the expiration date of its license, must notify the [Bureau] **Outdoor Advertising Section** to that effect not later than March 15 preceding its expiration.

16:41A-2.5 Bond for nonresidents

(a) An applicant for a license who does not reside in this State or which is a foreign corporation not authorized to do business in this State, is required to file with his, **her** or its application, a bond running to this State in the sum of $2,000[.00], satisfactory to the [Director] **Administrator of Outdoor Advertising** and with surety approved, conditioned upon the observing and fulfilling by the applicant of all the provisions of the law.

(b) (No change.)

16:41A-2.9 Notice; hearing

(a) Whenever, it is determined by the [Director] **Administrator of Outdoor Advertising** that any person has committed a violation or offense as stated in [sections] **N.J.A.C. 16:41A-2.8,** [(]Revocation[)] or **N.J.A.C. 16:41A-3.2,** [(]Standards for permit issuance[) of this chapter], such person will be given a written notice stating the violation or offense and within 30 days he must:

1.-3. (No change.)

(b) Thereafter, the [Director] **Administrator of Outdoor Advertising** shall grant [such] **an informal or formal** hearing [if the same be requested, and at such hearing he may make an order confirming, modifying or vacating any finding or determination].

(c) An informal hearing shall be held within 30 days of receipt of such request unless an extension of time is required for good cause.

[(c)] **(d)** The filing of a protest and request for a hearing does not abate any penalties due, nor stay the right of the [Director] **Administrator of Outdoor Advertising** to remove any signs, space, advertisements and advertising structures within 30 days of the giving of notice, unless the licensee furnishes security of the kind in the amount satisfactory to the [Director] **Administrator of Outdoor Advertising.**

(e) If the protester requests only a formal hearing, the Administrator of Outdoor Advertising shall transmit the matter to the Office of Administrative Law within 30 days of receiving the request.

16:41A-2.10 Nature of hearings

(a) An informal hearing before the **Administrator of** Outdoor Advertising [Tax Bureau] is in the nature of a conference, with or without representation [on behalf of a taxpayer or other party in interest]. **Within 15 days of the informal hearing, the Administrator of Outdoor Advertising shall issue a decision.**

[(b) At a formal hearing, all evidence is taken before a court recorder and the parties are not bound by common law or statutory rules of evidence. All testimony having reasonable probative value is admitted, but immaterial, irrelevant or unduly cumulative testimony may be excluded. Every party has the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(c) After all parties have been given the opportunity of presenting all the evidence in support of the issues, the Bureau shall take the matter under advisement and reach a determination on the record and facts disclosed. Upon reaching a determination, the Bureau shall notify a taxpayer or other party in interest or his representative by mail of the determination made.]

(b) Within 30 days of receipt of the informal decision, a protester may appeal the decision by requesting the Administrator of Outdoor Advertising to transmit the matter to the Office of Administrative Law for a formal hearing. All formal hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

16:41A-2.11 Removal of signs or spaces

(a) (No change.)

(b) In the event any person fails to remove any advertising structure or other object used or to be used for the display of outdoor advertising withing 30 days of the mailing of notice, the [Director] **Commissioner of Transportation** shall order the immediate removal of the same and may recover from such owner or person, in addition to any other penalties provided by law, double the cost of removal or the sum of $50.00 whichever is greater [. See section 8.1 (Penalties) of this chapter] **(see N.J.A.C. 16:41A-8.1, Penalties).**

(c) Whenever the power of removal is exercised, the [Director] **Commissioner of Transportation** may, without further notice to the owner of the unlawful structure, deputize any person or persons t enter upon private property, without liability, to effect said remova

16:41A-3.1 When required

(a) Any person, whether required to be licensed or not, befor erecting, maintaining, or using any outdoor advertising structure c other objects for the display of outdoor advertising matter on re property within public view, shall apply to and obtain from th [Bureau] **Outdoor Advertising Section** a permit for the same. A perm is required for any sign not on the premises where business is cor ducted.

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

16:41A-3.2 Standards for permit issuance

(a) The issuance of new permits is prohibited in certain areas an under certain conditions. An application for a permit to erect a sig will not be granted if:

1. It would injuriously affect adjacent property, where such adj cent property will be affected by the substantial impairment of ligh air, scenery, terrain or view. Proper notification from such adjacer property owner will be considered by the [Bureau] **Outdoor Adverti ing Section;**

2. It would injuriously affect any public interest. In the determin tion of whether the issuance of a permit would adversely affect an public interest, the [Bureau] **Outdoor Advertising Section,** in additio to other factors, will consider any public sentiment as expressed b the governing authorities and agencies of the United States, State c New Jersey, county and municipality within whose boundaries th application is made.

3.-13. (No change.)

16:41A-3.3 Application for permit

(a) An application for a permit is to be made on [Form OA- **a New Jersey Department of Transportation application for Outdo Advertising Permit** and filed with the [Bureau] **Outdoor Advertisir Section** accompanied by the required fee [. See section 6.1 (Basis permit fees) of this chapter] **(see N.J.A.C. 16:41A-6.1, Basis of perm fees).**

(b) (No change.)

16:41A-3.15 Renewal of permit and application

(a) (No change.)

(b) An application for a renewal permit is to be made [on suc Form OA-1AR and filed with the Bureau no later than March 1 preceding the expiration of the permit] **by returning the Outdo Advertising Invoice with appropriate annual fee before March 31.**

(c) (No change.)

16:41A-3.19 Notice and hearings

In cases where it is determined by the [Director] **Administrator Outdoor Advertising** that any person has committed a violation offense as stated in [section] **N.J.A.C. 16:41A-3.2,** [(]Standards f permit issuance[) of this chapter], see [section] **N.J.A.C. 16:41A-2** [this chapter] for procedures on notice and hearings.

16:41A-3.20 Removal of signs or spaces

(a) (No change.)

(b) In the event any person shall fail to remove any advertisir structure or other object used or to be used for the display of outdo advertising within 30 days of the mailing notice, the [Director] **Con missioner of Transportation** shall order the immediate removal of th same and may recover from the owner or person, in addition to ar other penalties provided by law, double the cost of removal or th sum of $50.00 whichever is greater [See section 2.11 of this chapt for other penalties.] **(see N.J.A.C. 16:41A-2.11 for other penalties**

(c) Whenever the power of removal is exercised, the [Directo **Commissioner of Transportation** may, without further notice to th owner of the unlawful structure, deputize any person or persons enter upon private property, without liability, to effect said remov

16:41A-4.2 Application

An application for a conditional permit is to be made [on For OA2C and filed with the Bureau] **by completing an Application f an Outdoor Advertising Permit and submitting it to the Outdo**

Advertising Section accompanied by the required fee as indicated in [section 6.2 (Renewal fee)] **N.J.A.C. 16:41A-6.1** [of this chapter].

16:41A-4.4 Renewal

(a) (No change.)

(b) [An application for renewal of a conditional permit is to be made on Form 1AR and filed with the Outdoor Advertising Tax Bureau not later than March 15, proceeding the expiration of the existing conditional permit.] **A conditional permit may be renewed by returning the New Jersey Department of Transportation Outdoor Advertising Invoice to the Outdoor Advertising Section with the appropriate fee before March 31.**

(c) (No change.)

16:41A-5.2 Application

Application for a No Fee Permit is to be made on [Form OA2NF and] **an Application for Outdoor Advertising Permit** which may be obtained from the [Bureau upon request] **Outdoor Advertising Section**.

16:41A-5.4 Renewal

A No Fee Permit may be renewed by [filing the Bureau on or before March 15, preceding its expiration, an application for renewal on Form OA1B-ARNF] **returning the Department of Transportation Outdoor Advertising Invoice by March 31**.

16:41A-6.1 (No change in rule text.)

Double-Faced, Back to Back or V-Type Signs: Twice the permit fee.

1.-2 (No change.)

3. Semi-Annual Fee: For permit issued between October 1 and March **31.**

16:41A-6.4 Refunds

No refund shall be made after an application for a permit has been filed with the [Director] **Outdoor Advertising Section**.

16:41A-7.1 Exempt advertisements

(a) No permit is required for the erection, use or maintenance of any sign, advertising structure, object, or other device which is to be used solely for any of the following purposes; provided, that such sign, structure, object or other device is not owned by a licensee under the Act, and such exempt advertisement is not in violation of the provisions of N.J.S.A. 54:40-60:

1.-2. (No change.)

3. Any cautionary, informative, or directory sign, signal or device erected on any public highway in the interest of public safety, convenience or health, when permission has been given therefor by the public authority having jurisdiction of such public highway and when written evidence of such permission has been submitted to the [Bureau] **Outdoor Advertising Section** either in the form of a direct communication from such public authority or by a copy of a letter granting such permission.

4.-8. (No change.)

(a)

DIVISION OF PROCUREMENT CONSTRUCTION SERVICES

Receipt of Bids Verification

Proposed Amendment: N.J.A.C. 16:44-5.5

Authorized By: Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1, 14A:1-1 and 14:15-2.

Proposal Number: PRN 1989-395.

Submit comments by September 6, 1989 to:

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

The agency proposal follows:

Summary

On February 28, 1988, Governor Thomas H. Kean issued Reorganization Plan (No. 001-1988), which appeared in the April 18, 1988 New Jersey Register at 20 N.J.R. 937, to provide for the increased efficiency, coordination and functioning of the Department of Transportation. Additionally, the Commissioner, Department of Transportation, under statutory authority, N.J.S.A. 27:1A-6, implemented changes simultaneously for the consolidation and coordination of certain functions existing within the Department. The effect of this consolidation provided for the expeditious administration of public business by coordinating functions in a manner designed to increase departmental efficiency; reallocating certain functions and responsibilities, thereby better utilizing the resources of the Department.

In the past, the verification of bid proposals was performed by the Division of Accounting and Auditing for mathematical accuracy. However, in view of the reorganization and transfer of functions, this duty is now performed by the Office of Construction and Services, Procurement Division which has staff auditors.

The Department therefore proposes to amend N.J.A.C. 16:44-5.5 in accordance with the Reorganization Plan and N.J.S.A. 27:1A-6, to delineate the functions.

Social Impact

The proposed amendment will effect transfer of the function of mathematical verification of bid proposals to the Office of Construction and Services, Procurement Division in compliance with the Reorganization Plan (No. 001-1988), and provide for the consolidation of functions and the elimination of overlapping functions. Additionally, it provides for the efficient operation, administration and expeditious handling of bid proposals, wherein staff auditors will perform mathematical verifications upon receipt of proposals.

Economic Impact

There will be no new costs to the Department because of transfer of the function or responsibility would not require any additional staffing or added costs. Staffing is provided to undertake the function. There will be no economic impact on the public.

Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, 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 rule primarily effects internal procedural changes.

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

16:44-5.5 Verification

(a) [The Bureau of Contract Administration] **The Office of Construction Services, Procurement Division** shall separate all proposals from the other required documents and [deliver them to the Director of Fiscal Management for verification of calculates] **calculations verified**.

(b) [The Director of Fiscal Management shall have the] **The** extensions and additions **are to be** checked; errors, if any, corrected; and the actual total price certified as being correct. Copies of the certified printed calculations shall be distributed as follows:

1.-5. (No change.)

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

(a)

FINANCE AND ADMINISTRATION
DIVISION OF PROCUREMENT
Contract Administration
Classification of Contractors
Definitions
Proposed Amendment: N.J.A.C. 16:44-1.1

Authorized By: Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 14A:1-1 and 14:15-2.
Proposal Number: PRN 1989-391.

Submit comments by September 6, 1989 to:

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

The agency proposal follows:

Summary

The proposed amendment will establish the new composition of the Pre-qualification Committee and effect title changes within the Committee to conform with organizational changes within the Department and adds the titles of Director, Division of Procurement and Manager, Construction Services, Procurement Division. These changes are authorized in compliance with the powers granted the Commissioner by N.J.S.A. 27, specifically N.J.S.A. 27:1A-6.

The Department therefore proposes to amend N.J.A.C. 16:44-1.1 to reflect the organizational changes.

Social Impact

The proposed amendment will effect the new structure of the Department's Pre-qualification Committee in view of the organizational changes within the Department.

Economic Impact

The proposed amendment will not have any economic impact since it simply reflects an organizational change.

Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, 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 amendment primarily effects changes in definition and organization within the Department. A regulatory flexibility analysis is, therefore, not required.

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

16:44-1.1 Definitions

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

. . .

"Pre-qualification [committee] **Committee**" means a committee appointed by the Commissioner of Transportation to perform the duties indicated in this subtitle [and composed of:]. **The Committee shall be composed of five voting members, selected at the discretion of the Commissioner of Transportation. A Deputy Attorney General shall serve as a non-voting member for the committee. The Manager, Construction Services shall serve as Staff and Secretary to the committee.** The committee consists of:

1. Assistant Commissioner for [Engineering and Operations, (State Highway Engineer), Chairman] **Finance and Administration, (Chair)**;

2. [Deputy Attorney General, non-voting member] **Assistant Commissioner for Construction and Maintenance (Deputy State Transportation Engineer)**;

3. [Assistant Commissioner for Finance and Administration] **Director, Division of Procurement**;

4. [Chief Engineer, Construction and Maintenance] **Director, Office of Civil Rights/Contract Compliance**;

5. [Chief, Bureau of Contract Administration] **Director, Division of Construction and Maintenance Engineering Support**; and

[6. Director, Office of Contract Compliance, Civil Rights.]

6. Non-voting members as follows:

i. A Deputy Attorney General; and

ii. The Manager, Construction Services, Procurement Division, shall be a non-voting member of the Pre-qualification Committee, and serves as Secretary. The Pre-qualification Committee will delegate to the Manager, Construction Services, Procurement Division, the authority to sign renewal of pre-qualification applications for the Committee which will increase by three steps in dollar values without change in work scope and any decreases in dollar value without change in work scope.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF PARKS AND FORESTRY
Notice of Extension of Comment Period
Designation of West Pine Plains to Natural Areas System
Proposed Amendment: N.J.A.C. 7:2-11.12

Take notice that the Department of Environmental Protection is extending until August 21, 1989 the period for submission of written comments on the proposed designation of the West Pine Plains to the Natural Areas System. The proposal was published on June 5, 1989 in the New Jersey Register at 21 N.J.R. 1480(b). Please refer to the proposal (DEP Docket No. 026-89-05) for further information.

(c)

DIVISION OF WATER RESOURCES
Sewer Connection Ban Exemptions
Application for a Sewer Connection Ban Exemption
Proposed Amendments: N.J.A.C. 7:14A-12.22 and 12.23

Authorized By: Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 13:1D-1 et seq., N.J.S.A. 58:10A-1 et seq., particularly 58:10A-4.
DEP Docket Number: 032-89-06.
Proposal Number: PRN 1989-389.

A **public hearing** concerning these proposed amendments will be held on:

September 26, 1989 at 10:00 A.M.
Department of Environmental Protection Building
2nd Floor, Large Conference Room
401 East State Street
Trenton, New Jersey

Submit written comments by October 5, 1989 to:

Jane Engel, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) is proposing to amend N.J.A.C. 7:14A-12.22 in order to allow affected sewage authorities or municipalities to grant exemptions from sewer connection bans in two new circumstances and to amend N.J.A.C. 7:14A-12.23 to clarify that in specific instances a condition of an exemption may require the applicant to obtain a treatment works approv

The proposed amendment at N.J.A.C. 7:14A-12.22(b)9 would allow a project for which public funding has been committed pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., in accordance with the applicable rules adopted by the Council of Affordable Housing at N.J.A.C. 5:91 and 5:92, the Department of Community Affairs (DCA) at N.J.A.C. 5:14 and the New Jersey Housing and Mortgage Finance Agency at N.J.A.C. 5:80, to apply for an exemption from a sewer connection ban. In addition to qualifying for public funding under one of the regulatory programs listed above, the project must be limited to providing affordable housing for low and moderate income families and must be owned by a public or non-profit corporation or association.

The proposed amendment at N.J.A.C. 7:14A-12.22(b)10 would allow a project providing rental housing for low income households for which DCA has committed grants or loans through the New Jersey Urban Multi-Family Production Program (JUMPP), P.L. 1988, c.47, or through the Neighborhood Preservation Balanced Housing Program (Balanced Housing Program), in accordance with N.J.A.C. 5:14, to apply for an exemption from a sewer connection ban.

Under both proposed amendments, the sewage authority or municipality under the sewer connection ban must have entered into and be in compliance with either an Administrative Consent Order with the Department or a Judicial Consent Decree with the United States Environmental Protection Agency (USEPA) for the improvement and/or upgrade of its wastewater treatment facility. In addition, the wastewater treatment facility serving the project must be in compliance with all other relevant Department rules.

Pursuant to the sewer connection ban rules at N.J.A.C. 7:14A-12, wastewater treatment facilities that are not in compliance with the requirements of their NJPDES permits, including such requirements as permitted flow and effluent quality averaged over a three month period, are not allowed to accept any additional sewage flow and a sewer connection ban is imposed. Sewer connection bans are an important and effective element of the Department's water quality management program; their imposition deters additional harm to the environment and the public health. When a sewer connection ban is in effect, a moratorium is imposed on all new connections in the affected municipality until deficiencies at the wastewater treatment facility are corrected. In addition to having an impact on the building industry, property owners and real estate businesses dealing with new developments, the resultant lack of new housing impacts persons wishing to purchase and/or occupy new residential buildings. This impact can be particularly severe on persons of low and moderate income seeking affordable housing when only new residential developments will provide it.

Due to the shortage of housing within the means of low and moderate income households throughout New Jersey and a Legislative mandate to revitalize selected urban areas, DCA requested the Department to reconsider its sewer connection ban rules to determine if two amendments could be made for development projects receiving public funding and committed to providing affordable housing, particularly in urban areas, for low and moderate income households. Based on this request by a sister agency and in light of the continuing shortage of affordable housing in New Jersey, the Department reviewed the matter in consultation with DCA.

The Department recognizes that many residents of certain municipalities under a sewer connection ban are in desperate need of affordable housing. In addition, affordable housing is a cornerstone in revitalizing urban areas. Presently, the sewer connection ban rules only allow for publicly owned and/or operated projects to receive exemptions. In order to allow for a more flexible approach in addressing the competing public needs of housing and environmental protection, the Department is proposing two amendments to the sewer connection ban rules to allow residential housing to be built and occupied in select circumstances.

The Department also recognizes that it is necessary to limit these amendments to specific sets of circumstances since there is growing pressure for housing in New Jersey and too many exemptions will render the sewer connection bans meaningless. In order to allow new housing developments to proceed without undermining the integrity of the sewer connection ban rules, the Department has chosen to rely on DCA's commitments to award grants or loans to particular projects as a way of limiting exemptions to projects already determined to be important for the State. In addition, at N.J.A.C. 7:14A-12.22(b)9, the Department is requiring the project to be committed to providing housing units for only low and moderate income households and to be owned by a public entity or non-profit corporation or association. In this way, the Department will limit exemptions to projects that provide the greatest benefit to those persons most in need of affordable housing. The Department acknowledges, however, that in many instances affordable housing cannot or will not be built in certain urban areas unless for-profit development entities financially support the project. Therefore, the Department at N.J.A.C. 7:14A-12.22(b)10 will allow projects proposed by either for-profit or not-for-profit entities to be eligible for an exemption. Prior to granting any approvals pursuant to this provision, however, an equal amount of the wastewater flow from the project must be diverted to a wastewater treatment facility that is meeting and will, upon receiving the diverted flow, continue to meet final effluent limitations contained in its NJPDES permit. In addition, the Department must be satisfied that each project has obtained all other necessary approvals, that the municipality has committed itself to improving and/or upgrading its wastewater treatment facility in a timely manner, and that the municipality's treatment facility is in compliance with all other relevant Department rules. The Department has also deleted the specific reference to N.J.A.C. 7:14A-12.22(b)5 at N.J.A.C. 7:14A-12.23(i)2 to clarify that in the appropriate circumstance any applicant for an exemption will be required to obtain a treatment works approval.

Social Impact

The proposed amendments represent an accommodation of two State policies, that is, the protection of the environment and the production of an adequate supply of low and moderate income housing. Under the proposed amendments, an exemption from a sewer connection ban may be granted for low and moderate income housing projects to be built under a plan approved by the Council on Affordable Housing in accordance with the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., and an exemption may be granted for low income rental housing projects to be built with a grant or loan award through the JUMPP or Balanced Housing Program. The result will be to provide decent and affordable housing for people who would otherwise be unable to afford it, while still providing adequate environmental protection.

Economic Impact

Persons of low and moderate income who are able to obtain housing as a result of these amendments will benefit by not having to spend a disproportionate share of their income on housing. By helping to increase the supply of affordable housing, the proposed amendments will reduce competition for existing lower-priced units, with a consequent reduction of homelessness. Entities seeking to build residential low and moderate income housing in areas under a sewer connection ban would have to apply for an exemption. The costs involved in such a procedure are discussed in the Regulatory Flexibility Analysis of this proposal.

Environmental Impact

The Department anticipates that there will be a minimal adverse environmental impact as a result of these proposed amendments. The Department of Community Affairs estimates that due to funding limitations, up to 100 additional housing units per year will be built under the exemption at N.J.A.C. 7:14A-12.22(b)9. In these instances, the sewage authority or municipality must have entered into and be in compliance with an Administrative Consent Order or Judicial Consent Decree to upgrade and/or improve the wastewater treatment facilities in a timely manner. In some cases, there will be no adverse environmental impact because improvements to the wastewater treatment facility will be in place by the time the housing units are occupied. In other cases, however, the units will be occupied before all improvements are made to the wastewater treatment facility; in these situations, the Department has determined to allow some limited environmental degradation in light of the competing need for decent, affordable housing in New Jersey.

With respect to the proposed amendment at N.J.A.C. 7:14A-12.22(b)10, the Department anticipates that there will be no environmental degradation as the additional wastewater generated by the project will be treated to the final effluent limits contained in a valid NJPDES permit issued to the facility receiving the diverted flow. The proposed amendment at N.J.A.C. 7:14A-12.23(i)2 will have a positive environmental impact by clarifying that in appropriate circumstances an applicant for an exemption will be required to obtain a treatment works approval.

Regulatory Flexibility Analysis

These proposed amendments would apply to public, not-for-profit and for-profit entities seeking to build residential housing in areas under a sewer connection ban. It is estimated that of the total number of entities impacted by these amendments, a minimal number is "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A.

52:14B-16 et seq. and will be impacted. In order to comply with these amendments, the small businesses will have to apply for an exemption. In so doing, it is likely that small businesses will need the services of professional engineers or other professionals to design acceptable projects and activities. It is expected that initial capital costs for each small business could range from approximately $200.00 to several thousand dollars depending on the proposed project. These proposed amendments will not impose any additional compliance requirements as the amendments will allow for projects to proceed along the normal permit process instead of requiring the permit process to be halted until the sewer connection ban is rescinded. Annual costs will range from a minimal amount to several thousand dollars, depending on the project. In developing these amendments, the Department has balanced the need to protect the environment against the economic impact of the proposed amendments and has determined that to minimize the impact of the amendments would endanger the environment, public health and public safety and, therefore, no exemption from coverage is provided.

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

7:14A-12.22 Sewer connection ban exemptions

(a) (No change.)

(b) An applicant for an exemption must prove to the satisfaction of the affected sewage authority and the Department that it meets any of the following criteria:

1.-8. (No change.)

9. If the connection will allow for the construction of a proposed residential housing project, meeting all of the following conditions:

i. The housing project consists of buildings or structures to be occupied for residential purposes;

ii. The affected sewage authority or municipality has entered into and is in compliance with an Administrative Consent Order with the Department under the Water Pollution Control Act or Judicial Consent Decree with the United States Environmental Protection Agency ("USEPA") for the improvement or upgrade of the wastewater treatment facility;

iii. The primary construction contract for the improvement or upgrade of the wastewater treatment facility required by the Administrative Consent Order or Judicial Consent Decree entered into with the Department or USEPA has been awarded;

iv. Occupancy of the proposed housing project shall be limited solely to households of low and moderate income as defined pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:92-1.3;

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

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

vii. All other necessary Federal, State, and local approvals for the project have been obtained; and

viii. The wastewater treatment facility which will service the project is in compliance with all other relevant rules of the Department.

10. If the connection will allow for the construction of a proposed rental housing project meeting all of the following conditions:

i. The affected sewage authority or municipality has entered into and is in compliance with an Administrative Consent Order with the Department under the Water Pollution Control Act, or Judicial Consent Decree with the United States Environmental Protection Agency ("USEPA") for the improvement or upgrade of the wastewater treatment facility;

ii. The primary construction contract for the improvement or upgrade of the wastewater treatment facility required by the Administrative Consent Order or Judicial Consent Decree entered into with the Department or USEPA has been awarded;

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

iv. The project is receiving or has a commitment from the Depart ment of Community Affairs to receive grants or loans through eithe the New Jersey Urban Multi-Family Production Program, P.L. 198 c.47, or the Neighborhood Preservation Balanced Housing Prograr implemented by the Department of Community Affairs at N.J.A.C 5:14;

v. The housing project consists of buildings or structures to be oc cupied for residential, rental purposes and the units shall remain rent for, no less than 15 years if the project is receiving or has a commitmer to receive a grant or loan through the New Jersey Urban Multi-Famil Production Program, P.L. 1988, c.47, or for the amount of time s forth at N.J.A.C. 5:14 if the project is receiving or has a commitmer to receive a grant or loan through the Neighborhood Preservatio Balanced Housing Program;

vi. The proposed project shall be located in a municipality that or has been at one time designated as an Urban Aid Municipality defined by Department of Community Affairs, Division of Local Go ernment Services, in accordance with N.J.S.A. 52:27D-178 to 181;

vii. All other necessary Federal, State and local approvals for th project have been obtained;

viii. The wastewater treatment facility which will serve the proje is in compliance with all other relevant rules of the Department; an

ix. An equal amount of the wastewater flow from the operation the project shall be diverted from the wastewater treatment facili subject to the sewer connection ban to a wastewater treatment facili that is meeting and will, upon receiving the diverted flow, continue meet the final effluent limitations contained in its valid NJPDES pe mit. This diversion of flow shall be made in a manner consistent wi water quality management plans prepared pursuant to the Water Qual ty Planning Act, N.J.S.A. 58:11A-1 et seq., specifically N.J.S.A 58:11A-7, and all rules promulgated pursuant thereto.

7:14A-12.23 Application for a sewer connection ban exemption

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

(i) The granting of an exemption by the Department and th affected sewage authority does not relieve the applicant of the follov ing responsibilities:

1. (No change.)

2. Obtaining the requisite treatment works approval from th Department or from the municipality or affected sewage authori in the case of a project granted an exemption under N.J.A.C 7:14A-12.22(b)[5].

(a)

DIVISION OF WATER RESOURCES

Underground Storage Tank Systems Technical Requirements and Procedures

Proposed Amendments: N.J.A.C. 7:14B-1.3, 1.4, 1.6 2.1, 2.2, 2.3, 2.4, 2.5, 2.7, 2.8, 3.1, 3.2, 3.4 and 3.5

Proposed Repeal: N.J.A.C. 7:14B-4

Proposed New Rules: N.J.A.C. 7:14B-4 through 12 and 15

Authorized By: Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9, 58:10A-1 et seq., more particularly 58:10A-21 et seq.

DEP Docket Number: 036-89-07.

Proposal Number: PRN 1989-420.

Public hearings concerning this proposal will be held on:

Thursday, August 24, 1989
Rutgers Labor Education Center
Ryders Lane
New Brunswick, New Jersey
10 A.M. until close of comments

Tuesday, August 29, 1989
New Jersey State Museum
205 W. State Street
Trenton, New Jersey
10 A.M. until close of comments

Submit written comments by October 6, 1989 to:

Edward J. Morrison, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

A detailed discussion of the proposed amendments to N.J.A.C. 7:14B-1, 2 and 3 and the proposed new rules, N.J.A.C. 7:14B-4 through 15, is contained in the "Basis and Background for the Proposed Underground Storage Tank Rules" (June 1989). This document may be obtained from:

Bureau of Underground Storage Tanks
Division of Water Resources
Department of Environmental Protection
CN-029
Trenton, New Jersey 08625; or

New Jersey Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
CN 301
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On September 3, 1986, P.L. 1986, c.102, codified at N.J.S.A. 58:10A-21 et seq. and commonly known as the New Jersey Underground Storage of Hazardous Substances Act, was signed into law. The New Jersey Department of Environmental Protection ("the Department"), pursuant to N.J.S.A. 58:10A-21 et seq. (the "State Act"), is authorized to adopt a regulatory program for the prevention and control of unauthorized discharges of hazardous substances caused by releases from underground storage tank ("UST") systems. The State Act is based primarily on the Federal "Hazardous and Solid Waste Amendments of 1984, P.L. 98-616, (the "Federal Act") which authorizes the United States Environmental Protection Agency (USEPA) to develop a similar regulatory program. The USEPA promulgated regulations on September 23, 1988 which prescribe the technical requirements for tank owners and operators (40 C.F.R. §280 (1988)). Also, on that date the USEPA promulgated procedures to delegate the Federal Underground Storage Tank Program to the states (40 C.F.R. §281 (1988)). The State Act authorizes the Department to seek delegation of the Federal program and these rules, in part, help fulfill that mandate. On December 21, 1987, the Department adopted N.J.A.C. 7:14B-1 through 4, Underground Storage Tank Registration Requirements and Fee Rules, which provide general information about the State's underground storage tank program, implement the registration of underground storage tank systems, and provide for the payment of fees to support New Jersey's underground storage tank program. The Department is now proposing to amend subchapter 1 (General Information), subchapter 2 (Registration Requirements and Procedures) and subchapter 3 (Fees). The Department is repealing subchapter 4 (Penalties) and proposing updated penalty provisions in subchapter 12. The new rules in subchapters 4 through 11 and subchapter 15 set out the Department's performance and design standards for new and existing underground storage tanks. By establishing minimium construction standards for all new underground storage tanks and upgrades of existing underground storage tanks, the Department expects to decrease the likelihood of ground water contamination from an underground storage tank discharge. The new rules also establish technical requirements for installing, removing and closing underground storage tank systems, requirements for the permitting of any replacement, installation, expansion or substantial modification of a facility, and requirements for corrective action of soil and ground water contaminated by hazardous substances released by UST systems.

Subchapter 1 sets forth general information, including the scope, construction, purpose, and applicability of the rules, and the definitions for the chapter. N.J.A.C. 7:14B-1.3 and 1.4 are being amended to reflect the addition of subchapters 4 through 12 and 15. In addition, new definitions of terms used for the first time in the new subchapters are being proposed in N.J.A.C. 7:14B-1.6. Existing definitions for extended out of service, long term out of service, and temporary out-of-service underground storage tanks have been removed in favor of the requirements in subchapter 9. The term "system" is being added to all places in the chapter where the term "underground storage tank" means the entire tank system, including the piping. This change is being made to emphasize that this chapter applies to all portions of an underground storage tank system, including ancillary equipment and piping.

Subchapter 2 sets forth the specific underground storage tank registration requirements and procedures. An amendment is being proposed to this subchapter requiring owners and operators to register their tanks prior to their being closed (see N.J.A.C. 7:14B-2.1(f)).

Subchapter 3 sets forth the different fee schedules for the UST program. The existing registration fee schedules (see N.J.A.C. 7:14B-3) remain intact, with one exception. An additional exemption for UST's abandoned according to N.J.A.C. 7:14B-9.2 and 3 is being proposed (see N.J.A.C. 7:14B-3.4(b)). Fees are being added in N.J.A.C. 7:14B-3.5 to cover installation permits issued under N.J.A.C. 7:14B-10 and closure approvals issued under N.J.A.C. 7:14B-9. The fees are based upon the number of staff hours necessary to review the particular application.

Subchapter 4 establishes performance standards and engineering requirements for new and existing underground storage tank systems. All new tank systems will have to meet minimum construction standards, (see N.J.A.C. 7:14B-4.1(g)) including corrosion protection for the tank and the piping, (see N.J.A.C. 7:14B-4.1(a)) and spill and overfill protection for the tank (see N.J.A.C. 7:14B-4.1(c)). All owners and operators of new tank systems must also maintain a discharge monitoring system. New facilities located in environmentally sensitive areas will need to install secondary containment on the tank system, as well as corrosion, spill and overfill protection (see N.J.A.C. 7:14B-4.1(d)2). Corrosion protection may consist of fiberglass reinforced plastic, cathodically protected steel or similar types of corrosion protected materials. Existing tank systems must be upgraded to meet new tank standards by September 3, 1991 either through retrofitting or replacement (see N.J.A.C. 7:14B-4.5(c)).

Subchapter 5 sets forth general operating requirements for UST systems. The owner or operator or the person who delivers the hazardous substance must be present at all deliveries of hazardous substances to prevent spills or overfills due to neglect (see N.J.A.C. 7:14B-5.1(b)). All cathodic protection systems must have scheduled maintenance programs to ensure that they are continuing to provide the necessary protection to the tank system (see N.J.A.C. 7:14B-5.2(a)2). Repairs to tanks may only be made under certain conditions to insure that a repaired tank can hold a hazardous substance without risk of release (see N.J.A.C. 7:14B-5.3). Inventory control practices must be followed by all tank owners and operators as a method to detect releases (see N.J.A.C. 7:14B-5.4). All facilities must have a release response plan which describes the steps to be followed by the operator in case there is a release from the tank system (see N.J.A.C. 7:14B-5.5).

Subchapter 6 sets forth performance standards and operating conditions for monitoring systems. There are four main types of discharge monitoring systems allowed under the rules for single wall tanks: ground water monitoring wells (see N.J.A.C. 7:14B-6.2(b)2), vapor monitoring wells (see N.J.A.C. 7:14B-6.2(a)3), observation wells in conjunction with partial liners (see N.J.A.C. 7:14B-6.2(b)3) and in-tank monitors which measure the level of liquid in tank (see N.J.A.C. 7:14B-6.2(b)5). Each of the four alternatives has restrictions to their uses. The facility's owner or operator must select either the ground water monitoring well, the vapor monitoring well or the partial liner and observation well system if the different restrictions allow for their selection (see N.J.A.C. 7:14B-6.1(a)). Otherwise, the in-tank monitor may be selected. Various restrictions include the type of soil, depth to ground-water table, existing soil contamination, and the type of hazardous substance stored.

Subchapter 7 sets forth procedures to be followed if a release is suspected or confirmed, including minimum investigation techniques. Some examples of a suspected release are: inventory control record discrepancy, tank test failure, and evidence of a hazardous substance in soil, ground water or nearby surface water (see N.J.A.C. 7:14B-7.1). Examples of a confirmed release are: evidence of hazardous substances in a discharge monitoring system, second tank test failure, and results from a closure site assessment which indicates contamination (see N.J.A.C. 7:14B-7.3). Methods to investigate a suspected release are: reviewing inventory control records, conducting a visual inspection of all readily accessible physical facilities, and checking the calibration or operation of dispensers or monitoring systems (see N.J.A.C. 7:14B-7.2).

Subchapter 8 sets forth the corrective action procedures which must be followed if a release is confirmed. The facility must take immediate steps to control the release by ceasing use of the tank, emptying the tank, and mitigating the effects of the release (see N.J.A.C. 7:14B-8.1). Local and State authorities must be notified immediately (see N.J.A.C. 7:14B-8.3(a)). A site investigation to determine the nature and extent of the release shall be initiated as soon as any emergency conditions are mitigated (see N.J.A.C. 7:14B-8.3(a)3). Contamination due to the release must be remediated. This includes removal of free product off of the ground water table, removal or treatment of visibly contaminated soils,

and the removal of dissolved product in ground water as determined necessary by the Department (see N.J.A.C. 7:14B-8.2).

Subchapter 9 sets forth the requirements for closure of an underground storage tank system, including the assessment of the site where the tank was located. All tanks which are closed must be removed, unless it is physically impossible to do so due to structural concerns (see N.J.A.C. 7:14B-9.1(c)). Specific procedures for decommissioning a tank are proposed, including degassing, cleaning and disposal of tank sludges (see N.J.A.C. 7:14B-9.2(b)4). Most owners of closed tanks will be required to perform a site assessment to determine if a past release has occurred by installing at least one monitoring well in the excavation of the removed tank (see N.J.A.C. 7:14B-9.2(c)). Any tank left empty for less than 12 months must continue to maintain its corrosion protection system, while tanks left empty for greater than 12 months must be closed, unless a site assessment is performed (see N.J.A.C. 7:14B-9.1(a) and (b)). Owners or operators of facilities closing a tank must notify the Department of their intent to close the facility (see N.J.A.C. 7:14B-9.2(a)).

Subchapter 10 sets forth the permitting requirements for all new installations, replacements or substantial modificatons of tank systems or monitoring systems. Permits will be required prior to installation of single wall tanks, piping, discharge monitoring systems, and corrosion, spill and overfill protection systems (see N.J.A.C. 7:14B-10.1). Permits are not required for new installations of tank systems which have secondary containment (see N.J.A.C. 7:14B-10.1(b)). Facilities with previously installed monitoring systems will also need Department approval (see N.J.A.C. 7:14B-10.1(g)2).

Subchapter 11 sets forth the criteria under which a municipality may pass a local ordinance which regulates USTs. The municipality must prove to the Department that there is an environmental condition in the town which requires additional regulatory protection (see N.J.A.C. 7:14B-11.2(a)). If the Department approves the request, the local ordinance may be passed (or retained, if currently in existence). All other local ordinances regulating USTs are superseded by these rules (see N.J.A.C. 7:14B-11.1(a)).

Subchapter 12 sets forth the penalty provisions of the UST program and the procedures for requesting an adjudicatory hearing. The State Act at N.J.S.A. 58:10-32 incorporates the provisions of the Water Pollution Control Act, N.J.S.A. 58:10A-10, for its penalty authority. The penalties and the procedures for appealing them are codified at N.J.A.C. 7:14-8. Adjudicatory hearings may be requested by owners of facilities when the owner believes that a permit or registration has been illegally denied, revoked, or suspended (see N.J.A.C. 7:14B-12.2(b)).

Subchapter 13, proposed elsewhere in this issue of the New Jersey Register will contain the rules for loans to be made from the Underground Storage Tank Improvement Fund (see N.J.S.A. 58:10A-36). At this time the Department is developing a loan program to suit the particular needs of the Bureau of Underground Storage Tanks. The loan rules will be proposed in the near future with the intention of adopting them in conjunction with these rules.

Subchapter 14 will contain the financial responsibility requirements for facility owners. The United States Environmental Protection Agency has recently promulgated regulations on a nationwide basis on this subject and the Department is reviewing those regulations. The Department intends to propose rules on financial responsibility requirements in the near future.

Subchapter 15 sets forth the confidentiality provisions, including the procedures for application and storage of materials declared to be confidential. All material classified in this manner will be stored in locked file drawers, with access limited to specified personnel (see N.J.A.C. 7:14B-15.2(b)). Any contractor hired by the Department who needs to utilize confidential information must also keep the data classified (see N.J.A.C. 7:14B-15.2(b)).

Social Impact

The proposed amendments and new rules will have a beneficial social impact. Releases from underground storage tank systems have the potential to cause severe harm to public health and the environment. Tanks can discharge hazardous substances into the environment, threaten ground water and potable water sources, create vapor hazards which have immediate dangers of explosion and long term health risks. Contamination lowers property values, creates real estate transfer problems, and can render land unfit for development or use.

The proposed amendments and new rules will address most aspects of tank operation and maintenance and include specific corrective action strategies. Tank installation and system standards will prevent discharges from poorly designed or installed systems. Operating requirements will address potential leaks due to poor housekeeping or negligent operatin standards. Monitoring requirements minimize the adverse effects of ur foreseeable discharges, while closure plans detect releases which hav already occurred but have not yet been discovered. Prescribed correctiv action strategies will allow responsible parties to realize the extent an responsibilities related to a spill or discharge.

The proposed amendments and new rules will provide the Departmer with the authority to mandate compliance with a tank managemer program which will ensure that the environmental degradation that r sults from improperly installed, maintained, or abandoned tanks will b abated.

Economic Impact

To comply with these proposed amendments and new rules, an unde ground storage tank system owner or operator is required to proper manage the tank system.

Proper management of the tank system consists of upgrading the sy tem to meet construction standards for corrosion protection, monitorir systems and spill and overfill prevention; conducting site assessmen during closure of the tank system to determine if any releases hav occurred; and operating the system in a manner to prevent releas entirely or to detect releases before they leave the excavation area.

The Department estimates that the cost for compliance with thes proposed rules will vary from minimal for a currently state-of-the-art tan to $50,000 to $100,000 for the installation of a system of three bran new tanks; for retrofitting existing tanks, costs will fluctuate dependin on the site conditions, but these estimates are provided:

Monitoring systems	$2,000 to $10,0(
Corrosion protection systems	$5,000 to $ 7,5(
Spill and Overfill prevention devices	$1,500 to $ 5,0(
	$8,500 to $22,5(

Closure costs are dependent upon the type of site assessment necessar for the tank system to be decommissioned. Costs range from $4,000 t $9,000 for decommissioning and $2,000 to $10,000 for the site assessmen

Normal operating costs consist of inventory control, inspection monitoring systems and inspection of corrosion control systems. Tanl have a design life of 30 years; therefore, no equipment expenditures asic from normal wear and tear are predictable. Labor costs of approximate $3,000 annually will be needed to perform these periodic tasks; howeve the Department considers this to be a normal daily activity in operatir a business.

The economic impact due to releases from tank systems will chan dramatically once tank owners comply with these rules. Initially, mo releases will be detected due to the installation of monitoring system As the older tank systems are replaced by tank systems with corrosic protection most releases which occur now will be prevented. Thus the will be a benefit to the overall community in terms of dollars saved d to these rules.

An average cleanup costs approximately $50,000 at this time. Tl Department estimates that 1,000 releases will be detected annually wh these rules first go into effect, for a total annual cost of $50,000,000. On tank owners comply with the corrosion protection requirements N.J.A.C. 7:14B the number of releases is expected to be only 100 p year. Using the same average cost, the total annual cost for cleanup aft 1991 is approximately $5,000,000. Thus, these rules provide a benefit $45,000,000 per year in savings to the regulated community due to tl prevention of releases.

The administrative costs related to applying for the necessary permi and approvals will depend on the sophistication of the applicant. Tl additional cost of preparing the necessary drawing and application forr under these rules will range from minimal for the facilities already pe forming these functions to several thousand dollars for a facility whi needs to hire an outside consultant to assist them.

Permit fees range from $75.00 to $475.00 per activity. Together wi current annual certification fees and initial registration fees (see N.J.A.(7:14B-2), these permit fees will fund the Department staff of the unde ground storage tank programs. Monies collected from fees will also l used to support facility and records investigation performed by loc health officials.

Assuming these rules go into effect around January 1, 1990, the es mated cost to the regulated community is $2.72 million for Fiscal Ye 1990 and $3.72 million for Fiscal Year 1991. The Fees, along with USEPA grant of $180,000, will provide the estimated $3.9 million r quired to annually fund 78 positions within the Department and t associated program costs as follows:

Underground Storage Tank (UST) Program Staff
(including enforcement staff)

1	Bureau Chief
2	Section Chiefs
5	Supervising Environmental Specialists
4	Supervising Geologists
1	Supervisor, Standards and Procedures
7	Technicians, Management Information Systems
3	Program Development Specialists
21	Principal Environmental Specialists
15	Principal Geologists
1	Financial Specialist
2	Auditors
1	Principal Environmental Engineer
15	Clerical Support

Estimated Salaries	$2,050,000.00
Employee Benefits	$ 482,500.00
Indirect Costs	$ 756,000.00
	$3,288,500.00

Program Costs

Printing/Postage	$ 68,000.00
Travel/Training	$ 40,000.00
Equipment Purchase—Data Processing	$ 25,000.00
Vehicle Replacement	$ 25,000.00
Vehicle Maintenance Repair	$ 5,000.00
County Health Officials	$ 150,000.00
Payback of appropriation	$ 233,500.00
Sampling and analysis	$ 75,000.00
	$ 611,500.00

Estimated Totals

Salaries (with employee benefits and indirect costs)	$3,288,500.00
Program Costs	$ 611,500.00
	$3,900,000.00

Environmental Impact

Uncontrolled and undetected releases from underground storage tank systems can severely degrade both ground and surface waters. As a direct result of an underground storage tank system release, aquatic life is threatened and potable water sources can be contaminated.

One gallon of a hazardous substance released into ground water has the potential of rendering millions of gallons of water unfit for human consumption. In 1986, 1987 and 1988 almost 1,000 cases involving releases from underground storage tanks were reported each year to the Department. Over 300 of these cases, nearly one-third of the total number, affected New Jersey's ground water. Since New Jersey depends on ground water for 50 percent of its potable water, unregulated tank systems cannot be allowed to operate in the Garden State. Upgrading system requirements and early detection of releases will significantly decrease new cases reported to the Department.

Restoration of acquifer systems which have been contaminated by hazardous substances to their original pristine state is very costly and time consuming. The reuse of a previously contaminated aquifer as a water supply may not occur for many years. Thus, one of the primary goals of the UST program is to prevent even minimal releases from occurring. Where they do occur, the releases must be detected early and controlled as soon as feasible so as to prevent the spread of the contamination. Releases which are detected early and immediately addressed may never reach the ground water supply.

Hazardous substances in ground water will also release vapors. Vapors will usually spread over the path of least resistance through the soil medium. In urban areas, the gravel packs around the multitude of sewer lines, telephone cables and electrical equipment will accelerate the spread of vapor. Very often, gasoline fumes are detected in underground structures (such as basements) several hundred feet away from the source of the release. These vapors can form an explosive mixture if allowed to accumulate in an enclosed area. In addition, long term inhalation of low levels of hazardous substance vapors can become a chronic health condition.

The harm caused by leaking underground storage tanks to human health and the State's natural environment can be devastating. The Department intends to achieve a substantial degree of protection from this threat by requiring tank owners and operators to meet certain reasonable standards; to install tanks that do not leak, to upgrade their tanks that are already in place, and monitor their tanks to insure no release occurs. The Department has determined that these and other requirements are the appropriate response to a very real and significant menace to the State's environment.

Regulatory Flexibility Statement

The proposed amendments and new rules apply to all small businesses that store hazardous substances in underground storage tanks governed under the State Act. The Department estimates that 15,000 tank owners and operators are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and will therefore be impacted by the proposed amendments and rules. Types of small businesses to which the rules apply include independent gasoline service stations, fleet services, and heating oil companies, to name a few.

The amendments and rules do not establish different compliance or reporting requirements or timetables that take into account resources available to small businesses. If a small business owns an underground storage tank as defined in N.J.S.A. 58:10A-22(p), then that small business must comply with the State's statutory and regulatory underground storage tank requirements. The fact that underground storage tanks located at small businesses tend to be small in size and few in number will decrease the impact of these rules on the small businesses' owner.

Also, rules are composed of performance standards for the most part. All tank owners and operators, small businesses or not, will have several options to choose from to comply with the rules. In addition, the legislature has already exempted a number of underground tanks from this program including farm tanks and certain residential tanks. Further administrative exemptions would be improper.

Small businesses are not exempt from any part of the reporting, recordkeeping or other compliance requirements of the rules. A primary motivation for enacting UST legislation was to regulate gasoline stations, a large number of which are small businesses. Thus it would be contrary to legislative intent to carve out a regulatory exemption for these establishments. The threat to public health posed by small businesses that own USTs is significant; any exemption for these facilities would seriously undermine the effectiveness of the UST program. Any release of a hazardous substance into the environment is harmful regardless of the size of the establishment from which it originated.

The initial capital cost of compliance for small businesses will vary depending on the activity the small business person chooses to undertake. Tank removal, upgrading with cathodic protection, and monitoring system installation all cost different amounts. However, the Department estimates that initial capital cost of compliance for small businesses that choose to retrofit their tanks would be approximately $8,500 to $22,500. Installation of a system of three brand new tanks would cost between $50,000 and $100,000. The annual compliance cost for a facility under normal operating conditions is dependent on the system selected. Systems which consist of automatic sensing or monitoring devices would require only minimal annual maintenance. Highly labor intensive systems would have an annual compliance cost of several thousand dollars.

To comply with the State's statutory and regulatory requirements, all UST owners and operators must register tanks with the Bureau of Underground Storage Tanks, acquire a permit for certain work performed on tanks, monitor for tank discharges, and, if a tank or tanks do discharge into the environment, clean up the discharge satisfactorily.

A UST owner or operator will require the services of several different professionals throughout the period of tank ownership. At some point professional assistance may be required of a professional engineer, a hydrogeologist and a cathodic protection tester.

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

7:14B-1.3 Purpose

(a) This chapter is promulgated for the following purposes:

1.-2. (No change in text.)

3. To establish Initial Registration and Annual Certification fees; [and]

4. To implement the technical requirements of the State Act;

5. To implement the reporting requirements of the State Act;

6. To implement the corrective action requirements of the State Act;

7. To implement the permitting requirements of the State Act; and

[4.] **8.** (No change.)

7:14B-1.4 Applicability

(a) (No change.)

(b) The following types of underground storage [tanks] **tank systems** are exempt from the requirements of this chapter:

1.-2. (No change.)

3. Tanks [used to store heating oil for onsite consumption in a residential building, except that for the purposes of registration pursuant to this chapter, and inventory control and release detection under sections 7 and 8 of the State Act (N.J.S.A. 58:10A-27 and 58:10A-28), respectively, a tank] with a capacity of [more than] 2,000 gallons **or less** used to store heating oil for onsite consumption in a residential building [shall be considered an underground storage tank];

4.-8. (No change.)

9. Tanks situated in an underground area, including, but not limited to, basements, cellars, mines, drift shafts, or tunnels if the storage tank [is located below the surface of the ground,] is equipped with secondary containment, and is uncovered so as to allow visual inspection of the exterior of the tank;

10. Any pipes, lines, fixtures or other related equipment connected to any tank exempted from the provisions of [the State Act] **this chapter** as set forth in b)1 to [8] **9 above, and 11 to 14 below**;

11.-14. (No change.)

(c) The following types of underground storage tank systems are subject only to N.J.A.C. 7:14B-2, 3, 4.1(a) and (m), 4.3(a) 7 and 8:

1. Tanks used to contain radioactive materials that are regulated under the Atomic Energy Act of 1954;

2. Tanks that are part of an emergency generator system at nuclear power generator facilities regulated by the Nuclear Regulatory Commission under 10 C.F.R. §50 Appendix A; and

3. Sumps.

(d) The following types of underground storage tank systems are subject only to N.J.A.C. 7:14B-2, 3, 5.4, 7 and 8:

1. Tanks used to store heating oil for onsite consumption in a residential building with a capacity greater than 2,000 gallons.

7:14B-1.6 Definitions

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

["Abandoned" or "abandonment"] **"Abandon in place" or "abandonment in place"** means a tank **system** rendered permanently nonoperational and left in the ground.

. . .

"Annular space" means the space created between the primary and secondary container of a double-walled underground storage tank.

"Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

"Below the surface of the ground" means beneath the ground surface or otherwise covered [so that physical or visual inspection of the exterior is precluded] **with earthen materials.**

"Casing" means a pipe used to support the sides of a hole to prevent caving or the entrance of water or other fluids into the hole.

"Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"Close" or "closure" means the permanent elimination from service of any underground storage tank **system** by removal or abandonment **in place.**

"Commercial" means any activity involving a hazardous substance from an underground storage tank **system** including, but not limited to, the resale, distribution, processing and transportatin of any hazardous substance, as well as the use of any hazardous substance to perform or carry out these or other activities, that results in monetary gain.

. . .

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the tank system.

"Continuous monitoring" means a monitoring system that incorporates automatic equipment that can detect leaks and/or discharges without interruption.

"Corrosion" means the deterioration of a material by direct or electrochemical reaction with its environment.

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a licensed New Jersey Professional Engineer as defined in N.J.S.A. 45:8-27 et seq.

"Daily" means at least five days per week.

"Decommissioning" means the excavating, cleaning, degassing, removal or abandonment in place of an underground storage tank system.

. . .

"Discharge detection system" means a method of detecting a discharge of hazardous substances into the environment from an underground storage tank system.

"Double-walled tank" means an underground storage tank in which a rigid secondary container is attached to the primary container and which has an annular space.

. . .

"Empty" means all hazardous substances have been removed that can be removed by direct pumping or drainage and no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the system remains.

"Excavation area" means the area containing the underground storage tank system and backfill material and bounded by the above ground surface, walls, and pit and trenches into which the underground storage tank system is placed at the time of installation.

"Existing [facility] **underground storage tank system**" means a underground storage tank **system** [that holds or held any quantity of any hazardous substance] **for which installation has commenced on or before December 21, 1987** and is not closed pursuant to this chapter. **Installation is considered to have commenced if:**

1. The owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if

i. A continuous on-site physical construction or installation program has begun; or

ii. The owner or operator has entered into contractual obligations which cannot be cancelled or modified without substantial loss. These contractual obligations shall be for physical construction at the site or installation of the tank system which shall be completed within a reasonable time.

"Exposure assessment" means a study to identify all existing and/or potential receptors of contamination due to a release of hazardous substances into the environment.

["Extended out-of-service" means an underground storage tank not in use for a period between 90 days and two years.]

"Facility" means one or more underground storage tank[s] **system** owned by one person on a contiguous piece of property.

. . .

"Field constructed tank" means a tank constructed at the facility with a capacity of 50,000 gallons or more. Tanks which are factory built and assembled in the field are not considered field-constructed tanks.

"Flow-through process tank" means a tank that forms an integral part of [an industrial or commercial] **a production** process through which there is a steady [or uninterrupted], **variable, recurring, or intermittent** flow of materials during the operation of the process. **Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.**

"Free product" means a hazardous substance that is present as a non-aqueous phase liquid.

. . .

"Holiday" means a flaw in the integrity of the metal or a flaw in the corrosion resistant coating of the metallic parts of an underground storage tank system which may cause the metal to corrode.

. . .

"Installation" means the emplacement of a new underground storage tank **or underground storage tank system** including the replacement of an existing underground storage tank **or underground storage tank system.**

"Inventory controls" means the techniques used to identify a loss of product that are based on volumetric measurements in the underground storage tank and reconciliation of these measurements with hazardous substance delivery and withdrawal records.

"Leak" means the release of a hazardous substance from an underground storage tank **system** into a space created by a method of secondary containment wherein hazardous substances can be detected by visual inspection or a monitoring system before it enters the environment.

"Leak detection system" means a method of detecting a leak in the space created by a method of secondary containment.

"Legal entity" means all public and private entities including all political subdivisons of the State such as counties and municipalities as well as utility authorities.

"Lining" means a layer of non-corrodible material resistant to the hazardous substance stored and bonded firmly to the interior surface of the tank, pipe, line, fixture or other equipment.

. . .

"Liquid level indicator" means a monitoring system which detects a change in the height of a fixed volume of liquid in an annular space.

"Liquid sensor" means a monitoring system which detects the liquid phase of a hazardous substance.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering and extraction operations (including gas production plants) for the purpose of collecting oil, water, and other liquids for subsequent disposition or reinjection into a production or pipeline stream, or which may collect and separate liquids from a gas stream.

["Long term out-of-service" means an underground storage tank not in use for a period of more than two years.]

"Membrane liner" means a synthetic non-corrodible impervious material used as a barrier around the tank system to facilitate monitoring releases.

. . .

["Motor fuel" means any petroleum product that includes, but is not limited to, all grades of gasoline, diesel fuel and kerosene used in the operation of any type of engine.]

"Monitor well" means a well used to observe the elevation of the water table or potentiometric surface, or to determine water quality in an aquifer.

"Monitoring system" means [a system] **either a discharge detection system or leak detection system** capable of detecting leaks or discharges, or both, other than an inventory control system, used in conjunction with an underground storage tank, or a facility conforming to criteria established [pursuant to Section 5 of the State Act (N.J.S.A. 58:10A-25)] **in N.J.A.C. 7:14B-6.**

"Motor fuel" means any petroleum product that includes, but is not limited to, all grades of gasoline, diesel fuel and kerosene used in the operation of any type of engine.

"New underground storage tank system" means an underground storage tank system which does not presently exist or is closed.

. . .

"Non-public water supply" means a water system that is not a public water system.

"Numbers 4, 5, and 6 fuel oil" means grades of fuel oil used for power generation or heating with properties listed with ASTM Specifications D-396 and 975.

. . .

"Permit" means an authorization or license or equivalent control document issued by the Department or its designee to implement the requirements of N.J.A.C. 7:14B-10.

. . .

"Piping" or "pipe" means any hollow cylinder or tubular conveyance which routinely contains a hazardous substance, is in contact with the ground and is constructed of non-earthen materials including any valves, elbows, joints, flanges and flexible connections and is designed to transport hazardous substances. Piping does not include vent lines, vapor recovery lines or fittings located on top of the tank.

"Piping containment chambers" means a container attached to the top of the underground storage tank accessible to grade providing containment of product bearing appurtenant pipe fittings.

"Presure loss sensor" means a monitoring system which can detect a loss of pressure in a pressurized annular space.

"Primary container" means the first level of containment which comes into immediate contact on its inner surface with the hazardous substance being contained (for example, single-walled tank).

"Product tight" means impervious to the hazardous substance contained or to be contained so as to prevent a release.

"Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals daily.

"Qualified geologist or ground water hydrologist" means any person who has:

1. Graduated from an accredited college with a bachelor's degree in hydrogeology, geohydrology, or soil science and has five years of appropriate professional experience;

2. Graduated from an accredited college with a bachelor's degree in geology including and/or supplemented by a minimum of three credit hours in hydrogeology or geohydrology and has five years of appropriate professional experience; or

3. Graduated from an accredited college with a bachelor's degree in one of the natural or physical sciences including and/or supplemented by 21 credit hours in pedology (course work in paleontology or mining will not be considered acceptable) and has five years of appropriate professional experience.

. . .

"Saturated zone" or "zone of saturation" means that part of the subsurface under atmospheric pressure in which all voids are filled with water.

"Screen" means a pipe used to support the sides of a hole which allows the entrance of water, gas, or other fluid into the hole.

"Secondary containment" means an additional layer of impervious material creating a space wherein a leak of hazardous substances from an underground storage tank **system** may be detected before it enters the environment.

"Stage" means to place in a temporary holding area prior to final disposal.

. . .

"Sump" means any pit or reservoir that meets the definition of an underground storage tank (including pipes, troughs or trenches connected to it) that serve to collect or contain a leak or discharge of a hazardous substance for no more than 48 hours.

"Surface impoundment" means a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is designed to hold an accumulation of hazardous substances and that is not an injection well.

. . .

["Temporarily out-of-service" means an underground storage tank not in use for a period of 90 days or less.]

. . .

"Underground storage tank" means any one or combination of tanks as set forth in N.J.A.C. 7:14B-1.4, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of hazardous substances, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10 percent or more [below] **beneath the surface of** the ground.

. . .

"Underground storage tank system" or "tank system" means an underground storage tank and its associated ancillary equipment and containment system, if any.

"Unsaturated zone" means the subsurface zone containing water under pressure less than that of the atmosphere, including water held by capillary forces within the soil containing air or gases generally under atmospheric pressure. This zone is limited above by the ground surface and below by the upper surface of the zone of saturation.

"Use" means the filling, dispensing or storing of any hazardous substance from or in an underground storage tank **system**.

"U-tube" means a slotted pipe located lengthwise and underneath each tank, sloped to a collection sump and accessible at grade.

"Vacuum loss sensor" means a monitoring system which detects the loss of vacuum from an annular space and thereby indicates a breach in either the primary or secondary container.

"Vadose zone" means the zone containing water under hydrostatic pressure less than atmospheric pressure and which is bounded by the ground surface and the water table.

"Vapor sensor" means a monitoring system which can detect the gaseous phase of a hazardous substance.

"Volatile organic substance" means any organic substances, mixture of organic substances, or mixture of organic and inorganic substances including, but not limited to, petroleum crudes, petroleum fractions, petrochemicals, solvents, dilutents, and thinners which have vapor pressures or sums of partial pressures of substances of 0.02 pounds per square inch (one millimeter of mercury) absolute or greater measured at standard conditions of atmospheric pressure and a temperature of 60 degrees Fahrenheit; and, in the case of surface coating formulations, incudes any coalescing or other agent, regardless of vapor pressure, which evaporates from the coating during the drying phase; but does not include methane, dichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, 1,1,2 trichloro-1,2,2, trifluorethane, 1,2 dichloro-1,1,2,2 tetrafluoroethane and chloropentafluoroethane.

. . .

"Water table" means the surface of the body of unconfined ground water where the hydrostatic pressure is equal to atmospheric pressure. The water table is the boundary betwen the saturated and unsaturated zones.

7:14B-2.1 General registration requirements

(a) Any person that owns or operates an underground storage tank **system** shall register each tank **system** with the Department.

(b) Any person that owns or operates an underground storage tank **system** who notified the Department pursuant to Section 9002 of the "Hazardous Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act", 42 U.S.C. §§ 6901 et seq., shall comply with all requirements set forth in this chapter.

(c) Any person that owns or operates an underground storage tank **system** shall [, two years following the effective date of this chapter,] only use such tank system upon receipt of a valid Registration Certificate issued by the Department.

(d) Any person that owns or operates an underground storage tank **system** that began use of the tank on or before [the effective date of this chapter] **December 21, 1987** shall register the [facility] **tank system** with the Department no later than 60 days following this date. Any person that owns or operates an underground storage tank **system** that was installed after [the effective date of this chapter] **December 21, 1987** shall register the [facility] **tank system** with the Department 30 days prior to the use of that tank **system**.

(e) Any person that owned or operated an underground storage tank **system** which was removed from the ground on or after September 3, 1986 shall register that tank **system** for the period between September 3, 1986 and the date that the tank **system** was removed.

(f) Any owner or operator intending to close an underground storage tank system shall register the underground storage tank system with the Department before these closure activities are begun.

7:14B-2.2 Registration and certification procedures

(a) Any person that owns or operates a facility shall file registration and certification information on the [official] New Jersey Underground Storage Tank Registration Questionnaire [(see Appendix A)] and the [official] New Jersey Underground Storage Tank Annual Certification Form [(see Appendix B)], respectively.

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

(d) The owner or operator of a facility shall, at a minimum, supply the following information on the New Jersey Underground Storage Tank Registration Questionnaire:

1. The name, location, and contact person for the facility;

2. The name and address of the facility owner;

3. The number and type of underground storage tank systems at the facility, including, but not limited to, contents, size, age, type of construction and other characteristics of the tank system;

4. A site plan of the facility, including the location of the tanks, lines, pumps, dispensers, fill pipes, and other features of the tank system, including the distance from existing buildings and property boundaries; and

5. Provide the following information for all general liability insurance or other financial responsibility mechanisms:

i. Type of mechanism;

ii. Carrier or issuing institution;

iii. Date of coverage;

iv. Policy number (if applicable); and

v. Policy amount (if applicable).

(e) The owner or operator of a facility shall, at a minimum, supply the following information on the New Jersey Underground Storage Tank Annual Certification Form:

1. Certification that the facility is in compliance with this chapter;

2. Notification of any changes to the status of the facility; and

3. Provide the following information for all general liability insurance or other financial responsibility mechanisms:

i. Type of mechanism;

ii. Carrier or issuing institution;

iii. Date of coverage;

iv. Policy number (if applicable); and

v. Policy amount (if applicable).

(f) The owner or operator of a facility shall, at a minimum, supply the following information on the New Jersey Underground Storage Tank Standard Reporting Form:

1. Identify whether the underground storage tank located at the owner or operator's facility is being installed, abandoned, removed, sold or transferred, or substantially modified;

2. The name and address of the owner or operator;

3. The facility name and location;

4. The identification number of the affected tank as it appears on the Registration Questionnaire;

5. The underground storage tank registration number (if known);

6. Specific information concerning transfer of ownership, abandonment or removal, substantial modifications and new or replacement installations, depending on which activity is applicable;

7. Certification that the facility is in compliance with this chapter. and

8. Provide the following information for all general liability insurance or other financial responsibility mechanisms:

i. Type of mechanism;

ii. Carrier or issuing institution;

iii. Date of coverage;

iv. Policy number (if applicable); and

v. Policy amount (if applicable).

7:14B-2.3 Signatories

(a) All registrants shall, upon submission, sign the following certification on the forms identified in (b) below:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification required by in (a)1 above shall be signed by the highest ranking individual at the facility with overall responsibility for that facility.

(b) The certification set forth in (a) above shall be signed on the following forms:

i. The New Jersey Underground Storage Tank Registration Questionnaire;

[ii. The New Jersey Underground Storage Tank Annual Certification Form; and]

[iii.] **ii.** The New Jersey Underground Storage Tank Standard Reporting Form.

(c) All owners and operators shall, upon submission, sign the following certification for the activities set forth in (d) below:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification set forth in (c)1 above shall be signed by the highest ranking individual with overall responsibility for that facility.

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including the possibility of fines and/or imprisonment."

i. The certification required by (c)2 above shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency by either the principal executive officer or ranking elected official.

(4) In cases where the highest ranking corporate, partnership, or governmental officer or official at the facility as required in (c)1i above is the same person as the official required to certify in (a)2i, only the certification in (c)1i need be made. In all other cases, the certifications of (c)1 and 2 shall be completed.

(d) The certifications set forth in (c) above shall be completed on the following submittals:

1. The Annual Certification Form required in N.J.A.C. 7:14B-2.2(e);

2. The discharge of hazardous substances report required in N.J.A.C. 7:14B-8.3(a)6;

3. A request for an exemption to site assessment requirements as set forth in N.J.A.C. 7:14B-9.4(c);

4. The closure report required by N.J.A.C. 7:14B-9.5(a)5; and

5. A permit application as required in N.J.A.C. 7:14B-10.1(f)8.

7:14B-2.4 Transfer of registration

(a) (No change.)

(b) The owner or operator of an underground storage tank **system** shall notify the Department of any change in the ownership of a facility within 30 days after the contract date or the date of closing on the Standard Reporting Form [(see Appendix C)] obtainable from the Department at the address provided in N.J.A.C. 7:14B-2.2(b) and in accordance with the procedures for reporting modifications set forth in N.J.A.C. 7:14B-2.5.

(c) (No change.)

7:14B-2.5 Changes to registration

(a) The owner or operator of a facility shall amend a facility's registration to reflect any modification of any information included in the New Jersey Underground Storage Tank Registration Questionnaire or New Jersey Underground Storage Tank Annual Certification Form. Each modification shall be reported to the Department on a separate Standard Reporting Form within 30 days after completion of the modification **except as provided for in (c) below.**

(b) Modifications include, but are not limited to, the following:

1. The sale or transfer of ownership of a facility;

2. The [installation,] abandonment, removal or substantial modification of a facility;

3. A change in the type of hazardous substances stored at a facility[; and].

(c) The owner or operator intending to close an underground storage tank system shall submit a Standard Reporting Form in advance of the closure as required by N.J.A.C. 7:14B-9.1 through 9.

7:14B-2.7 Display of Registration Certificate

The owner or operator of an underground storage tank **system** shall prominently display a valid Registration Certificate at the facility or shall make the Registration Certificate available for inspection by an authorized local, State or Federal representative.

7:14B-2.8 Denial or revocation of registration

(a) The Department may, in its discretion, deny the issuance of a Registration Certificate upon a determination of the following:

1. The New Jersey Underground Storage Tank Registration Questionnaire is incomplete, contains inaccurate information and/or is illegible;

2. The owner or operator fails to enclose the accurate Initial Registration Fee with the New Jersey Underground Storage Tank Registration Questionnaire pursuant to N.J.A.C. 7:14B-3.1; or

3. The owner or operator fails to comply with any requirement of the State Act or this chapter.

(b) The Department may revoke the registration of a facility upon a determination of the following:

1. The New Jersey Underground Storage Tank Registration Questionnaire contains false or inaccurate information;

2. The owner or operator has failed to submit an Annual Certification Form pursuant to N.J.A.C. 7:14-B-2.2;

3. The owner or operator has failed to pay the Annual Certification fee pursuant to N.J.A.C. 7:14B-3.1;

4. An authorized government representative is denied access to the facility during normal business hours; or

5. The owner or operator has failed to comply with any requirement of the State Act or this chapter.

(c) The Department shall inform an owner or operator of the denial or revocation of registration by Notice of Intent to Deny Registration or Notice of Intent to Revoke Registration. This Notice shall include:

1. The specific grounds for denial of issuance as set forth in N.J.A.C. 7:14B-2.8(a) above; or

2. The specific grounds for revocation as set forth in N.J.A.C. 7:14B-2.8(b) above.

(d) The Department shall serve this Notice to an owner or operator by certified mail (return receipt requested) or by personal service.

(e) An owner or operator that receives a Notice from the Department denying or revoking a registration shall not use the tank as required by N.J.A.C. 7:14B-2.1(c).

(f) Any person whose registration has been denied or revoked may request a hearing pursuant to N.J.A.C. 7:14B-12.2(a).

7:14B-3.1 Initial Registration [Fee] **fee**

The owner or operator of an underground storage tank **system** shall submit a $100.00 Initial Registration fee for each facility upon registration of the facility with the Department. [This subsection shall be operative one year following the effective date of these rules.]

7:14B-3.2 Annual Certification [Fee] **fee**

(a) The owner or operator of an underground storage tank **system** shall submit an Annual Certification [Fee] **fee** for each facility upon the yearly re-registration of the facility with the Department.

(b) The Annual Certification [Fee] **fee** is as follows:

1.-2. (No change.)

7:14B-3.4 Exemption from fees

(a) The Department shall not assess a fee to public schools or religious or charitable institutions.

1. For the purpose of this exemption, "public school" means a school, under college grade, which derives its support entirely or in part from public funds and is listed as a public school in the current edition of the New Jersey Department of Education's "School Directory."

(b) The Department shall not assess a fee for underground storage tank systems which have been abandoned in place in acccordance with N.J.A.C. 7:14B-9.1(d).

7:14B-3.5 Permit and approval fees

(a) The owner or operator of an existing or proposed underground storage tank system shall obtain a permit or approval from the Department before beginning any of the activities listed below. The owner or operator shall submit a fee for each activity at a facility which requires a permit or approval. An activity is one of the following:

1. Installation of a new underground storage tank system;
2. Closure of an underground storage tank system; or
3. Substantial modification of an underground storage tank system.

(b) The owner or operator shall submit a separate fee for each excavation area where an activity occurs.

(c) The fee schedule is as follows:

1. $50.00 for application review and permit or approval issuance for each activity;

2. $25.00 to receive a permit for the installation of spill and/or overfill protection devices;

3. $300.00 to receive a permit for the installation of a discharge monitoring system;

4. $100.00 to receive a permit for the installation of a field installed cathodic protection system on a new or existing tank system;

5. $100.00 to receive a permit for the substantial modification of an underground storage tank system which is not included in 2, 3 or 4 above;

6. $120.00 to receive an approval for the closure of an underground storage tank system requiring a site assessment; and

7. $80.00 to receive an approval for the closure of an underground storage tank system which does not require a site assessment.

[SUBCHAPTER 4. PENALTIES

7:14B-4.1 Penalties

Failure by an owner or operator of an underground storage tank to comply with any requirement of the State Act or this chapter may result in the penalties set forth in N.J.S.A. 58:10A-10.

AGENCY NOTE: Appendices A, B, and C, the New Jersey Underground Storage Tank Registration Questionnaire, the New Jersey Underground Storage Tank Annual Certification Questionnaire and the Standard Reporting Form, are not published in the New Jersey Administrative Code, but are available from the Department of Environmental Protection, Division of Water Resources, Bureau of Underground Storage Tanks, CN-029, Trenton, New Jersey 08625.]

AGENCY NOTE: Penalties are now in N.J.A.C. 7:14B-12.

SUBCHAPTER 4. UNDERGROUND STORAGE TANK SYSTEM PERFORMANCE STANDARDS AND ENGINEERING REQUIREMENTS

7:14B-4.1 Performance standards for new underground storage tank systems

(a) All new underground storage tank systems shall be properly designed, constructed and protected from corrosion in accordance with (g), (h), (i), (j), or (k) below.

(b) All compartmentalized tanks shall hold, in each compartment, hazardous substances compatible with one another to prevent safety hazards such as fire or explosion or corrosion of the underground storage tank system in case of breaches in the compartment walls.

(c) All new underground storage tank systems shall be equipped with spill and overfill prevention devices as follows:

1. A spill catchment basin of at least 15 gallons capacity; and

2. Overfill protection which satifies one of the following:

i. A sensor for measuring the level of product in the tank, equipped with an audible or visual alarm (mounted in proximity to the point of delivery so that the alarm can be easily heard or seen) that is triggered when the tank is 90 percent full;

ii. A device designed to restrict the flow of product into the tank when the tank is 90 percent full; or

iii. A device designed to automatically stop the flow of product into the tank when the tank is 95 percent full.

3. The owner or operator of the underground storage tank system is not required to install the overfill protection required by (c)2 above if the tank system is filled by transfers of no more than 25 gallons at one time.

(d) The following categories of new underground storage tanks shall be equipped with both primary and secondary levels of containment;

1. All new tanks containing hazardous substances other than petroleum products and waste oil, except that the Department may, in its discretion, waive this requirement where the owner or operator provides the following;

i. An alternate method which can detect a release of the stored substance as effectively as any of the methods allowed in the discharge monitoring sections of N.J.A.C. 7:14B-6.2a(a), (b) and (c) can detect a release of petroleum; and

ii. Information on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the underground storage tank site;

2. All new tanks located within any one of the following distances

i. For underground storage tanks containing gasoline, within 2000 feet of a public community water system;

ii. For underground storage tanks containing petroleum products other than gasoline, within 750 feet of a public community water system;

iii. Within 300 feet of a public non-community water system well or

iv. Within 300 feet of a surface water body; and

3. All new tanks that cannot comply with the requirements of N.J.A.C. 7:14B-6.3(b)2 for discharge monitoring systems.

(e) All new underground storage tanks shall be equipped with strike plates.

(f) All new underground storage tanks shall be equipped with product tight piping chambers accessible to grade containing all piping connections of product bearing piping excluding the fill pipe where a spill catchment basin is used.

(g) All new underground storage tanks constructed of fiberglass reinforced plastic shall conform to the standards set forth by one of the following national trade associations or independent testing laboratories, incorporated herein by reference:

1. Underwriters Laboratories Standard 1316, "Standard for Glass Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products";

2. Underwriters Laboratories of Canada CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products"; or

3. American Society of Testing and Materials Standards D4021-8(

(h) All new underground storage tanks constructed of dielectrically coated steel and cathodically protected with factory installed sacrificial anodes shall conform to the standards set forth by one of the following national trade associations or independent testing laboratories, incorporated herein by reference:

1. Steel Tank Institute, "Specification for STI-P3 System for External Corrosion Protection of Underground Storage Tanks";

2. Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks"; or

3. Underwriters Laboratories of Canada:

i. CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustile Liquids";

ii. CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids"; or

iii. CAN-S631-M-84, "Isolating Bushings for Steel Underground Tanks Protected with Coating and Galvanic Systems;" or

4. UL standard 58, "Steel Underground Storage Tanks for Flammable and Combustible Liquids."

(i) All new underground storage tanks constructed of dielectrically coated steel and cathodically protected with a field installed cathodic protection system shall conform to the standards set forth by the following national trade associations or independent testing laboratories, incorporated herein by reference:

1. National Association of Corrosion Engineers Standard RP-02-0 "Control of External Corrosion of Metallic Buried, Partially Buried or Submerged Liquid Storage Systems;

2. Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids;" or

3. UL standard 58, "Steel Underground Storage Tanks for Flammable and Combustible Liquids."

(j) All new underground storage tanks constructed of a steel fiberglass-reinforced-plastic composite shall conform to the standards set forth by the following national trade association or independent testing laboratories, incorporated herein by reference:

1. Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks;" or

2. Association for Composite Tanks ACT-100, "Specification for Fabrication of FRP clad Underground Storage Tanks."

(k) An owner or operator may install a new underground storage tank constructed of materials other than those listed in (g) through (j) above if the material is approved by one of the organizations listed in (g) through (j) above.

(l) All new underground storage tanks systems with cathodic protection systems shall be equipped with a measuring station accessible to grade to allow for the testing of the cathodic protection systems.

(m) The owner or the operator of an underground storage tank system shall ensure that the new underground storage tank system and the hazardous substance to be stored in or dispensed from that system will not interact in a way that may undermine the integrity of the system or promote its corrosion.

7:14B-4.2 Performance standards for new underground storage tank appurtenant piping

(a) All new underground storage tank appurtenant piping conveying hazardous substances other than petroleum products or conveying hazardous substances in area described in N.J.A.C. 7:14B-4.1(d) shall be constructed in the following manner:

1. Double walled with a leak detection monitoring system installed in accordance with N.J.A.C. 7:14B-6.3(a)2;

2. Placed within a lined trench which terminates at the bottom of dispenser and top of the tank, installed in accordance with N.J.A.C. 7:14B-4.4(d)6, and equipped with a leak detection monitoring system in accordance with N.J.A.C. 7:14B-6.3(a)2;

3. Suction line piping, except for gravity return lines and remote fill ports, equipped and installed in accordance with N.J.A.C. 7:14B-6.3;

4. Single walled piping with line leak detectors, except for gravity return lines and remote fill ports installed on product bearing lines in accordance with N.J.A.C. 7:14B-6.3; or

5. Secondarily contained utilizing a semirigid, dielectric, noncorrosive material. This material shall be compatible with the hazardous substance stored. It shall be at least 175 mils thick and provide an interstitial space to be tested at a pressure recommended by the manufacturer.

(b) All new underground storage tank appurtenant piping material shall be compatible with the hazardous substance being stored and dispensed from the underground storage tank.

(c) All new underground storage tank appurtenant piping constructed of fiberglass reinforced plastic shall conform to the standards set forth by one of the following national trade associations or independent laboratories, incorporated herein by reference:

1. Underwriters Laboratories:

i. Standard 971, "UL Listed Non-Metal Pipe"; or

ii. Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas"; or

2. Underwriters Laboratories of Canada:

i. Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; or

ii. Standard CAN4-S633-M81, "Flexible Underground Hose Connectors."

(d) All new underground storage tank appurtenant piping constructed of dielectrically coated steel and equipped with a field installed cathodic protection system shall conform to the standards set forth by least one or more of the following national trade associations or independent testing laboratories, incorporated herein by reference:

1. National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

2. American Petroleum Institute:

i. Publication 1615, "Installation of Underground Petroleum Storage Systems"; and

ii. Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; or

3. National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems."

(e) The owner or operator of all new underground storage tank appurtenant piping constructed of materials other than those listed in (c) and (d) above must receive approval from one of the organizations listed in (c) and (d) above. This information must be submitted to the Bureau of Underground Storage Tanks.

(f) The Department may, in its discretion, approve a new underground storage tank piping system not specified in this section upon the submittal to the Bureau of Underground Storage Tanks by the owner or operator of data from one of the following organizations that proves that the new underground storage tank piping system will prevent discharges as effectively as the systems listed in (a) above:

1. American Petroleum Institute;

2. Petroleum Equipment Institute;

3. Underwriter's Laboratories; or

4. American Society for Testing and Materials.

7:14B-4.3 Installation requirements for new underground storage tanks and appurtenant piping

(a) All new underground storage tanks and appurtenant pipe shall be installed in conformance with the manufacturer's instructions and with the practices of one of the following national trade associations, incorporated herein by reference:

1. American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System";

2. Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

3. American National Standards Institute:

i. Standard B31.3, "Petroleum Refinery Piping"; and

ii. Standard B31.4, "Liquid Petroleum."

(b) The underground storage tank system excavation shall provide adequate space for the tank, appurtenant piping and associated equipment, and for the proper placement and compaction of backfill materials.

(c) The underground storage tank system backfill material shall be a clean, washed, non-corrosive material such as sand, crushed rock or pea gravel, selected in conformance with the manufacturer's instructions, and placed and compacted, if necessary, in uniform lifts for proper support and protection of the tank and piping after installation.

(d) The underground storage tank shall be pressure/soap tested immediately prior to installation with three to five pounds per square inch air pressure and appurtenant piping shall be pressure/soap tested with 50 pounds per square inch pressure, soaping all surfaces, seams, and fittings while inspecting for bubbles. Pressure shall be monitored by the underground storage tank installer for a period of one hour. Additional tests or testing variations on piping may be required in accordance with manufacturer's instructions.

(e) The underground storage tank shall be tested for vertical deflection by measuring the tank diameter once before and once after backfill is placed in the excavation around the tank. The owner or operator shall, when vertical deflection varies by more than two percent between the two measurements, notify the underground storage tank manufacturer.

(f) An underground storage tank installed in areas subject to a high water table or flooding shall be anchored in accordance with manufacturer's instructions.

(g) The underground storage tank appurtenant piping shall be designed to minimize crossed underground storage tank piping and/or interference with conduit and other tank system components. Where the crossing of piping is unavoidable, adequate clearance shall be provided to prevent contact.

(h) The underground storage tank piping joints shall be accurately cut and deburred to provide liquid-tight seals.

(i) Flexible connectors shall be installed where pipes join dispenser and underground storage tank fittings.

(j) Underground storage tank precision tests and appurtenant piping precision tests shall be performed as follows after backfill material is installed but before the underground storage tank system is placed into operation:

1. Precision tank system testing shall, except where specified below, conform to the requirements of the current edition of the Nation Fire Protection Association Bulletin #329, "Underground Leakage of Flammable and Combustible Liquids," incorporated herein by reference;

2. Precision tank system testing shall be performed by qualified technical personnel certified by the manufacturer of the test method and in the interpetation of the data produced;

3. Precision tank system testing shall be capable of detecting a 0.1 gallon per hour leak rate with a 95 percent probability of detection and a five percent probability of false positive and/or results from any part of the underground storage tank system;

4. Precison tank system testing shall, at a minimum, take into account the following factors:

i. Changes in the temperature of the liquid during testing;

ii. The coefficient of expansion of the liquid;

iii. Tank end deflection or movement;

iv. The presence of a water table in the tank excavation area during testing;

v. Vapor pockets;

vi. Evaporation of the liquid during testing; and

vii. Precision test operator error; and

5. Testing of the product-bearing piping shall detect a 0.1 gallon per hour leak conducted at one and one half times the operating pressure or equivalent.

(k) The Department may, in its discretion, approve an underground storage tank or piping installation procedure not specified in this section, provided that the procedure is approved by one of the organizations listed in (a) above or by the tank manufacturer.

7:14B-4.4 Construction requirements for secondary containment

(a) The Department-approved methods of secondary containment for underground storage tanks include the following:

1. A double-walled tank with its secondary container completely surrounding the primary container (360 degrees) and constructed of materials as set forth in N.J.A.C. 7:14B-4.1;

2. A single-walled tank within a lined excavation and constructed of materials as set forth in N.J.A.C. 7:14B-4.1; or

3. A tank system conforming to Underwriters Laboratories specification 73-S-3, incorporated herein by reference, consisting of a steel tank totally encased in a semi-rigid, dielectric, noncorrosive material.

(b) All secondary containment systems shall be equipped with a collection system to contain, store and allow for the removal of a leak of hazardous substance from any part of an underground storage tank systems.

(c) The requirements in (a)1 above for secondary containment systems consisting of double-walled tanks shall be as follows:

1. Double-walled tanks shall provide for the monitoring of the annular space; and

2. Double-walled tanks shall be designed and installed to provide for the drainage of any hazardous substance and/or water from the primary container to a specific location in the annular space.

(d) The requirements in (a)2 above for secondary containment systems consisting of single-walled tanks within a lined excavation shall be as followed.

1. The secondary containment system shall have the capacity to contain 100 percent of the capacity of the largest tank within its boundary;

2. The membrane liner shall surround the tank system completely so as to prevent vertical and lateral migration of the stored hazardous substance;

3. The membrane liner shall prevent the intrusion of precipitation, ground water or soil moisture which interferes with the ability of the monitoring system to detect a release. The lined excavation shall be capped with an impermeable material which extends no less than one foot beyond the edges of the lined excavation to prevent infiltration from the surface;

4. The membrane liner shall always be above the ground water level and the underground storage tank system shall not be in the 25 year flood plain unless the liner and monitoring systems are intended for use under such conditions;

5. The membrane liner shall consist of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the hazardous substance stored) to direct a release to a monitoring point or points and permit its detection;

6. The membrane liner shall be compatible with the hazardous substance stored so that a release from the underground storage tank system will not cause a deterioration of the liner allowing a release to pass through undetected; and

7. For cathodically protected tanks, the membrane liner shall be installed so that it does not interfere with the proper operation of the cathodic protection system.

7:14B-4.5 Upgrading existing underground storage tank systems

(a) All existing underground storage tank systems containing hazardous substances other than petroleum products and waste oil shall, by December 22, 1998, be equipped with both primary and secondary levels of containment except as provided for under N.J.A.C. 7:14B-4.1(d)1 and 4.2(a).

(b) All existing underground storage tank systems used primarily for agricultural purposes on land that qualifies for a special tax assessment under N.J.S.A. 54:4-23.1 et seq. and installed prior to September 3, 1986 shall, by December 22, 1993, install a monitoring system in accordance with N.J.A.C. 7:14B-6, except as provided for in (g) below, install corrosion protection in accordance with N.J.A.C. 7:14B-4.1 and install spill and overfill protection in accordance with N.J.A.C. 7:14B-4.1.

(c) All existing underground storage tank systems without corrosion protection shall retrofit cathodic protection by September 3, 1991 in accordance with the following conditions:

1. Installation, operation and design of cathodic protection systems shall be performed in accordance with one of the following codes and standards, incorporated herein by reference:

i. Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks";

ii. Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks" and Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids";

iii. Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or

iv. National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems."

2. The tank and/or piping is constructed of steel and cathodically protected using:

i. A field-installed cathodic protection system designed by a corrosion expert; or

ii. Impressed current systems which are designed to allow for the inspections required in N.J.A.C. 7:14B-5.2;

3. The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system or the tank has been installed for less than 10 years and is equipped with a Department-approved monitoring system;

4. Tanks which have corrosion holes may be relined in accordance with N.J.A.C. 7:14B-5.3 to allow for the retrofitting of cathodic protection; and

5. A station accessible to grade shall be made available for testing of the cathodic protection system.

(d) All existing underground storage tank systems shall, except as provided for in (g) below, install a monitoring system in accordance with N.J.A.C. 7:14B-6, and spill prevention and overfill protection in accordance with N.J.A.C. 7:14B-4.1(b), by September 3, 1991.

(e) The owner or operator of an underground storage tank system that is equipped with a monitoring system installed prior to the effective date of this subchapter shall certify on the Annual Certification Form required in N.J.A.C. 7:14B-2.2(e) that the monitoring system complies with N.J.A.C. 7:14B-6.4. The owner or operator shall also obtain the certification of a qualified hydrogeologist, as described below, that site conditions are appropriate for the monitoring system utilized and the certification of a New Jersey Professional Engineer that the physical properties of the hazardous substance stored are appropriate for the monitoring system utilized.

1. The Department will accept license or certification from the following as qualifications for a hydrogeologist, geologist or ground-water hydrologist:

i. A geologist licensed by any state in the United States to practice geology; or

ii. Any person holding a certification used by one of the following organizations:

(1) American Institute of Hydrology—Professional Hydrologist or Hydrogeologist;

(2) American Institute of Professional Geologists—Certified Professional Geologist or Certified Professional Geological Scientist;

(3) American Society of Agromony—Certified Professional Soil Scientist or Certified Professional Soil Specialist; or

(4) Association of Ground Water Scientists and Engineers—Certified Ground Water Professional.

iii. Individuals with the above qualifications must submit this information to the Bureau of Underground Storage Tanks for acceptance as a hydrogeologist, geologist or ground water hydrogeologist.

(f) The owner or operator of an underground storage tank system that is equipped with a secondary containment system installed prior to December 21, 1987 shall certify on the Annual Certification Form required in N.J.A.C. 7:14B-2.2(e) that the secondary containment system complies with N.J.A.C. 7:14B-4.4(a).

(g) All existing underground storage tanks that are equipped with a monitoring system in accordance with a valid New Jersey Pollutant Discharge Elimination System/Discharge to Ground Water permit (see N.J.A.C. 7:14A-6) and in compliance with this permit shall be exempt from the monitoring system upgrade requirements of (b), (d) and (e) above. Compliance may be determined by review of the issued permit, discharge monitoring reports and other required submittals.

(h) Within 90 days of the effective date of this subchapter, the owner or operator shall permanently mark all fill ports to identify product inside the underground storage tank system. The markings shall be consistent with the colors and symbol codes established by the American Petroleum Institute Bulletin #1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Station and Distribution Terminals," incorporated herein by reference.

(i) By December 22, 1990, the owner or operator of an underground storage tank system using pressurized piping without a Department-approved monitoring system shall:

1. Install a line release detector which detects releases at a minimum of three gallons per hour at 10 pounds per square inch pressure within one hour and restricts flow to the dispenser in the event of a release; and

2. Conduct a precision test on the piping in accordance with N.J.A.C. 7:14B-4.3(j).

SUBCHAPTER 5. UNDERGROUND STORAGE TANK SYSTEM GENERAL OPERATING REQUIREMENTS

7:14B-5.1 Spill and overfill control

(a) The owner and the operator of an underground storage tank system shall ensure the following:

1. There shall be no release of hazardous substance due to spills or overfills at an underground storage tank facility;

2. The available volume in an underground storage tank shall always be greater than the volume of hazardous substance being transferred to the tank; and

3. The owner, the operator or the person who delivers the hazardous substance is always physically present to observe the transfer of a hazardous substance into the underground storage tank.

7:14B-5.2 Operation and maintenance of cathodic protection systems

(a) The owner and operator of an underground storage tank system with cathodic protection systems shall comply with the following requirements:

1. All cathodic protection systems shall be operated and maintained in a manner which provides continuous corrosion protection to the metal components of the underground storage tank system;

2. All underground storage tank systems equipped with cathodic protection systems shall be inspected in accordance with the following schedule:

i. Within six months after installation or repair and at least every three years thereafter, a cathodic protection tester shall test all cathodic protection systems to see if they are being operated properly and are operating properly;

ii. All underground storage tank systems equipped with impressed current cathodic protection systems shall be inspected every 60 days by the owner or operator or the owner or operator's agent. The operator's agent shall be trained by a cathodic protection tester. The inspector shall visually verify that the system is operating correctly;

3. The inspection conducted pursuant to (a)2i and ii above shall test the cathodic protection system of each underground storage tank system in accordance with the National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion in Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," incorporated herein by reference;

4. All owners or operators of underground storage tank systems shall maintain records that detail the following:

i. The results of the two most recent tests required under (a)2i above; and

ii. The results of the three most recent inspections required under (a)2ii above; and

5. The owner and the operator of an underground storage tank system shall certify compliance with the requirements of N.J.A.C. 7:14B-5.1 and 5.2 on the New Jersey Underground Storage Tank Annual Certification Form.

7:14B-5.3 Repairs

(a) The owner or operator of an underground storage tank system shall obtain a permit from the Department, pursuant to N.J.A.C. 7:14B-10(a), prior to performing repairs which constitute a substantial modification under N.J.A.C. 7:14B-10.

(b) The underground storage tank system shall be repaired in accordance with the standards set forth by one of the following national associations, incorporated herein by reference:

1. American Petroleum Institute Publication #1631, "Recommended Practice for the Interior Lining of Existing Underground Storage Tanks";

2. American Petroleum Institute Publication #2200, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipeline"; or

3. National Fire Prevention Association Standard 30, "Flammable and Combustible Liquids Code";

(c) All steel underground storage tanks with corrosion holes that are repaired shall be retrofitted with a cathodic protection system prior to putting the underground storage tank system back into use. The cathodic protection system shall be installed, maintained and operated in accordance with N.J.A.C. 7:14B-5.2.

(d) All fiberglass underground storage tank systems shall be repaired by an authorized representative of the manufacturer or in accordance with a code of practice developed by the Fiberglass Petroleum Tank and Pipe Institute.

(e) The owner or operator of an underground storage tank system shall replace, not repair, faulty fittings. Loose fittings and joints in piping that have been tightened to eliminate leakage may be put back into service. An entire section of metal piping shall be replaced and not repaired. A section of pipe is considered one length of pipe between two joints, elbows, tees or other fittings.

(f) The owner or operator of an underground storage tank system shall perform a precision tank test in accordance with N.J.A.C. 7:14B-4.3(j) within 30 days after the repair of the underground storage tank unless a release detection system meeting the requirements of N.J.A.C. 7:14B-6.4(a) and (c) is installed or is already in place.

(g) The owner or operator of an underground storage tank system shall maintain records of all repairs and associated precision testing at the facility for as long as the facility is in operation or six years, whichever is longer. After the six year period required in (a)1, 2 and 3 above, an owner or operator may make a written request to discard any such documents. Such a request shall be accompanied by a description of the documents involved. Upon written approval by the Depart-

ment, the owner or operator may discard only those documents that are not required to be preserved for a longer time period.

(h) Upon receipt of a written request by the Department, the owner or operator shall submit to the Department all records and documents or copies of the same required to be maintained by the Act, this chapter, registration certificates, permits or approvals or administrative orders.

7:14B-5.4 Interim inventory control and manual tank gauging requirements

(a) The owner or operator of an underground storage tank system shall conduct inventory reconciliation on a monthly basis to detect a release of at least one percent of the tank volume plus 130 gallons except for:

1. Underground storage tank systems that contain heating oil for on-site consumption;
2. Waste oil underground storage tank systems;
3. Field constructed tanks; and
4. Airport hydrant fuel distribution systems.

(b) Inventory control and reconciliation shall be performed as follows:

1. Inventory volume measurements for hazardous substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;
2. The equipment used shall be capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
3. The regulated substance inputs shall be reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
4. Deliveries shall be made through a drop tube that extends to within one foot of the tank bottom;
5. Product dispensing shall be metered and recorded within New Jersey's standards for meter calibration or an accuracy of six cubic inches for every five gallons of product withdrawn; and
6. The measurement of any water level in the bottom of the tank shall be made to the nearest one-eighth of an inch at least once a month.

(c) Manual tank gauging shall be performed at least weekly for underground storage tank systems containing waste oil as follows:

1. Tank liquid level measurements shall be taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;
2. The recorded level measurements shall be based on an average of two consecutive stick readings at both the beginning and ending of the period; and
3. The equipment used shall be capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch.

(d) A release is suspected and subject to the requirements of N.J.A.C. 7:14B-7 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal Tank Capacity	Weekly Standard (one test)	Monthly Standard (average of four tests)
550 gallons or less	10 gallons	5 gallons
551-1,000 gallons	13 gallons	7 gallons
1,001-2,000 gallons	26 gallons	13 gallons
2,001 gallons and above	1.3 percent of tank volume	.65 percent of tank volume

7:14B-5.5 Release response plan

(a) The owner or operator of an underground storage tank system shall prepare a release response plan which includes the following information:

1. The emergency telephone numbers of the local fire department, local health department, Department of Environmental Protection Hotline (609-292-7172), and any other appropriate local or State agencies;
2. The name and telephone number of the person responsible for the operation of the facility during an emergency if he or she is not present at the facility;
3. The name and telephone number of any retained corrective action contractor; and
4. The procedures to be followed pursuant to N.J.A.C. 7:14B-8 in the event of a leak or discharge of a hazardous substance from the facility.

(b) The release response plan shall be available for onsite inspection within 90 days after the effective date of N.J.A.C. 7:14B-5.

(c) Any release response plan which is required by and is in compliance with the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. will suffice for this requirement.

7:14B-5.6 Right of entry

(a) The owner or operator of an underground storage tank shall allow the Department, or an authorized representative, upon the presentation of credentials, to:

1. Enter upon the facility where an underground storage tank is or might be located or in which monitoring equipment or records required by this chapter are kept, for purposes of inspection, sampling, copying or photographing. Photographing shall be allowed only as related to the underground storage tank system;
2. Have access to and copy any records that must be kept under the conditions of this chapter;
3. Inspect any facilities or equipment (including monitoring and control equipment);
4. Observe practices or operations regulated or required under this chapter; and
5. Sample soil, ground water, surface water and/or air.

SUBCHAPTER 6. MONITORING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

7:14B-6.1 General monitoring requirements for all underground storage tank systems

(a) The owner or operator of an underground storage tank system shall, in accordance with the schedule in N.J.A.C. 7:14B-4.5, equip each system with a Department-approved monitoring system.

(b) The installation of a discharge monitoring system shall constitute a substantial modification to an existing underground storage tank system and shall require a permit as specified in N.J.A.C. 7:14B-10.1(a).

(c) The owner or operator of an underground storage tank system shall ensure that the monitoring system is:

1. Capable of detecting a leak or discharge from any part of the system;
2. Installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions including, but not limited to, routine maintenance and service checks for proper operation;
3. Checked for proper system operation at least once every 30 days; and
4. Examined for evidence of leaks or discharges either continuously or daily except for the monitoring system described in N.J.A.C. 7:14B-6.2(a)5.

(d) Electronic monitoring systems installed after December 22, 1990 shall be capable of detecting a release at the rate or quantity specified for that method in N.J.A.C. 7:14B-6.2 with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(e) The Department may, in its discretion, specify the monitoring system and/or the method of secondary containment to be used when:

1. The underground storage tank system is subject to excessive corrosion; or
2. A discharge from the facility has been detected.

(f) The owner or operator of an underground storage tank system shall develop written routine monitoring procedures which set forth the following:

1. The frequency with which the monitoring is to be performed;
2. The method and equipment used to conduct the monitoring;
3. The location at which the monitoring is to be performed; and
4. The name and/or titles of the person responsible for performing the monitoring and maintenance of the monitoring system.

(g) The written routine monitoring procedure developed in accordance with (f) above shall be kept at the underground storage tank facility and made available for inspection by any authorized local, State or Federal representative at any time after installation of the monitoring system. The owner or operator of an existing monitoring system shall

have the monitoring procedure available for inspection at any time after the monitoring system is installed.

(h) The person responsible for performing the monitoring and maintenance of the monitoring system shall be trained in the use and repair of the equipment.

(i) The owner or operator shall, on a monthly basis, complete a summary of the results of daily or continuous monitoring of the underground storage tank system and maintenance checks of the monitoring system. This summary shall be made available for inspection by any authorized local, State or Federal representative.

(j) All access points accessible to grade for monitoring systems shall be permanently marked or tagged with the facility number listed on the Registration Certificate and, if applicable, the well drilling permit number.

7:14B-6.2 Monitoring requirements for new underground storage tank systems

(a) The owner or operator of a new underground storage tank system that requires secondary containment as specified in N.J.A.C. 7:14B-4.1(d) shall install a leak detection monitoring system which shall, except as specified in (a)5 below, employ a continuous leak detection monitoring system connected to an audible/visual alarm system or a manual leak detection inspection shall be performed on a daily basis. Department-approved leak detection monitoring systems include the following:

1. Liquid level indicators which detect a change in the height of a fixed volume of liquid in an annular space;

2. Liquid sensors as follows:

i. For double-walled tanks and similar secondarily contained single-walled tanks, at least one sensor or device shall be employed to detect liquid in the annular space; or

ii. For lined excavations, at a minimum, one monitoring location in each of the four corners of the excavation or a slotted pipe located lengthwise and underneath each tank, sloped to a collection point and accessible at grade for monitoring of liquids;

3. For volatile hazardous substances, vapor sensors as follows:

i. For double-walled tanks and similar secondarily contained single-walled tanks, at least one sensor or device shall be located to detect vapors from any part of the annular space; or

ii. For lined excavations, at a minimum, one monitoring location in each of the four corners of the excavation or a u-tube;

4. Pressure/vacuum loss sensors; or

5. Monthly precision testing in accordance with N.J.A.C. 7:14B-4.3(j) and inventory control conducted in accordance with N.J.A.C. 7:14B-5.4.

(b) The owner or operator of a new underground storage tank that is not specified in N.J.A.C. 7:14B-4.1(d) and therefore does not require secondary containment shall install and operate a Department approved leak detection monitoring system as specified in (a) above of the tank system is secondarily contained. If the tank system was not secondarily contained at the time of tank installation the owner or operator shall install and operate a discharge monitoring system using one of the following methods:

1. Daily or continuous testing for vapors within the fill of the excavation area (or within two feet of the tank) upon a determination that:

i. The material used as backfill is sufficiently permeable (at least 0.01 centimeters per second) to readily allow diffusion of vapors from discharge into the excavation area;

ii. The stored hazardous substance or a tracer compound placed in the system is sufficiently volatile to result in a vapor level that is detectable by sensors employed in the excavation area in the event of a release;

iii. The measurement of vapors by the monitoring system is not adversely affected by ground water, rainfall or soil moisture or other known interferences;

iv. The level of background contamination in the soil gas of the excavation zone will not interfere with the method used to detect releases;

v. The detection limit of the vapor monitoring system is set at no more than 100 percent over the background level as determined during the calibration period recommended by the manufacturer;

vi. The monitoring locations are clearly marked and secured to prevent unauthorized access and contamination; and

vii. Within and immediately below the underground storage tank system excavation area, the site is evaluated to ensure that the number and positioning of the monitoring locations or sensors in the excavation will detect releases from any portion of the underground storage tank system;

2. Daily or continuous testing for hazardous substances on the water table using observation wells under the following conditions:

i. The stored hazardous substance is immiscible in water and has specific gravity of less than one;

ii. The water table is never more than 20 feet from the ground surface and the hydraulic conductivity of the fill between the underground storage tank system and the observation well is not less than 0.01 centimeters per second;

iii. All the monitoring locations intercept the excavation area (or are within two feet of the tank system) and intercept the water table;

iv. The sensors or devices that are used are able to detect the presence of at least one-eighth of an inch of floating free phase hazardous substance on top of the water table;

v. The monitoring locations are clearly marked and secured to prevent unauthorized access and contamination;

vi. Within and immediately below the underground storage tank system excavation area, the site is evaluated to ensure that the number and positioning of the monitoring locations or sensors in the excavation will detect releases from any portion of the underground storage tank system; and

vii. Every 12 months, one ground water sample is collected from one of the observation wells and analyzed for dissolved constituents of the petroleum products stored as specified by the Department. Ground water samples shall be collected in accordance with the Department's Division of Water Resources Field Procedures Manual for Water Data Acquisition and/or Division of Hazardous Waste Management's Field Sampling Procedure Manual; or

3. Daily or continuous testing of vapors or liquids in observation wells or u-tubes in combination with an impermeable liner in the bottom of the excavation area under the following conditions:

i. Testing for vapors meets the specifications in (b)1 above;

ii. Testing for hazardous substances where:

(1) The hydraulic conductivity of the fill between the underground storage tank system and the observation wells or u-tubes is not less than 0.01 centimeters per second;

(2) The sensors or devices that are used are able to detect at least one-eighth inch of hazardous substance in the observation well or collection sump; and

(3) The monitoring locations are clearly marked and secured to prevent unauthorized access and contamination;

iii. The liner shall be extended from the bottom of the excavation to at least two feet up the sides of the excavation;

iv. The ground water table shall be determined to always be below the bottom of the excavation; and

v. The liner shall also meet the conditions specified in N.J.A.C. 7:14B-4.4(d)3, 4, 5 and 6.

4. The owner or operator of an underground storage tank system located on a site where conditions as specified in (b)1, 2 or 3 above preclude the use of testing for vapors or hazardous substances shall take the following action:

i. Perform in-tank monitoring provided that:

(1) The automatic level monitor test or release rate test is conducted at a minimum once every 30 days when the tank is at least 50 percent full and capable of detecting a 0.2 gallon per hour release rate with a 95 percent probability of detection and a five percent probability of false alarm. One test shall be conducted annually when the tank is at least 80 percent full; and

(2) Automatic inventory reconciliation is conducted in accordance with the requirements of N.J.A.C. 7:14B-5.4;

ii. Upgrade the underground storage tank system to the requirements of N.J.A.C. 7:14B-4.4; or

iii. Close the underground storage tank system in accordance with the requirements of N.J.A.C. 7:14B-9.2.

(c) The minimum number of vapor monitoring locations or observation wells required for discharge monitoring systems not using u-tubes are as follows:

Total Capacity in Gallons per Tank Excavation	Minimum Number of Monitoring Devices or Locations
0-10,000	2
10,001-20,000	3
20,001-30,000	4
30,001-40,000	5
40,001-50,000	6
50,001 or greater	7

(d) The owner or operator of an underground storage tank who intends to install an in tank monitoring device as specified in (b)4 above for an existing underground storage tank system that is not equipped with secondary containment but is located in an area specified in N.J.A.C. 7:14B-4.1(d)2, shall perform a site assessment in accordance with the closure requirements of N.J.A.C. 7:14B-9 prior to obtaining Department approval of the in-tank monitoring device.

(e) The performance of manual tank gauging as specified in N.J.A.C. 7:14B-5.4 may be conducted by the owner or operator of a single-walled underground storage tank system of 1,000 gallons or less capacity for storing waste oil if the use of monitoring systems specified in (b)1, 2, 3 or 4 above is precluded.

(f) The owner or operator of a new underground storage tank system used as a sump shall be exempt from discharge monitoring requirements as long as a hazardous substance is not stored for more than 48 hours.

(g) Electronic monitoring systems shall detect, at a minimum, a 0.2 gallon per hour release rate or a release of 150 gallons within a month with a probability of detection of 0.95 and probability of false alarm of 0.05.

7:14B-6.3 Monitoring requirements for new piping on new underground storage tank systems

(a) The owner or operator of a new underground storage tank that requires secondary containment as specified in N.J.A.C. 7:14B-4.1(d) shall equip the product-bearing appurtenant piping with at least one of the following:

1. Single-walled piping with a suction pump system if:

i. The below-grade piping operates at less than atmospheric pressure;

ii. Only one check valve is included in each suction line;

iii. The check valve is located directly below, and as close as practical to, the suction pump;

iv. The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if suction is released; and

v. A method of inspecting the piping is provided that allows compliance with this paragraph to be readily determined;

2. Piping with secondary containment consistent with the requirements of N.J.A.C. 7:14B-4.2(a)1 or 2 and equipped with one of the following daily or continuous detection monitoring systems:

i. Vapor sensors where at least one sensor shall be employed to detect any vapor in the annular space or where there is at least one sensor or monitoring location for every 50 linear feet of piping between the tank and the dispenser in a lined excavation and:

(1) The material used as backfill shall be sufficiently permeable (at least 0.01 centimeters per second) to readily allow diffusion of vapors from leaks to the monitoring location in the lined excavation;

(2) The stored hazardous substance is sufficiently volatile to result in a vapor level that is detectable by sensors employed in the annular space or lined excavation area;

(3) The level of background contamination in the fill material in the lined excavation area will not interfere with the method used to detect releases; and

(4) The monitoring locations are clearly marked and secure from unauthorized access and contamination.

ii. Liquid sensors where at least one sensor shall be employed to detect any liquid in the annular space piping chamber or each collection sump of a lined excavation which meet the following additional conditions:

(1) The material used as backfill in the lined excavation is sufficiently porous (at least 0.01 centimeters per second) to readily allow the migration of the hazardous substance to the monitoring location;

(2) The monitoring device is able to detect at least one-eighth inch of floating free phase hazardous substance;

(3) Lined excavations have a monitoring location or device every 50 feet from the tank to the dispenser; and

(4) The monitoring locations are clearly marked and secure from unauthorized access and contamination; or

3. Single-walled piping with a pressurized shut-down monitoring device which prevents dispensing when a minimum of a 0.10 gallon per hour release has been detected and also where the pressurized shut-down device works independently of another device not expressly manufactured to work in conjunction with the pressurized shut-down monitoring device. An annual precision test of the piping shall be done in accordance with N.J.A.C. 7:14B-4.3(j).

(b) The owner or operator of a new underground storage tank which is not required to have secondary containment as specified in N.J.A.C. 7:14B-4.1(d) shall equip the product-bearing appurtenant piping with at least one of the following:

1. A leak detection monitoring system authorized by (a) above for a secondarily contained tank system; or

2. A discharge monitoring system which meets the requirement of N.J.A.C. 7:14B-6.2(b)1, 2 or 3.

3. Pressurized delivery systems using a discharge monitoring system shall install a line release detector which detects releases at a minimum of three gallons per hour at 10 pounds per square inch line pressure within one hour and restricts flow to the dispenser in the event of a release. An annual test of the operation of this device shall be conducted in accordance with manufacturer's requirements.

(c) The owner or operator of an underground storage tank system which contains hazardous substances other than petroleum products who intends to utilize the monitoring system options of (a)1 or 3 above shall demonstrate to the Department that effective corrective action technology is available for the hazardous substance to be stored.

7:14B-6.4 Monitoring requirements of existing underground storage tanks and piping systems

(a) The owner or operator of an existing underground storage tank with Department-approved secondary containment shall install and operate a leak detection monitoring system which meets the requirements of N.J.A.C. 7:14B-6.2(a) in accordance with the schedule specified in N.J.A.C. 7:14B-4.5.

(b) The owner or operator of an existing piping system with Department-approved secondary containment shall install and operate a leak detection monitoring system which meets the requirements of N.J.A.C. 7:14B-6.3(a) in accordance with the schedule specified in N.J.A.C. 7:14B-4.5.

(c) The owner or operator of an existing single-walled tank shall install and operate a discharge monitoring system which meets the requirements of N.J.A.C. 7:14B-6.2(b) in accordance with the schedule specified in N.J.A.C. 7:14B-4.5.

(d) The owner or operator of an existing underground storage tank system with an existing monitoring system installed prior to the effective date of this subchapter shall comply at a minimum with N.J.A.C. 7:14B-4.5(e).

(e) The owner or operator of an existing single-walled piping system shall install and operate a monitoring system which meets the requirements of N.J.A.C. 7:14B-6.3 in accordance with the schedule specified in N.J.A.C. 7:14B-4.5.

7:14B-6.5 Construction requirements for monitoring systems using screen and casing

(a) Monitoring systems such as vapor or liquid sensors and observation wells which use screen and casing and which are being emplaced in the excavation area during installation of an underground storage tank system do not require a permit as specified in N.J.S.A. 58:4A-4.1 et seq., the Subsurface and Percolating Waters Act. These monitoring systems shall be constructed in the following manner:

1. Screen and casing materials shall be compatible with the substances stored in the underground storage tank system so as not to preclude the use of the monitoring system;

2. Solid casing shall extend at least two feet below the surface. Glue shall not be used to attach screen to casing. The casing shall be grouted with at least two feet of neat cement to protect against surface infiltration. Screens shall be capped at the bottom;

3. All monitoring systems using screen and casing shall have protective coverings at the surface. Grade level access ports shall be four inches greater in diameter than the casing, watertight and strong enough to withstand the anticipated traffic load. For casing that extends above grade, a protective outer casing at least four inches greater in diameter than that of the inner casing shall be used. The protective coverings shall be seated in neat cement;

4. The top of the screen shall be located at least two feet above the seasonal high water table and five feet into the water table for ground water observation wells;

5. The innermost casing or cap shall be perforated with one hole to allow for venting; and

6. The screen shall be designed to prevent migration of natural soils or filter pack in the well.

(b) The owner or operator of a proposed monitoring system using screen and casing which requires the drilling of a borehole for installation shall comply with N.J.S.A. 58:4A-4.1 et seq., the Subsurface and Percolating Waters Act.

7:14B-6.6 Recordkeeping

(a) The owner or operator of an underground storage tank system shall maintain the following records:

1. All written performance claims pertaining to any monitoring system used and the manner in which these claims have been justified or tested by the equipment manufacturer or installer. These records shall be kept for a period of six years;

2. The results of any sampling, testing or monitoring for a period of no less than six years; and

3. Written documentation of all calibration, maintenance and repair of monitoring system equipment shall be maintained for a period no less than six years after the servicing work is performed.

(b) Owners and operators of underground storage tank systems may be required to submit records required by (a) above to the Department.

(c) After the six year period required in (a) above, an owner or operator may make a written request to discard any such documents. Such a request shall be accompanied by a description of the documents involved. Upon written approval by the Department, the owner or operator may discard only those documents that are not required to be preserved for a longer time period.

(d) Upon receipt of a written request by the Department, the owner or operator shall submit to the Department all records and documents or copies of the same required to be maintained by the Act, this chapter, registration certificates, permits or approvals or administrative orders.

SUBCHAPTER 7. RELEASE REPORTING AND INVESTIGATION

7:14B-7.1 Suspected releases

(a) The owner or operator of an underground storage tank system shall complete an investigation of a suspected release in accordance with the requirements of N.J.A.C. 7:14B-7.2 within seven days of the discovery of the suspected release, when any of the following situations have occurred:

1. Inventory control records maintained in accordance with N.J.A.C. 7:14B-5.4(a) and (b) indicate a release may have occurred in excess of one percent of the tank volume plus 130 gallons;

2. Inventory control records for an underground storage tank system containing waste oil maintained in accordance with the manual tank gauging requirements of N.J.A.C. 7:14B-5.4(c) indicate that a release of hazardous substances may have occurred;

3. There is evidence of a hazardous substance or resulting vapors in the soil, in surface water, or in any underground structure or well in the vicinity of the facility;

4. There is an unexplained presence of water in the underground storage tank;

5. Product dispensing equipment exhibits erratic behavior;

6. There is the sudden loss of product from the underground storage tank system;

7. Test results from a single precision test of an underground storage tank system performed in accordance with N.J.A.C. 7:14B-6.3(b)1 that indicates that a release may have occurred; or

8. Any other method of discovery of a suspected release.

7:14B-7.2 Investigating a suspected release

(a) The owner or operator of an underground storage tank system shall confirm or disprove a suspected release by conducting an investigation in accordance with one or more of the following procedures:

1. Check inventory control records for mathematical accuracy;

2. Conduct a visual inspection of all readily accessible physical facilities for evidence of leakage or discharge;

3. Check the calibration of all dispenser meters associated with hazardous substance withdrawal and if necessary perform calibration; or

4. Check for a malfunction of the monitoring system.

(b) If the investigation conducted in accordance with (a) above is inconclusive in confirming or disproving a suspected release, the owner or operator shall:

1. Conduct analyses of ground water samples for hazardous substance contamination on the ground water immediately beneath and/or in the immediate vicinity of the underground storage tank system; and

2. Conduct any other appropriate investigation designed to confirm or disprove a suspected release.

7:14B-7.3 Confirmed releases

(a) Any person, including, but not limited to, the owner or operator of an underground storage tank system or contractor hired to install, remove or test an underground storage tank system shall, upon confirming a release, immediately report the release to the appropriate local health agency in accordance with local requirements, and to the Department's Environmental Action Hotline (609) 292-7172. Releases may be confirmed on the basis of the following:

1. Test, sampling or monitoring results from a leak or discharge detection method specified in N.J.A.C. 7:14B-6.2, 3, and 4 that indicate that a release has occurred;

2. Laboratory analyses of ground water samples which indicate the presence of contamination in the ground water immediately beneath and/or in the immediate vicinity of the underground storage tank system;

3. Results from a closure plan conducted in accordance with the requirements of N.J.A.C. 7:14B-9.2(c) which indicate the presence of contamination in the ground water immediately beneath and/or in the immediate vicinity of the underground storage tank system;

4. Any other method, including visual inspection, that confirms that a release has occurred; or

5. A release is confirmed based upon the investigation conducted under N.J.A.C. 7:14B-7.2.

(b) When notifying the Department in accordance with (a) above, the following information shall be provided:

1. The type and estimated quantity of substance released;

2. The location of the release;

3. The actions being taken to contain, clean up, and/or remove the substance; and

4. Any other relevant information which the Department may request at the time of notification.

(c) The owner or operator of an underground storage tank system shall take corrective action as set forth in N.J.A.C. 7:14B-8 when a release is confirmed.

(d) The owner or operator of an underground storage tank system shall implement the release response plan required by N.J.A.C. 7:14B-5.5 when a release is confirmed.

SUBCHAPTER 8. CORRECTIVE ACTION

7:14B-8.1 Immediate corrective action requirements and procedures

(a) The owner or operator of an underground storage tank system shall, upon confirming a release, take immediate action to:

1. Determine the source of the discharge;

2. Cease use of the underground storage tank system;

3. Mitigate any fire, safety or health hazard including, but not limited to, hazards from combustible vapor or vapor inhalation and the removal of ignition sources;

4. Conduct a visual inspection to detect any above ground or exposed below ground discharge, and where any discharge is evident, mitigate the effects of the discharge;

5. Properly remove all hazardous substances from the underground storage tank system;

6. Repair, replace or close the underground storage tank system in accordance with the requirements of N.J.A.C. 7:14B-4, 5 and 9; and

7. Comply with the reporting requirements set forth in N.J.A.C. 7:14B-7.3.

7:14B-8.2 Discharge mitigation requirements

(a) The owner or operator of an underground storage tank system which has discharged hazardous substances shall:

1. Remove free floating or sinking product (non-aqueous phase liquids) from above or below the water table in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site. If this activity will result in a discharge regulated in accordance with N.J.A.C. 7:14A, a New Jersey Pollutant Discharge Elimination System Permit shall be obtained before discharge activities are begun;

2. Remove or decontaminate soils that contribute to a violation of the State's Ground Water Quality standards set forth in N.J.A.C. 7:9-6, that will result in vapor hazards, or that pose a threat to human health due to direct contact. All such soils shall be staged in such a manner that the soils are completely isolated from the environment and any hazardous substances in the soils are prevented from making contact with or being released into the environment. At a minimum, this shall entail removal or decontamination of free product contaminated soils;

3. Install monitoring wells to define the full vertical and horizontal extent of ground water contamination resulting from the discharge;

4. Determine the proximity of the discharge to potable water supplies, surface water bodies, underground structures and sources of pollution;

5. Perform additional ground water and soil remediation as required by the Department under this subchapter and N.JA.C. 7:14A-6.15; and

6. If ground water contamination is found, sample nearby residential and public water supply wells that may be affected by the ground water contamination and analyze the samples for the parameters found in the ground water.

(b) The Department may, in its discretion, approve a discharge investigation or mitigation method not specified in this subchapter upon a determination that it is at least as stringent as the approved standards in this section.

7:14B-8.3 Reporting requirements

(a) The owner or operator of an underground storage tank system which has discharged hazardous substances shall provide the local health department and the Department with a written report within 120 days of the notification of N.J.A.C. 7:14B-7.3, containing the following information:

1. The results of all work conducted to comply with the requirements of N.J.A.C. 7:14B-8.1 and 8.2;

2. The nature, estimated quantity and migration route of the hazardous substance;

3. Results from a site investigation which identifies on an area-wide map:

i. Private water supply well locations, surface water bodies and wetlands within 1,000 feet of discharge;

ii. Public water supply wells within 2,500 feet of the discharge;

iii. Basements and surface utilities on adjacent properties; and

iv. Surrounding population, land use, subsurface soil conditions and climatological conditions;

4. The results of any monitoring or sampling conducted in connection with the discharge. All samples shall be collected in accordance with the Department's Division of Hazardous Site Mitigation's Field Sampling Procedures Manual and/or the Division of Water Resources' Field Procedures Manual for Water Data Acquisition. All samples collected shall be analyzed by a laboratory certified pursuant to N.J.A.C. 7:18. The laboratory shall meet the performance standards and quality control requirements specified in N.J.A.C. 7:18, 40 CFR Part 136 for water and wastewater analysis and in USEPA's manual "Testing Methods for Evaluating Soil Waste" (SW-846 Third Edition) for solid waste analyses. All samples shall be analyzed for parameters that are representative of the substances which have been stored in and/or discharged from the underground storage tank system;

5. A detailed description of corrective actions taken and any actions planned, including an implementation schedule;

6. A certification signed by the owner or operator as required by N.J.A.C. 7:14B-2.3(d)2; and

7. Any other relevant information requested by the Department.

(b) The report described in (a) above shall be prepared by a qualified geologist or ground-water hydrologist that meets the requirements of N.J.A.C. 7:14B-4.5(e)i. The preparer of the report shall sign the following certification:

"I certify under penalty of law that the information provided in this document is true, accurate and complete and was obtained by procedures in compliance with this subchapter. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

(c) In addition to the requirements listed in (a) above, the owner or operator of an underground storage tank which has discharged a hazardous substance shall report the following to the Department's and to the appropriate local health agencies and, in addition, for (c)1 below, the local fire department in accordance with local requirements:

1. The discovery of any vapor hazard;

2. The discovery of contaminated potable water supply wells; and

3. A schedule for performing the following activities prior to their implementation:

i. Dates of tank or piping removal;

ii. Date of well installation; and

iii. Date of sample collection.

7:14B-8.4 Health and safety requirements

All investigative and corrective action activities required under this chapter shall be undertaken in a manner consistent with the United States Environmental Protection Agency's Standard Operating Safety Guides (Hazardous Materials Incident Response Operations Course (165.5)) incorporated herein by reference, and U.S. Department of Labor's Occupational Safety and Health Standards health and safety practices (29 CFR Part 1910 and 1926 (1989)).

7:14B-8.5 Additional corrective action requirements

Upon review of the report required by N.J.A.C. 7:14B-8.3(a), the Department may require the owner of an underground storage tank system which has discharged a hazardous substance to apply for a New Jersey Pollutant Discharge Elimination System Permit, in accordance with N.J.A.C. 7:14A and satisfy the corrective action program requirements in N.J.A.C. 7:14A-6.15.

7:14B-8.6 Leak mitigation requirements

(a) The owner or operator of an underground storage tank system which has leaked a hazardous substance into the annular space created by the secondary containment system shall:

1. Determine the source of the leak;

2. Properly remove all hazardous substances from the underground storage tank system; and

3. Repair, replace or close the underground storage tank system in accordance with the requirements of this chapter.

(b) The owner or operator of an underground storage tank system shall, within 30 days after reporting a leak in the annular space to the Department in accordance with the requirements of N.J.A.C. 7:14B-7, provide the Department with a written report calculating a detailed description of the corrective actions taken concerning the leak into the annular space.

7:14B-8.7 Recordkeeping

(a) As of the effective date of this subchapter, the current and subsequent owners of the property on which an underground storage tank system exists and was closed shall maintain all records generated to comply with the requirements of this subchapter. These records shall be maintained indefinitely.

(b) These records shall be submitted for inspection upon request by any authorized local, State and/or Federal representative.

SUBCHAPTER 9. OUT-OF-SERVICE UNDERGROUND STORAGE TANK SYSTEMS AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS

7:14B-9.1 General requirements

(a) The owner or operator of an underground storage tank system which is empty for a period of 12 months or less after the effective date of this subchapter shall maintain all existing cathodic protection systems as required by N.J.A.C. 7:14B-5.2 and shall follow the procedures in American Petroleum Institute Recommended Practice 1604 "Removal and Disposal of Used Underground Petroleum Storage Tanks", incorporated herein by reference, for placing a tank system temporarily out of service.

(b) The owner or operator of an underground storage tank system which has been empty for more than 12 months shall close the tank system. The owner or operator may request an extension from the Department of this 12 month period, by submitting a site assessment in accordance with N.J.A.C. 7:14B-9.2 or 7:14B-9.3 at least 30 days prior to the expiration date.

(c) The owner or operator closing an underground storage tank system shall:

1. Remove the tank except as provided in (d) below; and

2. Remove any monitoring system unless the monitoring system will be used for a new tank system or for monitoring a release in accordance with N.J.A.C. 7:14B-8.3(a)4.

(d) The Department may, in its discretion, allow the owner or operator of an underground storage tank system to abandon the system in place if:

1. The underground storage tank is located under a permanent structure; or

2. The owner or operator submits a certification, signed and sealed by a New Jersey professional engineer, stating that removal of the underground storage tank will cause damage to another structure, or that the tank is difficult to remove from the ground because of inaccessibility or type of tank construction.

(e) The owner or operator of an underground storage tank system considering a change in storage to a non-regulated substance, shall empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with N.J.A.C. 7:14B-9.2 or 9.3.

7:14B-9.2 Closure requirements for underground storage tank systems containing petroleum products

(a) The owner or operator of an underground storage tank system containing petroleum products who intends to permanently close the underground storage tank system shall, 30 days prior to the anticipated closure date, notify the Department in writing on forms provided by the Department. This notification shall include:

1. The facility registration number;

2. A statement as to whether the tank system is being removed or abandoned in place;

3. Three copies of a detailed implementation schedule;

4. If abandonment in place is being proposed, the information required by N.J.A.C. 7:14B-9.1(d) shall be provided; and

5. If the facility is not registered as required by N.J.A.C. 7:14B-2.2, the owner or the operator shall attach a completed New Jersey Underground Storage Tank Registration Questionnaire.

(b) The owner or operator who intends to close an underground storage tank containing petroleum products shall develop and implement a closure plan which consists of a site assessment and a tank decommissioning plan. The Department or the county health agency as designated pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq. may require the owner or operator to submit the closure plan for review prior to implementation and the Department or county health agency may disapprove or require modification of the plan to ensure compliance with the requirements of this chapter. The closure plan shall include the following:

1. An implementation schedule;

2. A site assessment plan as described in (c) below prepared by a qualified geologist or ground-water hydrologist that meets the requirements of N.J.A.C. 7:14B-4.5(e)1.

3. A tank decommissioning plan which conforms with:

i. The New Jersey Uniform Construction Code, N.J.A.C. 5:23; and

ii. The American Petroleum Institute Bulletin No. 1604, "Recommended Practice for Abandonment and Removal of Used Underground Storage Tanks", incorporated herein by reference; and

4. The owner or operator shall remove all residual liquids, solids, or sludges from the tank and appurtenant piping by draining, pumping, or in-tank cleaning and disposing of such material and the tank in accordance with all applicable Federal, State and local rules and regulations.

(c) The site assessment plan shall, at a minimum, consist of ground water monitoring wells drilled in accordance with well drilling requirements promulgated pursuant to N.J.S.A. 58:4A-5.

1. The wells shall be screened in the first water encountered and the screens shall be placed three feet above the water table wherever possible and five feet below the water table. When ground water is not encountered within 75 feet of the surface, the Department may, in its discretion, approve another method of site assessment.

2. The wells shall be located within five feet of the underground storage tank system or within the excavation if ground water is present in the excavation.

3. The wells shall be placed in the anticipated downgradient direction of ground water flow.

4. The necessary number of wells will be prepared by the preparer of the site assessment, using his or her best professional judgment, and based on the following minimum criteria:

i. One tank up to 20 feet in length requires one well;

ii. Two to three tanks up to 20 feet in length in the same excavation require two wells;

iii. Each pump island or dispenser that is more than 20 feet away from the tanks or located in a position hydraulically down-gradient of other monitoring wells requires one well for each island; and

iv. Additional monitoring wells will be necessary for extensive runs of piping at facilities including, but not limited to:

(1) Bulk storage terminals; and

(2) Refineries, large industrial complexes, and multiple buildings served by a centralized underground heating system.

5. The monitoring wells shall be properly developed and sampled in accordance with the Department's Division of Water Resources Field Procedures Manual for Water Data Acquisition and/or the Division of Hazardous Site Mitigation Field Sampling Procedures Manual. Ground water samples shall be examined for the presence of any visible free product contamination. In addition, the ground water samples may be required to be analyzed for the water soluble constitutents of the substances stored as specified by the Department. The depth of the water table in each well shall be noted and reported with the sampling results.

7:14B-9.3 Closure requirements for underground storage tank systems containing hazardous substances other than petroleum products

(a) The owner or operator of an underground storage tank system regulated by the New Jersey Hazardous Waste Regulations, N.J.A.C. 7:26, shall follow the closure procedures in that chapter (see N.J.A.C. 7:26-9).

(b) The owner or operator of an underground storage tank system containing a hazardous substance which is not a petroleum product or a hazardous waste shall comply with the following closure procedures:

1. A closure plan shall be submitted to the Department for review and approval at least 45 days in advance of the anticipated closure date.

2. The closure plan shall contain all the information required by N.J.A.C. 7:14B-9.2(a), (b), and (c).

7:14B-9.4 Exemptions to site assessment requirements

(a) Facilities shall be exempt from performing the site assessment portion of the closure plan as described in N.J.A.C. 7:14B-9.2 and 9.3 if owner or operator of the facility submits documents showing:

1. The installation of ground water monitoring wells at the facility in accordance with N.J.A.C. 7:14B-6.2 and 6.4;

2. The installation of secondary containment and monitoring systems as defined in N.J.A.C. 7:14B-4 and 6.2 where there were no underground storage tank systems at the facility prior to the existing system; and

3. The installation of vapor sensors as an approved monitoring system as specified in N.J.A.C. 7:14B-6 if there has never been any detectable contamination at the lowest detection limit of the monitoring system.

(b) In addition to submitting the documents in (a) above, before receiving an exemption, the owner or operator shall provide the Department with information which shows that the facility;

1. Is in compliance with all other requirements in this chapter; and

2. Has never had a reportable release or a suspected release which was not fully investigated.

(c) The owner or operator shall include a certification with the information set forth above as required by N.J.A.C. 7:14B-2.3(d)3.

(d) The owner or operator of a facility desiring an exemption shall submit the supporting information to the Bureau of Underground Storage Tanks for review and approval at least 45 days in advance of the anticipated closure date.

7:14B-9.5 Reporting and recordkeeping requirements

(a) The owner or operator of an underground storage tank closed after the effective date of this subchapter shall, within 90 days of completing implementation of the closure plan, submit the following information to the Department:

1. A site diagram with a plan view which indicates the locations of the groundwater monitoring wells, all major structures and utilities, approximate property boundaries, and all existing or closed underground storage tank systems including appurtenant piping and a cross-sectional view indicating depth of tank, stratigraphy and location of water table;

2. A summary of the site assessment sampling results and depths to water table in tabular form and keyed to the site diagram;

3. A certification, signed by the preparer of the site assessment, which states the following with regard to the site assessment portion of the closure plan:

"I certify under penalty of law that the information provided in this document is true, accurate and complete and was obtained by procedures in compliance with this subchapter. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

4. A certification signed by the person performing the tank decommissioning portion of the closure plan which states the following:

"I certify under penalty of law that tank decommissioning activities were performed in compliance with N.J.A.C. 7:14B-9.2(b)3. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

5. Certifications, signed by the appropriate representatives of the owner or operator of the closed underground storage tank system, in accordance with the requirements of N.J.A.C. 7:14B-2.3(d)4.

(b) The owner or operator of a closed facility may be required to submit additional information regarding site conditions depending upon the sampling results in order to ensure compliance with the requirements of this subchapter.

(c) The owner or operator shall report any evidence of contamination discovered during closure activities in accordance with the procedures in N.J.A.C. 7:14B-7.3 and perform corrective action in accordance with N.J.A.C. 7:14B-8.

(d) The owner or the property on which an underground storage tank system exists and was closed shall maintain all records generated to comply with the requirements of this subchapter. These records shall be maintained at the closure site for an indefinite period of time.

(e) These records shall be made available for inspection by any authorized local, State and/or Federal representative and shall be submitted to the Department if required.

SUBCHAPTER 10. PERMITTING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

7:14B-10.1 General permitting requirements and procedures

(a) Any person who owns or operates, or is proposing to own or operate, an underground storage tank system shall, except as provided for under (b) below, obtain a permit from the Department prior to replacing, installing, expanding or substantially modifying the underground storage tank system.

(b) Any person who owns or operates, or is proposing to own or operate, an underground storage tank that is or will be equipped with one of the Department-approved methods of secondary containment or devices specified in N.J.A.C. 7:14B-4.4(a), shall obtain a construction permit issued pursuant to the New Jersey Uniform Construction Code, N.J.A.C. 5:23, prior to installation and shall maintain at the underground storage tank facility the site diagrams and plans and specifications required by N.J.A.C. 7:14B-10.2(a)2.

(c) Any person who owns or operates, or is proposing to own or operate, an underground storage tank system and intends to replace, install, expand or substantially modify the underground storage tank system shall complete and submit a separate permit application form for each activity in each excavation area.

(d) Any person who owns or operates, or is proposing to own or operate, an underground storage tank system which requires a permit under this subchapter, shall complete and submit the permit application form at least 45 days in advance of the anticipated date of initiating the activity for which the permit is required.

(e) Permit application forms shall be obtained from and accurately completed, signed, dated, and returned to:

Bureau of Underground Storage Tanks/
Permitting Unit
Division of Water Resources
Department of Environmental Protection
CN 029
Trenton, New Jersey 08625

(f) Any person who owns or operates, or is proposing to own or operate, an underground storage tank system which requires a permit under this subchapter, shall provide the following information on the permit application form:

1. The activity to be conducted at the facility which requires the person to obtain a permit;

2. The name, mailing address, and location of the facility where the activity will take place;

3. The facility owner's and operator's name, address, and telephone number;

4. The name, address, and telephone number of the applicant's authorized agent, where applicable;

5. The facility SIC code;

6. A listing of all the permits or construction approvals received or applied for in relation to the proposed activity;

7. A listing of any administrative orders, notices of violations, complaints filed against, or other corrective action required or enforcement action taken by any governmental entity with regard to the operation of the facility;

8. A certification by the owner or operator as required by N.J.A.C. 7:14B-2.3(d)5, and

9. Any other relevant information which the Department, in its discretion, requires.

(g) Depending on which underground storage tank permit is being sought, the owner or operator must provide the additional information required in N.J.A.C. 7:14B-10.2 through 10.5.

(h) The Department may issue a permit to the owner or operator of an existing or proposed underground storage tank system upon a determination that:

1. The owner or operator proposes to construct the underground storage tank system with materials that meet or exceed the standards contained in the New Jersey Uniform Construction Code, N.J.A.C. 5:23;

2. The owner or operator proposes to equip the underground storage tank system with either a method of secondary containment meeting the requirements of N.J.A.C. 7:14B-4.4(a) or a monitoring system meeting the requirements of N.J.A.C. 7:14B-6.2 or 6.4;

3. The owner or operator proposes to equip the underground storage tank system with corrosion control meeting the requirements of N.J.A.C. 7:14B-4.1 (g), (h), (i) or (j);

4. The owner or operator proposes to equip the underground storage tank system with spill and overfill protection meeting the requirements of N.J.A.C. 7:14B-4.1(c);

5. The owner or operator of an underground storage tank system shall ensure that the new underground storage tank system and the hazardous substance to be stored in or dispensed from that system will not interact in a way that may undermine the integrity of the system or promote corrosion; and

6. The permit application form is accurate and complete, and all application fees have been paid in accordance with N.J.A.C. 7:14B-3.

(i) Any person who has been issued a permit under this section shall be required to notify the Department or the local code enforcement official in advance of beginning one or more of the activities listed in (a) above. This shall be done to allow a Department or local code enforcement official to inspect the facility and determine whether the facility is in compliance with all applicable rules and regulations.

1. The permittee shall also provide the Department or the local fire code official with the names of all insurance companies and insurance policy numbers related to the facility.

7:14B-10.2 Additional application requirements for the installation of underground storage tank systems not equipped with secondary containment or equivalent devices

(a) In addition to the general permitting requirements and procedures set forth in this subchapter, any owner or operator that intends to install an underground storage tank system which is not equipped with secondary containment or equivalent devices as specified in N.J.A.C. 7:14B-4.4 and 6.3 on either the tank or the appurtenant piping shall;

1. Submit two copies of a set of plans and specification signed and sealed by a New Jersey professional engineer, drawn to scale and depicting the top, front, and side views of the proposed underground storage tank system installation. Plans submitted shall show all information and details necessary to indicate compliance with this chapter and shall include a certification which states the following:

"I certify under penalty of law that the information provided in this document is true, accurate and complete and is in conformance with the requirements of this subchapter. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate, or incomplete information, including fines and/or imprisonment."

i. The Professional Engineer shall sign and seal the "as built" plans and specifications where they differ from the proposed plans and specifications; and

2. Submit three copies of the site diagram showing to scale the size and location of all new underground storage tank systems, all existing structures on the site, and distances from lot lines.

(b) Where the set of plans and specifications are or will be used repeatedly at different underground storage tank system facilities, the plans attached to the first application for a Department installation permit and accompanied by a request for the designation may, following approval by the Department, be designated as a "prototype or master plan." An additional copy of the signed and sealed plans shall be submitted to the Department for retention. Subsequent permit applications shall consist of three copies each of the site diagram required by (a)2 above, signed and sealed by a New Jersey professional engineer, and a reference to the original approval of the "prototype or master plan".

7:14B-10.3 Additional application requirements for the installation of discharge monitoring systems on existing underground storage tank systems not equipped with secondary containment or equivalent devices

(a) In addition to the general requirements and procedures set forth in N.J.A.C. 78:14B-10.1, any person planning to install a discharge monitoring system on an existing underground storage tank system shall provide the following information on the permit application form:

1. The results of at least one boring drilled adjacent to the existing underground storage tank system, or at the location of the proposed underground storage tank system;

i. The boring shall be drilled in accordance with the well drilling requirements promulgated pursuant to N.J.S.A. 58:4A-5;

ii. The boring may extend not more than 15 feet below the bottom of the tank excavation area;

iii. The boring shall be evaluated for textural analysis of split spoon samples every five feet for the length of the boring using standard methods of classification including, but not limited to, Burmeister, Unified, or United States Department of Agriculture systems. This requirement shall not apply to monitoring systems which are in entirely homogeneous backfill consisting of crushed gravel, clean sand, or pea gravel as recommended by the tank or piping manufacturer; and

iv. The boring shall be examined to determine the highest seasonal water table as indicated by water level measurement or other indicators including, but not limited to, mottling (if seen within the maximum extent of the boring);

2. A detailed description of the monitoring device to be installed including, but not limited to, operation requirements, monitoring frequency, written performance claims and their manner of determination, and monitoring points; and

3. A site diagram which accurately indicates the location of all sampling and proposed monitoring points in relation to all underground storage tank systems at the facility. For purposes of proper identification, each monitoring point, sensor, or sampling device shall be designated with a number.

(b) The owner or operator of an underground storage tank system that proposes to install vapor sensors as a discharge monitoring system shall submit the following specific information on the permit application form:

1. The results of soil gas analyses from at least five borings. Four of the borings shall be located in each of the corners of the proposed or original tank excavation area and one boring shall be performed adjacent to the appurtenant piping;

i. The borings shall be drilled in accordance with the well drilling requirements of N.J.S.A. 58:4A-5; and

ii. The borings may not extend more than five feet below the ground surface for the purpose of detecting background contamination of soil gas by field instruments with detection limits of 10 parts per million or less and calibrated to the substance being stored; and

2. Verification of field results through samples analyzed by a New Jersey Certified Laboratory upon request of the Department.

(c) The Department may, in its discretion, require additional borings for those facilities with over 30,000 gallons of storage capacity in one excavation area and/or unusual, complex or long piping configurations.

7:14B-10.4 Additional application requirements for the installation of corrosion protection systems for existing underground storage tank systems

In addition to the general requirements and procedures set forth in N.J.A.C. 7:14B-10.1, any owner or operator that intends to install corrosion protection in accordance with N.J.A.C. 7:14B-4.1(a) on an existing underground storage tank system shall provide the Department with plans and specifications and a testing and maintenance schedule designed by a corrosion expert. The submission shall be accompanied by the following certification made by the corrosion expert:

"I certify under penalty of law that the information provided in this document is true, accurate and complete and is in conformance with the requirements of this subchapter. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate, or incomplete information, including fines and/or imprisonment."

7:14B-10.5 Additional application requirements for substantial modifications other than discharge monitoring systems and corrosion protection

(a) In addition to the general requirements and procedures set forth in N.J.A.C. 7:14B-10.1, the owner or operator of an underground storage tank system that proposes to substantially modify that tank system in any way other than through installation of a monitoring system or corrosion protection shall submit the following information to the Department:

1. A detailed narrative description of the proposed substantial modification; and

2. Three copies of drawings of professional quality that accurately depict the proposed substantial modification. The Department may, in its discretion, require plans and specifications signed and sealed by a New Jersey professional engineer. In addition to this submission, the New Jersey professional engineer shall provide the following certification:

"I certify under penalty of law that the information provided in this document is true, accurate and complete and is in conformance with the requirements of this subchapter. I am aware that there are signifi-

cant civil and criminal penalties for submitting false, inaccurate, or incomplete information, including fines and/or imprisonment."

(b) The owner or operator of an existing underground storage tank system who intends to install an interior lining shall provide the Department with a certification pursuant to N.J.A.C. 7:14B-5.3(b).

(c) For the purposes of this subchapter only, the following activities shall not constitute substantial modifications which require a permit under this subchapter issued by the Department:

1. Installation of vapor control systems required by N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Substances;

2. Installation of replacement appurtenant piping sections as long as the appurtenant piping meets standards set forth in N.J.A.C. 7:14B-4.2(b) and the entire length of piping from the dispenser to the tank is not being replaced. Replacement of the entire length of piping from the dispenser to the tank shall constitute a new installation and require a permit under this subchapter;

3. Minor repairs which will not:

i. Involve cutting the tank shell;

ii. Affect cathodic protection systems, for example, introducing new unprotected metal parts; or

iii. Otherwise affect the storage, capacity, physical configuration or integrity of the facility or its monitoring system;

4. A change in the tank's contents where the new hazardous substance is chemically compatible with the tank's construction material or lining;

5. The installation of a line release detector as required in N.J.A.C. 7:14B-4.5(i); or

6. Any other activities which, in the opinion of the Department, will not affect storage capacity, physical configuration, or the physical integrity of the facility or its monitoring system.

7:14B-10.6 Public access to permit information

(a) All completed New Jersey Underground Storage Tank permit application forms, as well as documented information pertaining to the permit, shall be considered public records pursuant to N.J.S.A. 47:1A-1 et seq.

(b) Interested persons shall request in writing an appointment to review the public records. This written request shall be sent to:

New Jersey Department of Environmental Protection
CN 029
Bureau of Underground Storage Tanks
401 East State Street
Trenton, New Jersey 08625-0029

7:14B-10.7 Display of permit and availability of approved plans

(a) The owner or operator of an underground storage tank system for which a Department permit has been issued shall prominently display the valid permit at the facility during the course of the permitted activity and shall make the permit available for inspection by an authorized local, State or Federal representative.

(b) The owner or operator of an underground storage tank system for which a Department permit has been issued shall maintain one set of approved plans at the facility during the course of the permitted activity and shall make the approved plans available for inspection by any authorized local, State or Federal representative.

7:14B-10.8 Emergency permits

(a) The Department may, in its discretion, issue an emergency underground storage tank permit in the specific instance where:

1. A building's sole source of heat is from an oil burner and that building's underground storage tank system containing heating oil is determined to be leaking.

i. When this type of underground storage tank system is discovered to have released a hazardous subtance into the environment then, in order to reduce the period of time that the building must remain without heat, the owner or operator may request an emergency permit to remove and replace the leaking underground storage tank system.

(b) The owner or operator of an underground storage tank system, requesting an emergency permit, shall contact the Department on the day of the emergency or, when the emergency occurs after business hours, on a weekend or on a holiday, the owner or operator shall contact the Department on the next working day thereafter at (609) 984-3156 for telephone issuance of an emergency permit. The owner or operator shall, within 14 days of receipt of telephone issuance of the emergency permit, submit a formal permit application, including the appropriate fee, to the Department.

(c) The owner or operator shall provide the following information when requesting an emergency permit:

1. Name, address and telephone number of the owner and the operator;

2. A clear and concise factual description of the nature and scope of the emergency;

3. The address and location of the facility where the emergency occurred; and

4. A description of the underground storage tank system installed or repaired, including all features necessary to be in compliance with this chapter.

(d) The Department, upon issuance of an emergency permit, shall assign to the owner or the operator of the underground storage tank system an emergency permit number. The owner or operator shall prominently display the number of the facility and make it available for on-site inspection by any authorized local, State or Federal representative.

7:14B-10.9 Permit expiration

Any permit issued pursuant to this chapter shall expire if the work authorized by the permit is not commenced within 12 months after the effective date of the permit, or if the authorized work is suspended or abandoned for a period of six months at any time after work has begun.

7:14B-10.10 Grounds for denial or revocation of permits

(a) The Department may, in its discretion, deny the issuance of a permit under this subchapter upon a determination of the following:

1. The permit application is incomplete, contains inaccurate information and/or is illegible; or

2. The owner or operator fails to comply with any requirement of the State Act or this chapter.

(b) The Department may revoke a permit upon a determination of the following:

1. The permit application contains false or inaccurate information;

2. An authorized local, State or Federal government representative is denied access to the facility site;

3. The owner or operator fails to comply with any requirement of the State Act or this subchapter; or

4. The owner or operator of an underground storage tank system is performing or has authorized an activity which is not in compliance with this chapter.

(c) The Department shall inform an owner or operator of the denial or revocation of a permit by a Notice of Intent to Deny a Permit or a Notice of Intent to Revoke a Permit. This Notice shall include:

1. The specific grounds for denial of issuance as set forth in (a) above; or

2. The specific grounds for revocation as set forth in (b) above.

(d) The Department shall serve this Notice to an owner or operator by certified mail (return receipt requested) or by personal service.

(e) An owner or operator that receives a Notice from the Department denying or revoking a permit shall not begin the proposed permitted activities or shall discontinue any ongoing permitted activities.

(f) The Department, in seeking to revoke a permit, shall comply with the procedures and requirements of N.J.A.C. 7:14B-12.

SUBCHAPTER 11. MUNICIPAL ORDINANCES

7:14B-11.1 Local ordinance exemption

(a) This chapter supersedes any law or ordinance regulating underground storage tanks regulated subject to this chapter, enacted by municipality, county or political subdivision thereof prior to the effective date of this chapter.

(b) No municipality, county, or political subdivision thereof shall enact any law or ordinance regulating underground storage tanks regulated subject to this chapter without express permission from the Department in accordance with N.J.A.C. 7:14B-11.2 below.

7:14B-11.2 Local ordinance enactment

(a) A municipality, county, or political subdivision thereof may apply to the Department for authority to enact a municipal ordinance that

provides rules and regulations that are more environmentally protective than this chapter. The application shall consist of the following:

1. A copy of the proposed ordinance;

2. A resolution from the governing body supporting the proposed ordinance;

3. A written statement setting forth all the provisions of the proposed ordinance which differ from those set forth, or are not found in, this chapter;

4. The legal and environmental basis for the difference; and

5. All supporting facts and data.

(b) A municipality may apply to the Department to continue enforcement or testing activities under an existing ordinance so to affect an uninterrupted monitoring program between the effective date of this subchapter and the dates found in the tank system upgrading schedule of N.J.A.C. 7:14B-4.5(a), (b), (c), (d), (e), (f), (h) and (i).

7:14B-11.3 Department determination

(a) The Department shall, within 180 days of receipt of a written petition from a municipality, evaluate the proposed municipal ordinance to determine whether the exemption is warranted and advise the municipality of its findings.

(b) The Department shall base its determination on the following criteria:

1. The municipal ordinance provides greater environmental protection for unique hydrogeologic conditions;

2. The municipal ordinance provides greater protection against imminent threats to human health; or

3. The municipal ordinance provides greater environmental protection for wetlands or flood plains.

(c) The Department shall provide public notice of all approvals of municipal ordinances under this section by publishing notice of each approval in the DEP Bulletin.

(d) The municipality, county or political subdivision receiving approval from the Department to adopt the ordinance shall submit to the Department a copy of the final ordinance along with a detailed description of the means by which the local government will enforce the provisions of the ordinance.

(e) The municipality, county or political subdivision that is denied the right by the Department to adopt an ordinance may request an adjudicatory hearing pursuant to N.J.A.C. 7:14B-12.

SUBCHAPTER 12. PENALTIES, REMEDIES, AND ADMINISTRATIVE HEARING PROCEDURES

7:14B-12.1 General penalty

(a) Failure by an owner or operator of an underground storage tank system to comply with any requirement of the State Act or this chapter may result in denial or revocation of the owner's or operator's registration or permit for the tank system and/or the civil administrative penalties set forth in N.J.S.A. 58:10A-10 and N.J.A.C. 7:14-8.

(b) An owner or operator may request an administrative hearing for appealing a penalty issued pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. or N.J.A.C. 7:14-8 by meeting the requirements of N.J.A.C. 7:14-8.4.

7:14B-12.2 Procedures for requesting hearings after denial or revocation of registration and permits

(a) Within 20 calendar days from receipt of notification from the Bureau of Underground Storage Tanks denying or revoking a permit or registration, issued pursuant to N.J.S.A. 58:10A-21 et seq., the Underground Storage of Hazardous Substances Act, the registrant may request an adjudicatory hearing to contest such action by submitting a written request to the Department which shall include the following information:

1. The name, address, and telephone number of the registrant, and its authorized representative, if any;

2. The Underground Storage Tank registration number for the facility;

3. The registrant's factual position on each question alleged to be at issue, its relevance to the Department's decision, specific reference to contested conditions as well as suggested revised or alternative conditions;

4. Information supporting the registrant's factual position and proposed conditions and copies of other written documents relied upon to support the request for a hearing;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for disabled persons.

(b) A hearing request not received within 20 days after receipt by the registrant shall be denied by the Department.

(c) If the registrant fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) If it grants the request for a hearing, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

SUBCHAPTERS 13 AND 14 (RESERVED)

SUBCHAPTER 15. CONFIDENTIALITY

7:14B-15.1 Scope and exchange of information

(a) This subchapter sets forth the procedures for making information received by the Department in administering the Underground Storage Tank program under N.J.A.C. 7:14B-1 available to the public and maintaining confidentiality of certain parts of that information.

(b) All information collected by or originated by the Department in connection with underground storage tank regulatory activities under N.J.A.C. 7:14B shall be generally available to the public except as provided otherwise in this subchapter.

(c) Claims for confidentiality will be decided by the Department in accordance with the provisions of this subchapter.

(d) If a request for information is made for interagency or intra-agency memoranda or letters, the Department may deny this request if such request is exempted from disclosure pursuant to 5 U.S.C. § 552 (b)(5).

(e) If a request for information is made for investigatory records, the Department may deny the request if such request is exempted from disclosure pursuant to 5 U.S.C. § 552 (b)(7) or N.J.S.A. 47:1A-3.

(f) When USEPA supplies information to the Department which was submitted to USEPA under a claim of confidentiality, the information shall be subject to the conditions set forth in 40 CFR Part 2 and this subchapter. If the Department obtains information from USEPA that is not claimed to be confidential, the Department may make that information available to the public without further notice to any interested party.

(g) Notwithstanding any other provision of this subchapter, any information obtained or used in the administration of the underground storage tank program shall be available to EPA and U.S. Department of Justice upon request without restriction. If the information has been submitted to the Department under a claim of confidentiality, the Department shall submit that claim to EPA when providing information as required in this section.

(h) Access to any information for which a confidentiality claim has been made will be limited to Department employees, representative and contractors, whose activities necessitate such access. Also USEPA employees may have access to confidential information subject to (f) above.

(i) No disclosure of information for which a confidentiality claim has been asserted shall be made to any other persons except as provided in this subchapter.

(j) Nothing in this section shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that such disclosure is not in a form that would foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the person who supplied it to the Department.

7:14B-15.2 Confidential claims

(a) Any owner or operator of an underground storage tank system required to submit any information pursuant to the Act or this chapter which in the owner's or operator's opinion constitutes trade secrets,

proprietary information, or information related to national security, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(b) Any owner or operator submitting any information to the Department and asserting a confidentiality claim covering any information contained therein shall submit two documents to the Department. One document shall contain all the information required by the Act or this chapter including any information which the owner or operator alleges to be entitled to confidential treatment. The second document shall be identical to the first except that it shall contain no information which the owner or operator alleges to be entitled to confidential treatment. The second document can be a photocopy of the first, with the allegedly confidential material blacked out.

(c) The top of each page of the first document containing the information which the owner or operator alleges to be entitled to confidential treatment shall display the heading "CONFIDENTIAL" in bold type, or stamp.

(d) All parts of the text of the first document which the owner or operator alleges to be entitled to confidential treatment shall be underscored or highlighted in a clearly identifiable manner. This manner of marking confidential information shall be such that both the allegedly confidential information and the underscoring or highlighting is reproducible on photocopying machines.

(e) The first document, containing the information which the owner or operator alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope, together with the second, non-confidential document (which may or may not be enclosed in a separate envelope, at the option of the owner or operator), shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no marking indicating the confidential nature of contents.

(f) To ensure proper delivery, the complete package should be sent by certified mail, return receipt requested, or by other means which will allow verification of receipt. Ordinary mail may be used, but the Department will assume no responsibility for packages until they are actually received at the address provided below:

New Jersey Department of Environmental Protection
CN 029
Bureau of Underground Storage Tanks
401 East State Street
Trenton, New Jersey 08625-0029

7:14B-15.3 Disclosure of confidential information to contractors

(a) The Department may disclose confidential information to a contractor of the Department when the contractor's activities necessitate such access.

(b) No information may be disclosed to a contractor unless the contract in question provides that the contractor and the contractor's employees, agents and representatives use the information only for the purpose of carrying out the work required by the contract, not disclose the information to anyone not authorized in writing by the Department, store the information in locked cabinets in secure rooms, and return the information to the Department whenever the information is no longer required by the contractor for the performance of the work required by the contract.

(c) Disclosure in violation of this subchapter or the contractual provisions described in (b) above shall constitute grounds for debarment or suspension as provided in N.J.A.C. 7:1-5 Debarment, Suspension and Disqualification from Department Contracting, in addition to whatever other remedies may be available to the Department at equity or law.

7:14B-15.4 Confidentiality determinations

(a) Information for which a confidentiality claim has been asserted will be treated by the Department as entitled to confidential treatment, unless the Department determines that the information is not entitled to confidential treatment as provided in this section and N.J.A.C. 7:14B-15.

(b) The Department shall act upon a confidentiality claim and determine whether information is or is not entitled to confidential treatment whenever the Department:

1. Receives a request under N.J.S.A. 47:1A-1 et seq. to inspect or copy such information;

2. Desires to determine whether information in its possession is entitled to confidential treatment; or

3. Desires for any reason in the public interest to disclose the information to persons not authorized by this subchapter to have access to confidential information.

(c) The Department shall make the initial determination whether information is or is not entitled to confidential treatment.

1. If the Department determines that information is not entitled to confidential treatment, it shall so notify the owner or operator who submitted the information.

2. The notice required under this subsection shall be sent by certified mail, return receipt requested and shall state the reasons for the Department's initial determination.

3. An owner or operator who wishes to contest a determination by the Department shall, within 30 days of notification of the determination, submit evidence to support the owner's or operator's contention that the Department's initial determination was incorrect. The evidence may include, but need not be limited to, a statement indicating:

i. The period of time for which confidential treatment is desired by the owner or operator (for example, until a certain date, until the occurrence of a specified event, or permanently);

ii. The measures taken by the owner or operator to guard against undesired disclosure of the information to others;

iii. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith; and

iv. The extent to which disclosure of the information would result in substantial damage to the owner or operator, including a description of the damage, an explanation of why the damage would be substantial, and an explanation of the relationship between disclosures and the damage.

4. Failure of an owner or operator to furnish timely comments or exceptions waives the owner's or operator's confidentiality claim.

5. The owner or operator may assert a confidentiality claim to any information submitted to the Department by an owner or operator as part of its comments pursuant to (c)3 above.

6. The Department may extend the time limit for submitting comments pursuant to (c)3 above for good cause shown by the owner or operator and upon receipt of a request in writing.

(d) After receiving the evidence, the Department shall review its initial determination and make a final determination.

1. If, after review, the Department determines that the information is not entitled to confidential treatment, the Department shall so notify the owner or operator by certified mail, return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the confidentiality claim, and that the Department shall make the information available to the public on the 14th day following receipt by the owner or operator of the written notice.

2. If, after review, the determination is made that information is entitled to confidential treatment, the information shall not be disclosed, except as otherwise provided by this subchapter. The owner or operator shall be notified of the Department's determination by certified mail, return receipt requested. The notice shall state the basis for the determination and that it constitutes final agency action.

7:14B-15.5 Substantive criteria for use in confidentiality determinations

(a) When the owner or operator satisfies each of the following substantive criteria, the Department shall determine that the information for which a confidentiality claim has been asserted is confidential:

1. The owner or operator has asserted a confidentiality claim which has not expired by its terms, been waived or withdrawn;

2. The owner or operator has shown that reasonable measures have been taken to protect the confidentiality of the information and that the owner or operator intends to continue to take such measures;

3. The information is not, and has not been, available or otherwise disclosed to other persons without the owner's or operator's consent (other than by subpoena or by discovery based on a showing of special need in a judicial or quasi-judicial proceeding, as long as the information has not become available to persons not involved in the proceeding);

4. No statute specifically requires disclosure of the information; and

5. Except for information related to national security, the owner or operator has shown that disclosure of the information would be likely to cause substantial damage to its competitive position.

7:14B-15.6 Disclosure of confidential information to USEPA and other public agencies

(a) The Department may disclose confidential information to persons other than Department employees, representatives, and contractors only as provided in this section or N.J.A.C. 7:14B-15.3.

(b) The Department may disclose confidential information to any other State agency or to a Federal agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency;

2. The request sets forth the official purpose for which the information is needed;

3. The Department notifies the other agency of the Department's determination that the information is entitled to confidential treatment, or of any unresolved confidentiality claim covering the information;

4. The other State or Federal agency has first furnished to the Department a written formal legal opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department to disclose such information to the other agency;

5. The other agency agrees not to disclose the information further unless:

i. The other agency has statutory authority both to compel production of the information and to make the proposed disclosure; or

ii. The other agency has obtained the consent of the affected owner or operator to the proposed disclosure; and

6. The other agency has adopted rules or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure.

(c) Except as otherwise provided in N.J.A.C. 7:14B-15.7, the Department shall notify in writing the owner or operator who supplied the confidential information of:

1. Its disclosure to another agency;

2. The date on which disclosure was made;

3. The name of the agency to which disclosed; and

4. A description of the information disclosed.

7:14B-15.7 Disclosure by consent

(a) The Department may disclose any confidential information to any person if it has obtained the written consent of the owner or operator to such disclosure.

(b) The giving of consent by an owner or operator to disclose shall not be deemed to waive a confidentiality claim with regard to further disclosures unless the authorized disclosure is of such nature as to make the disclosed information accessible to the general public.

7:14B-15.8 Imminent and substantial danger

(a) Upon a finding that disclosure of confidential information would serve to alleviate an imminent and substantial danger to public health and the environment, the Department may:

1. Prescribe and make known to the owner or operator such shorter comment period (see N.J.A.C. 7:14B-15.4(c)4), post-determination waiting period (see N.J.A.C. 7:14B-15.4(d)1), or both, as it finds necessary under the circumstances; or

2. Disclose confidential information to any person whose role in alleviating the danger to public health and the environment necessitates that disclosure. Any such disclosure shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in alleviating the danger.

(b) Any disclosure made pursuant to this section shall not be deemed a waiver of a confidentiality claim, nor shall it, of itself, be grounds for any determination that information is no longer entitled to confidential treatment.

(c) The Department will notify the owner or operator of any disclosure made purusant to this section as soon as is feasible.

7:14B-15.9 Security procedures

(a) Submissions to the Department pursuant to the Act and this chapter will be marked confidential and opened only by persons authorized by the Department engaged in administering the Act and this chapter.

(b) All submissions entitled to confidential treatment shall be stored by the Department or its contractors only in locked cabinets.

(c) Any record made or maintained by Department employees, representatives, or contractors which contains confidential information shall contain appropriate indicators identifying the confidential information.

7:14B-15.10 Wrongful access or disclosure; penalties

(a) A person may not disclose, seek access to, obtain or have possession of any confidential information obtained pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., or this chapter, except as authorized by this subchapter.

(b) Every Department employee, representative, and contractor who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

(c) A Department employee, representative, or contractor shall not disclose, or use for his or her private gain or advantage, any information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department.

(d) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence a civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information.

2. Pursue any other remedy available by law.

(e) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(f) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

(a)

DIVISION OF WATER RESOURCES

Underground Storage Tank Improvement Fund Loan Program

Proposed New Rules: N.J.A.C. 7:14B-13

Authorized By: Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9, N.J.S.A. 58:10A-21 et seq., more particularly 58:10A-36.

DEP Docket Number: 035-89-07.

Proposal Number: PRN 1989-419.

Public hearings concerning these proposed new rules will be held on:

Thursday, August 24, 1989
Rutgers Labor Education Center
Ryders Lane
New Brunswick, New Jersey
10:00 A.M. until close of comments

Tuesday, August 29, 1989
New Jersey State Museum
250 W. State Street
Trenton, New Jersey
10:00 A.M. until close of comments

Submit written comments by October 6, 1989 to:

Edward J. Morrison, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

A detailed discussion of the proposed new rules, N.J.A.C. 7:14B-13, is contained in the "Basis and Background for the Proposed Underground Storage Tank Rules" (June 1989). This document may be obtained from:

Bureau of Underground Storage Tanks
Division of Water Resources
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625; or

New Jersey Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
CN 301
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On September 3, 1986, P.L. 1986, c.102, codified at N.J.S.A. 58:10A-21 et seq., and commonly known as the New Jersey Underground Storage of Hazardous Substances Act ("Act"), was signed into law. Section 17 of the Act established the State Underground Storage Tank Improvement Fund ("Fund") to assist underground storage tank ("UST") owners with the financial burdens of complying with the Act's technical requirements in N.J.A.C. 7:14B-4 through 12 and 15, proposed elsewhere in this issue of the New Jersey Register. The Act authorized the New Jersey Department of Environmental Protection ("the Department"), to adopt a regulatory program for the prevention and control of the unauthorized discharges of hazardous substances caused by releases from underground storage tank (UST) systems and to administer the Fund. Loans from this Fund will be made available to eligible owners of UST systems demonstrating economic hardship.

N.J.A.C. 7:14B-13 sets forth the requirements and procedures for obtaining a loan from the Fund. In order to be eligible for a loan, an applicant must be a "small business" (see N.J.A.C. 7:14B-13.40) and also must meet specific economic hardship criteria (see N.J.A.C. 7:14B-13.9). This criteria, which includes gross receipts, net profits and costs of compliance, is given a numerical value and judged against a loan award schedule (see N.J.A.C. 7:14B-13.10). This system was developed due to the relatively small amount of money in the Fund ($5,000,000).

The UST loan program, like private commercial loans, requires an applicant to submit financial information to prove credit worthiness. The applicant must submit a completed loan application as well as balance sheets, income statements and asset data. The applicant must have collateral in an amount sufficient to secure the loan. Application processing will be performed by the Department and the credit analysis and loan closing will be performed by the New Jersey Economic Development Authority. In the future the Department will assume these activities.

There are discrete stages in the UST loan award process. In order these are, Preapplication procedure, N.J.A.C. 7:14B-13.3; Preliminary review procedure, N.J.A.C. 7:14B-13.4; Application procedure, N.J.A.C. 7:14B-13.6; Notice of approval or denial, N.J.A.C. 7:14A-13.11; commitment letter, N.J.A.C. 7:14B-13.11; and Loan closing, N.J.A.C. 7:14B-13.14.

Activities for which loans are available include the replacing or repairing of one or more tank systems, or the installation of UST monitoring systems to comply with N.J.A.C. 7:14B-4, 5, and 6. Repair, for the purposes of this subchapter, means the installation of a corrosion protection system, a spill containment device or an overfill protection device on an underground storage tank. Ineligible project costs include costs for the remediation of a release and any excess costs over and above those needed for compliance with this chapter (see the definition of "eligible project cost" in N.J.A.C. 7:14B-13.40). As prescribed by the Act, interest rates for these loans are set at a maximum of six percent and terms can be for no longer than 10 years.

The UST loan award agreement contains standard conditions and default remedies that will protect the Department in the event a borrower is unable to repay the loan and/or complete the UST project.

Social Impact

Proposed new N.J.A.C. 7:14B-13 will have a beneficial social impact. Releases from underground storage tank systems have the potential to cause severe harm to public health and the environment. Tank systems can discharge hazardous substances into the environment, threaten ground water and potable water sources and create vapor hazards which present both immediate dangers of explosion and long term health risks. The technical UST rules, proposed elsewhere in this Register, provide the Department with the authority to mandate compliance with a tank management program which will ensure that the environmental degradation that results from improperly installed, maintained, or abandone tanks is abated.

The Department recognizes that initial compliance with the propose technical rules will create a significant financial burden for a number c tank owners. The Department, by providing low interest loans for mee ing the requirements of the technical rules, will alleviate some of th financial burden and at the same time further the environmental obje tives of the UST program. The loan program will benefit both the e vironment and eligible members of the regulated community experiencir economic hardship as a result of the cost of complying with the US technical requirement.

Economic Impact

In order to comply with the proposed UST technical rules, an unde ground storage tank system owner or operator is required to proper manage the tank system. The Department estimates the cost for con pliance with the proposed technical rules will vary from minimal for currently state-of-the-art tank to $50,000 to $100,000 for the installatic of a system of three brand new tanks. For retrofitting existing tanks, cos will fluctuate depending on the site conditions, but these estimates a provided:

Monitoring systems	$2,000 to	$10,0(
Corrosion protection systems	$5,000 to	$ 7,5(
Spill and Overfill prevention device	$1,500 to	$ 5,0(
TOTAL	$8,500 to	$22,5(

This proposed loan program will assist the regulated community wi the financial burden associated with complying with the technical requir ments. However, it will be the UST owner's responsibility to apply f and repay a loan.

The application fee for an underground storage tank is $250.00. T Department conducted a study to determine the estimated salary cos for performing an application evaluation and discovered it will requi an estimated 90 hours to perform this task at an estimated cost of $2,41 Therefore the application fee of $250.00 is required in order to help defr the cost of performing the application evaluation.

In addition, if an application is approved the applicant must subm a $600.00 loan closing fee. The Department will be procuring the servic of the New Jersey Economic Development Authority (NJEDA) to pe form the financial evaluations and loan closing. NJEDA will be chargir the Department $1,800 to perform these services. This $600.00 closir fee is a flat fee, to be applied to all loans, no matter what the degr of complexity. Unfortunately, there is a limited amount of funds availab for loan awards.

Environmental Impact

The Fund's purpose is to financially assist the regulated communi when upgrading their UST systems in order to prevent releases from the tanks. Uncontrolled and undetected releases from UST systems ca severely degrade both ground and surface waters. As a direct result a release, aquatic life can be threatened and potable water sources ca be contaminated.

The harm caused by discharging USTs to human health and the State natural environment can be extensive. The Department intends to achie a substantial degree of protection from this threat by requiring tar owners and operators to meet certain reasonable standards; to inst tanks that do not discharge, to upgrade tanks already in place, ar monitor their tanks to insure no release occurs. By providing financi assistance to the regulated community to meet these requirements t Department will ease the financial burden caused by the requiremen and help prevent a very real and significant menace to the State's enviro ment.

Regulatory Flexibility Analysis

Proposed N.J.S.A. 7:14B-13 applies to all small businesses that sto hazardous substances in UST systems regulated under the Act. T Department estimates that 15,000 tank owners and operators are "sm businesses" as defined in the Regulatory Flexibility Act, N.J.S. 52:14B-16 et seq. and therefore will be impacted by the proposed rul

However, these rules do not require compliance or reporting requir ments but rather provide UST tank owners who are small business owne with an opportunity to obtain a low interest loan. The types of sm businesses eligible to obtain a loan may include independent gasoli service stations, fleet services, and heating oil companies. The Act esta lished the Fund as a revolving fund to financially assist owners of the facilities. The loans will be made available to eligible small business

that must replace or repair tanks, or install monitoring systems, in order to comply with the technical requirements.

In order to apply for a loan pursuant to the proposed rules, all UST owners must submit at a minimum the following data:

1. A completed application form provided by the Department;
2. Required financial statements:
3. Three price proposals for completion of the project including prices, plans and time schedules;
4. An application evaluation fee of $250.00 for conducting the review procedures as per N.J.A.C. 7:14B-13.6; and
5. All documentation required to be submitted before the loan closing can be held including permits, approvals, non-refundable closing fee of $600.00 and project contract signed by all responsible parties.

Proposed N.J.A.C. 7:14B-13 as a whole is designed to minimize the adverse economic impact small businesses will experience when upgrading their UST systems in order to comply with the UST technical rules. Because the class of eligible applicants has been limited to small businesses, no further minimization of economic impacts has been provided in the development of application criteria.

Full text of the proposal follows:

SUBCHAPTER 13. UNDERGROUND STORAGE TANK LOAN PROGRAM

7:14B-13.1 Scope and construction

(a) The following shall constitute the rules governing loans from the State Underground Storage Tank Improvement Fund for the replacement or repair of underground storage tanks or for the purpose of installing monitoring systems. These rules prescribe procedures, minimum standards of conduct for borrowers, and standards for obtaining loans for replacement or repair of one or more underground storage tanks.

(b) Loans shall be awarded to eligible applicants depending upon the relative economic hardship of the applicant and availability of money in the Fund.

(c) These rules shall be liberally construed to permit the Department to effectuate the purposes of the law.

7:14B-13.2 Purpose

(a) These rules are promulgated for the following purposes:

1. To implement the purposes and objectives of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., specifically N.J.S.A. 58:10A-36, the Underground Storage Tank Improvement Fund;
2. To establish policies and procedures for administration of funds appropriated pursuant to the above act for the purpose of making State loans to underground storage tank owners for the replacement or repair of one or more underground storage tanks or for the installation of underground storage tank monitoring systems;
3. To protect the public and the State of New Jersey by insuring that funds appropriated are spent in a proper manner and for the intended purposes;
4. To assure that the distribution and use of funds are consistent with the laws and policies of the State of New Jersey; and
5. To establish minimum standards of conduct to prevent conflicts of interest and insure proper administration of loans.

7:14B-13.3 Preapplication procedure

(a) Every applicant may request an informal conference prior to making a formal application for a loan. During the conference the Department shall identify and explain all loan application documents. It shall also identify and answer questions concerning other Departmental permits the applicant must obtain prior to being awarded a loan. This conference is not part of the application procedure and verbal statements made during the conference shall not bind the Department. Such conferences may be waived at the discretion of the Department.

(b) Questions concerning the program should be directed to:

Department of Environmental Protection
Division of Water Resources
Bureau of Underground Storage Tanks
CN 029
401 East State Steet
Trenton, New Jersey 08625

7:14B-13.4 Preliminary procedure for obtaining an underground storage tank loan

(a) Each applicant for an underground storage tank loan shall:

1. Determine if it meets the eligibility criteria of N.J.A.C. 7:14B-13.5;
2. Arrange for a preapplication conference, if necessary; and
3. Complete the application procedures required by N.J.A.C. 7:14B-13.6.

7:14B-13.5 Eligibility of loan recipients and costs

(a) An applicant is eligible for a loan award provided the following requirements are met:

1. The applicant is the owner of the underground storage tank system;
2. The applicant is a small business;
3. The applicant is required to upgrade his or her tank system to meet the requirements of this chapter by:
   i. Replacing an underground storage tank system, pursuant to N.J.A.C. 7:14B-4;
   ii. Repairing (see N.J.A.C. 7:14B-13.40) underground storage tank system; or
   iii. Installing a monitoring system, pursuant to N.J.A.C. 7:14B-6; and
4. The applicant meets the eligibility requirements of this subchapter.

7:14B-13.6 Application procedure

(a) To apply for an underground storage tank loan, an applicant shall comply with all the pertinent requirements of this section. The application shall be submitted to the Department at the address specified at N.J.A.C. 7:14B-13.3, on the forms provided for that purpose.

(b) An applicant for an underground storage tank loan shall submit:

1. A completed loan application, which shall include the following information:
   i. The name, address and social security number of the applicant;
   ii. The name, address and social security number of the owner of the property where the underground storage tank system is located (if different);
   iii. The contractual relationship between the owner and operator of the underground storage tank system, if applicable; and a copy of the contractual agreement between the owner and operator of the underground storage tank system;
   iv. The name, mailing address, block and lot, and phone number of the business where the underground storage tank system is located;
   v. The nature of the ownership, for example, sole proprietorship, partnership, corporation or joint tenancy;
   vi. If the owner is a partnership or corporation, a copy of the partnership agreement or articles of incorporation;
   vii. The names of all mortgage or lien holders and the original and outstanding balance of all mortgages and liens;
   viii. The owner's personal debt including amounts owed on all loans, mortgages or rent payments and credit cards;
   ix. A list of suppliers, including name, address, telephone number and contact person; and
   x. For a corporation, joint tenancy, or partnership a list of the names, addresses, social security numbers of the principals and officers;
2. In addition to the information submitted on the application form listed above, the applicant shall submit, at a minimum, the following information:
   i. Copies of the applicant's balance sheet for the last three years;
   ii. Copies of the applicant's income statement for the last three years;
   iii. A statement of changes in the applicant's financial position for the last three years;
   iv. An applicant's year-to-date balance sheet;
   v. An applicant's year-to-date income statement; and
   vi. Signed income tax returns including all schedules for the last three years;

3. If the financial statements required by (b)2i through v above are not available, the applicant shall be required to submit the following information:

i. Yearly gross receipts and net profit or weekly gross receipts and net profit from all sources of the business for the last three years;

ii. Asset data including value of equipment and property or real estate; and

iii. Debt data including amounts owed on all loans, mortgages or rent payments and credit cards;

4. The borrower shall have collateral in an amount sufficient to adequately secure the loan and that collateral may include a lien on the real and/or personal property of the applicant and/or its owners. Types of collateral may include, at a minimum, mortgages, security interests in equipment, and life insurance policies. The borrower shall submit a certified copy of the deed to any real estate he or she owns;

5. If an applicant intends to use the property on which the tank is located for collateral, then the applicant shall perform a site assessment on the property pursuant to N.J.A.C. 7:14B-9.2;

i. If the site assessment shows there is no contamination on the property, then the applicant may use this property to secure the loan.

ii. If the site assessment confirms a discharge from an underground storage tank on the property, the applicant shall complete the corrective action requirements of N.J.A.C. 7:14B-8 before the property may be used as security for the loan;

6. The applicant shall submit three price proposals for completion of the project;

7. An application evaluation fee of $250.00 shall be submitted to cover the cost of reviewing the loan application;

8. A description of how the applicant plans to repay the loan and pay any other expenses necessary to fully complete the proposed underground storage tank improvement, the steps the owner has taken to implement this plan, and the steps the owner plans to take before receiving the loan that will guarantee that at the time of the signing of the loan award agreement the owner will be irrevocably committed to repay the loan and pay any other expenses necessary to fully complete the underground storage tank improvement;

9. A written explanation of the need for the project;

10. A proposed construction schedule for the project;

11. Proof of ownership of the real property on which the underground storage tank is located;

12. The loan applicant shall sign a certification which states the following:

> "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification required by (b)12 above shall be signed by an individual with the power to bind the corporation, company or partnership and, as appropriate, at the levels indicated below:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; and

13. A corporate seal shall be attached to the application if the applicant is a corporation. In cases of joint ownership, all owners of record shall sign the loan applications and bind themselves to the loan award conditions.

(c) Each application shall constitute an undertaking to accept the requirements of this subchapter and the terms and conditions of the loan award agreement.

(d) The Department may require an applicant to submit additional relevant information.

7:14B-13.7 Emergency loan application procedures

(a) An applicant may submit an application after an underground storage tank improvement has been completed under the following emergency conditions:

1. A release has occurred at the facility;

2. There are no other underground storage tank systems available for business operations to continue;

3. The applicant submits an application within 30 days after the work is completed; and

4. The applicant meets the loan award eligibility requirements of N.J.A.C. 7:14B-13.5.

(b) Applications shall be submitted to the address specified at N.J.A.C. 7:14B-13.3.

7:14B-13.8 Use and disclosure of information

All loan applications and other submittals, when received by the Department, constitute public records. The Department shall make them available to persons who request their release, to the extent allowed by New Jersey and Federal law.

7:14B-13.9 Evaluation of application and economic hardship

(a) The Department shall notify the applicant that his or her application has been received and is being evaluated in accordance with this subchapter. Each application shall be subjected to:

1. Preliminary administrative review to determine the completeness of the application;

2. Program evaluation (including technical and financial); and

3. Final administrative evaluation.

(b) Each application shall be evaluated, at a minimum, against the following basic criteria;

1. Monies available in the fund;

2. The application requirement at N.J.A.C. 7:14B-13.6; and

3. The eligibility requirements of N.J.A.C. 7:14B-13.5.

(c) The three price proposals submitted pursuant to N.J.A.C. 7:14B-13.6(b)5 shall be evaluated to determine which proposal meets the minimum responsive requirements. The Department reserves the right to reject all proposals if the plans and costs are deemed excessive or not in compliance with N.J.A.C. 7:14B-13.2 and N.J.A.C. 7:14B-4 through 6.

(d) The minimum loan award available to any one business is $5,000 and the maximum award available to any one business is $100,000.

(e) A financial evaluation of the application shall be conducted to determine the credit worthiness of the applicant, taking into consideration, at a minimum, the following factors:

1. The ability of the applicant to properly manage the loan and the project; and

2. The ability of the applicant to repay the loan.

(f) An economic hardship evaluation shall be conducted in accordance with the following criteria:

ECONOMIC HARDSHIP CRITERIA

Percent	Points	Score
Gross Receipts/Industry Average Gross Receipts		
50 or less	10	
50.1-75	7	
75.1-125	5	
125.1-150	3	
150.1-higher	0	
SUBTOTAL		
Net Profit/Industry Average Net Profit		
50 or less	10	
50.1-75	7	
75.1-125	5	
125.1-150	3	
150.1 or higher	0	
SUBTOTAL		
Cost of Compliance/Gross Receipts		
8.1 or higher	10	
6.1-8	7	
4.1-6	5	
2.1-4	3	
2 or less	0	
SUBTOTAL		

Project Type		
Replace tank	5	
Repairing tank to meet regulations or install monitoring systems	3	
	SUBTOTAL	
Degree of Economic Hardship equals total points		TOTAL

7:14B-13.10 Loan award schedule

(a) The interest rate, term of the loan and percentage of project cost awarded shall be based on the degree of economic hardship of the loan recipients according to the following schedule:

LOAN AWARD SCHEDULE

Total Criteria Points	Percentage of Total Eligible Project Costs	Interest Rates	Term of the Loan
35	100	2 1/2	10 years
34-28	90	2 1/2	10 years
27-21	75	3 1/2	7 years
20-14	50	4 1/2	5 years
13-7	25	6	5 years
6 or less	Ineligible	Ineligible	Ineligible

(b) Because of the limited amount of money in the Fund, the Department shall give priority to applicants that demonstrate the most severe economic hardship which means the applicants with the greatest number of criteria points.

7:14B-13.11 Notice of approval or denial

(a) The Department shall notify all applicants in writing by certified mail of the approval or denial of a loan award.

(b) The Department shall identify in writing the reasons for loan denial. A denial of an application shall not preclude its reconsideration or resubmittal by applicant.

(c) The Department's approval of a loan will be in the form of notice of intent to award a loan. The notice shall contain the amount of the loan, interest rate, and the term of the loan based upon the Loan Award Schedule at N.J.A.C. 7:14B-13.10(a). Interest rates shall remain fixed during the term of the loan period.

(d) The approved applicant shall submit a fully signed contract between the applicant and contractor, which includes the cost of the project, plans, schedule and signatures of all responsible parties within 60 days of receipt of the notice of intent.

(e) The approved applicant shall submit a non-refundable loan closing fee of $600.00 within 60 days of receipt of the notice of intent.

(f) The applicant's failure to submit any requested information within the required time period shall make him ineligible for a loan award.

(g) Applicants receiving a notice of intent to award a loan shall obtain all necessary Federal, State and local permits and approvals within 60 days of receipt of the notice of intent to award a loan. Failure to obtain the required permits within the required time period shall make the project ineligible for a loan for that application period unless prior approval for an extension has been granted by the Assistant Director.

(h) If subsequent to the issuance of a notice of intent to award loan the applicant discovers that costs will exceed those previously estimated, or that the scope of the project will be modified, or any other circumstances appear which affect the award of priority points, the applicant shall notify the Department immediately. The Department shall then recalculate, if appropriate, the applicant's priority determination utilizing the new information submitted.

(i) In addition, if any changes in the project costs, scope or other circumstances result in a reduction in the total eligible loan amount from the total amount specified in the notice of intent to award a loan, the notice of intent to award a loan may be recalled and revised to reflect the reduction in the total eligible loan amount approved for the project.

(j) Any applicant receiving a notice of intent to award a loan who decides not to proceed with a project shall notify the Department within 30 days of the date of the notice.

7:14B-13.12 Commitment letter

(a) Upon receipt of the documentation and fee required in N.J.A.C. 7:14B-13.11, the Department shall prepare and transmit by certified mail a Commitment Letter to the approved applicant containing a description of the terms and conditions of the loan award agreement.

(b) The approved applicant for the loan award shall execute the Commitment Letter and return it by certified mail within 30 days. The date, time and location of the loan closing shall be included in the Commitment Letter. The Commitment Letter shall be signed by a person authorized to bind the borrower to the described terms and conditions in the Letter.

7:14B-13.13 Loan award issuance including loan award agreement and promissory note

(a) The Department shall prepare and transmit four copies of the loan award agreement to the applicant.

1. The loan award agreement shall set forth the terms and conditions of the loan, approved project scope, approved project costs, and the approved commencement and completion dates for the underground storage tank project. The loan award agreement and promissory note shall contain the repayment schedule, interest rate, the length of the loan periods and approved project costs, plans and time schedule.

2. The application and required documentation submitted shall become part of the loan award agreement. The loan award agreement shall be deemed to incorporate all requirements, provisions and information in documents or papers submitted to the Department in the application process.

(b) The borrower shall submit at the closing, proof of its and its contractors, and subcontractors, compliance with all hazard insurance requirements of the loan award agreement and certify that the insurance is in full force and effect and that the premiums have been paid. At all times during the term of this agreement, the borrower shall comply with the laws of New Jersey relating to Workman's Compensation Insurance.

(c) The Loan Award Agreement shall consist, at a minimum, of the following terms and conditions:

1. Award of the loan shall create a personal debt of the borrower and a lien or security interest against the borrower's property in the amount of the loan, which lien or security interest may be recorded as appropriate in the county hall of records or with the Secretary of State;

2. If the borrower is any entity other than an individual, a personal guarantee of the principal of the entity may be required. This personal guarantee may be secured by the assets of the guarantor, which lien may be recorded as appropriate in the county hall of records or with the Secretary of State;

3. The Department may require an appraisal, survey, and title search if the borrower's real property is being offered as collateral. Any cost of preparing the documentation of this nature shall be paid by the borrower and it shall be the borrower's responsibility to obtain such services;

4. A borrower may reapply for additional funding, if the loan award project work cannot be performed or completed due to conditions discovered after work has started. This additional funding may be an increase in the amount of the present loan or a separate loan. The borrower may submit a request for additional funding to the address in N.J.A.C. 7:14B-13.3;

5. Any loan awarded pursuant to this subchapter may be prepaid in whole or in part at any time without penalty;

6. All documents, searches, opinions, evidence of insurance and guarantees shall be submitted to the Department prior to disbursement of any monies from the Fund; and

7. The Department's approval of all costs and plans is required prior to disbursement of any monies from the Fund.

7:14B-13.14 Loan closing

(a) The loan award agreement and promissory note shall be delivered and executed by all parties at the closing.

(b) Prior to closing an update of the financial evaluation will be performed and any required outstanding documentation shall be submitted by the applicant.

(c) The full amount of the borrower's loan shall be disbursed at the loan closing.

7:14B-13.15 Representations and warranties of borrowers

(a) The following representations and warranties shall be made by the borrower when he or she executes the loan award agreement and shall be contained therein:

1. The borrower has power to enter into the loan award agreement and the promissory note evidencing the debt obligation of the borrower to the Department and has authorized the taking of all action necessary to carry out and give effect to the transactions contemplated by the loan award agreement;

2. There is no action or proceeding pending or threatened against the borrower before any court or administrative agency that might adversely affect the ability of the borrower to perform its obligations under the loan award agreement and all authorizations, consents and approvals of governmental bodies or agencies, required in connection with the execution and delivery of the loan award agreement or in connection with the performance of the borrower's obligations under the loan award agreement have been obtained and will be obtained whenever required by the loan award agreement or by law;

3. Neither the execution and delivery of the loan award agreement, the consummation of the transactions contemplated by it, nor the fulfillment of or compliance with the terms and conditions of the loan award agreement is prevented, limited by, or conflicts with or results in a breach of the terms, conditions, or provisions of any corporate restrictions or any evidence of indebtedness, agreement or instrument of whatever nature to which the borrower is now a party or by which it is bound, or constitutes a default under any of the foregoing;

4. All tax returns and reports of the borrower required by law to be filed have been duly filed and all taxes, assessments, fees and other governmental charges upon the borrower or upon any of its respective properties, assets, income or franchises which are due and payable pursuant to such returns and reports, or pursuant to any assessment received by the borrower have been paid other than those which may be presently payable without penalty or interest;

5. The borrower has, or will have, title to all the collateral whenever acquired or arising free and clear of all liens and claims, encumbrances, set-offs, defenses and counterclaims, and has not made and will not make any assignment, pledge, mortgage, hypothecation or transfer (other than sales or leases in the ordinary course of business) of any such collateral or the proceeds thereof;

6. There has been no material adverse change in the aggregate assets or aggregate liabilities or in the condition, financial or otherwise, of the borrower from that set forth in the financial statements delivered to the Department by the borrower in connection with the loan award agreement;

7. All statements, representations and warranties made by the borrower in its application to the Department and any materials furnished in support of the request for Department financial assistance and this loan award agreement are true. It is specifically understood by the borrower that all such statements, representations and warranties shall be deemed to have been relied upon by the Department as an inducement to make the loan and that if any such statements, representations or warranties were materially false at the time they were made or are breached during the term of the loan award agreement, the Department may, in its sole discretion, consider any such misrepresentation or breach an event of default;

8. The borrower shall pay during the term of this loan award agreement as the same become due, all taxes, assessments and governmental charges which may be required by law or contract to be paid by the borrower. The borrower may in good faith contest such taxes and governmental charges and such taxes and charges may remain unpaid during the period of such contest provided the underground storage tank facility and collateral will not be subject to loss or forfeiture as a result;

9. The borrower shall during the term of the loan award agreement operate and maintain all assets of the borrower in compliance with all governmental laws, ordinances, approvals, rules and regulation: which are applicable to and binding upon the borrower;

10. The borrower will not relocate all or any substantial part o its business operation from the facility without the express prio written consent of the Department;

11. Collateral will be kept and maintained at the locations speci fied in the loan award agreement. The borrower shall not remov the collateral from those locations, except in the normal course o business for temporary periods, without the express prior consent o the Department;

12. The borrower shall join the Department in executing, filing and doing whatever may be necessary under applicable law, to perfec and continue the Department's security interest in the collateral a the borrower's expense;

13. The borrower agrees that it will at all times keep accurate an complete records with respect to the collateral including, but no limited to, a record of all proceeds received therefrom or as a resul of the sale thereof;

14. The borrower may not sell, lease, convey, assign, transfer o otherwise dispose of any use or possessory interest in the under ground storage tank facility and collateral without the express prio written consent of the Department except that the borrower ma grant a utility, access and other easements and rights-of-way whic will not impair the borrower's use of the underground storage tan facility and collateral. The Department reserves the right to den approval of any proposed lease, sublease, assignment or transfer the lessee, sublessee or assignee does not, in the judgment of th Department, satisfy guidelines for eligibility for Department financi assistance. No permitted subleasing or assignment shall relieve th borrower from primary liability under the loan award agreement

15. During the term of the loan award agreement the borrowe shall continue in business and without the prior written consent c the Department shall not dispose of all or substantially all of its asse and shall not consolidate business with or merge into another entit or permit one or more other entities to consolidate with or merg with the borrower's business;

16. The borrower shall not, without the express prior written cor sent of the Department:

i. Issue any additional stock;

ii. Declare cash or stock dividends;

iii. Purchase its own stock for value; or

iv. Transfer any excess funds of the borrower, its affiliates c subsidiaries for investment in any other business venture. The ter "business venture" does not include bank accounts or certificates c deposit;

17. The borrower shall make no material or substantial chang in the present management or operating control of the borrow without prior notification to the Department;

18. The borrower shall not borrow any funds or grant any lie on the collateral without the express prior written consent of th Department;

19. The borrower its contractors and subcontractors shall mai tain their financial records in accordance with generally accepte accounting principles;

20. The borrower shall maintain the borrower's net worth in a amount not less than that indicated by the borrower's financi statements submitted to the Department; and

21. The borrower shall maintain the borrower's current assets a level greater than the borrower's current liabilities.

7:14B-13.16 Condemnation

(a) If the underground storage tank facility or the collateral sha be damaged or either partially or totally destroyed or if title to the temporary use of the whole or any part of the undergroun storage tank facility or collateral shall be taken or condemned b a competent authority for any public use or purpose, there shall b no abatement or reduction in the amounts payable by the borrow under the loan award agreement or under the promissory note.

(b) In the event of any damage, destruction, taking or condemn tion of the underground storage tank facility or collateral, th proceeds from any insurance or condemnation award shall be d posited with the Department and applied to the payment of ar

amounts due on the loan unless the borrower and the Department shall agree to apply the proceeds to the repair, reconstruction, replacement or relocation of the underground storage tank facility or collateral.

7:14B-13.17 Indemnification

(a) The borrower shall covenant and agree that the Department, its members, agents, servants, officers or employees shall not be liable for:

1. Any loss, damage or injury to, or death of, any person occurring at or about or resulting from any defect in the underground storage tank facility or the collateral;

2. Any damage or injury to the persons or property of the borrower, or its officers, agents, servants or employees, or any other person who may be about the underground storage tank facility, caused by any act of negligence of any person (other than the Department or their members, officers, agents, servants or employees); or

3. Any costs, expenses or damages incurred as a result of any lawsuit commenced because of action taken in good faith by the Department in connection with the underground storage tank facility or the collateral.

(b) The borrower shall indemnify, protect, defend and hold the Department, the State of New Jersey, and their respective members, agents, servants, officers and employees (each an "Indemnified Party"), harmless from and against any and all such losses, damages, injuries, costs or expenses and (except for claims, demands, suits, actions or other proceedings brought against an Indemnified Party resulting from willful or wanton misconduct of such Indemnified Party) from and against any and all claims, demands, suits, actions or other proceedings whatsoever, brought by any person or entity whatsoever (except the borrower), and arising or purportedly arising from the loan award agreement, the promissory note or any transaction comtemplated in any such documents, or from the construction, ownership and operation of the underground storage tank facility or the collateral.

7:14B-13.18 Effect of loan award

(a) The loan award agreement shall become effective immediately after its execution by the Department and the borrower, and shall constitute an obligation of the Fund in the amount and for the purposes stated in the loan award document.

(b) The award of the loan shall not commit or obligate the Department to award any continuation loan to cover cost overruns for any project.

7:14B-13.19 Repayment of loan

(a) The Department will issue a repayment schedule and coupon book to the borrowers in accordance to the terms and conditions of the loan award agreement.

(b) Copies of signed income tax returns including all schedules shall be submitted each year as long as the loan is outstanding.

7:14B-13.20 Recycling of funds

Subject to Federal and/or State law, funds from repayment of loans issued under the authority of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21, et seq., and this subchapter, shall be deposited in the Underground Storage Tank Improvement Fund and shall remain available for further disbursements as new loans to be awarded pursuant to this chapter until December 31, 1991.

7:14B-13.21 Fraud and other unlawful or corrupt practices

(a) The borrower shall administer the loan, award contracts and subcontracts pursuant to the loan free from bribery, graft, and other corrupt practices. The borrower bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct.

(b) The borrower shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The borrower shall notify the Assistant Director immediately after such allegation or evidence comes to its attention, and shall periodically advise the Assistant Director of the status and ultimate disposition of any matter.

7:14B-13.22 Project completion certifications

(a) The following project completion requirements shall be satisfied, in addition to requirements prescribed by other statutes, rules and agreements as may be applicable to particular loans:

1. The borrower shall certify that the project was initiated and completed in accordance with all the requirements of this chapter and the loan award agreement and was completed within the time schedule specified in the loan award agreement. The borrower shall sign a certification which states the following:

"I certify under penalty of law that the information provided in this document and its attachments is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

i. The certification required by (a)1 above shall be signed by an individual with the power to bind the corporation or partnership and, as appropriate, at the levels indicated below:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor respectively.

2. A borrower shall obtain a certification from a New Jersey professional engineer stating the underground storage tank repair or replacement, or the installation of monitoring system was done in compliance with this chapter and the loan award agreement. This certification shall be sealed by the professional engineer and submitted as an attachment to the document required by (a)1 above.

7:14B-13.23 Administration and performance of loan

The borrower bears primary responsibility for the administration and success of the project, including any subagreements made by the borrower for accomplishing loan objectives. Although borrowers are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions to the Department. The primary concern of the Department is that loan funds awarded be used in conformance with this subchapter and the loan award agreement to achieve loan objectives and to insure that the purposes set forth in the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., are accomplished.

7:14B-13.24 Access

(a) The borrower and its contractor and subcontractors shall provide access to the Department personnel and any authorized representative of the Department to the facilities, premises and records related to the project.

(b) The borrower shall submit to the Department such documents and information as requested by the Department.

1. All borrowers, contractors and subcontractors may be subject to a financial audit.

2. Records shall be retained and available to the Department for a minimum of six years after issuance of the final payment by the Department.

7:14B-13.25 Assignment

The right to receive payment from the State under a loan may not be assigned, nor may payments due under a loan be similarly encumbered.

7:14B-13.26 Publicity and signs

A project identification sign, bearing the emblem of the New Jersey Department of Environmental Protection, shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, State loan support, and other information as required by the Department.

7:14B-13.27 Debarment

No borrower shall contract with or allow any of his or her contractors to contract with any person debarred or suspended pursuant to N.J.A.C. 7:1-5 or on the New Jersey Department of Treasury's list of firms debarred or suspended from engaging in work with the State.

7:14B-13.28 Project changes and loan modifications

(a) A loan modification means any written alteration of the loan terms or conditions, budget or project method or other administrative, technical or financial agreements.

(b) The borrower shall promptly notify the Assistant Director in writing (certified mail, return receipt requested) of events or proposed changes which may require a loan modification including, but not limited to:

1. Rebudgeting;

2. Changes in approved technical plans or specifications for the project;

3. Changes which may affect the approved scope or objective of a project;

4. Significant, changed conditions at the project site; and/or

5. Changes which may increase or substantially decrease the total cost of a project.

(c) If the Department decides a formal loan amendment is necessary it shall notify the borrower and a formal loan amendment shall be prepared in accordance with N.J.A.C. 7:14B-13.29. If the Department decides a formal loan amendment is not necessary, it shall follow the procedures of N.J.A.C. 7:14B-13.30 or 13.31, as applicable.

7:14B-13.29 Formal loan award amendments

(a) The Department shall require a formal loan award amendment to change principal provisions of a loan where project changes substantially alter the cost or time of performance of the project or any major phase thereof.

(b) The Department and borrower shall effect a formal loan award amendment only by a written amendment to the loan award agreement.

7:14B-13.30 Administrative loan changes

Administrative changes by the Department, such as change in the designation of key Department personnel or of the office to which a report is to be transmitted by the borrower, or a change in the payment schedule for underground storage tank loans constitute changes to the loan award agreement (but not necessarily to the project work) and do not affect the substantive rights of the Department or the borrower. The Department may issue such changes unilaterally. Such changes shall be in writing and shall generally be effected by a letter (certified mail, return receipt requested) to the borrower.

7:14B-13.31 Other changes

All other project changes, which do not require formal loan award amendment, require written approval of the Assistant Director.

7:14B-13.32 Defaults

(a) The Department may in writing declare a default in the loan award agreement if it determines:

1. The loan award project has not been completed within 90 days of the closing. An extension may be requested in writing;

2. The loan award project work was not performed in compliance with N.J.A.C. 7:14B-4 through 6;

3. Any representation or warranty made in the loan award agreement or in any report, certificate, financial statement or other instrument furnished in connection with the loan award agreement is false or misleading in any material respect;

4. There is a default in the payment of any installment of the principal or interest on the promissory note and such default has continued unremedied for 15 days;

5. The borrower has failed to observe and perform any covenant, condition or agreement of the loan award agreement required to be performed by the borrower and such failure has continued for a period of 10 days after receipt by the borrower of written notice by the Department specifying the nature of such failure and requesting that it be remedied; or if by reason of the nature of such failure the same cannot be remedied within the said 10 days, the borrower fails to proceed with reasonable diligence after receipt of said notice to cure same;

6. The borrower shall have applied for or consented to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets; admitted in writing the inability to pay its debts as they mature; made a general assignment for the benefit of credi tors; been adjudged a bankrupt, or filed a petition or an answe seeking an arrangement with creditors or taken advantage of an insolvency law, or an answer admitting the material allegations c a petition in bankruptcy or insolvency proceeding; or an orde judgment or decree shall have been entered, without the applicatio approval or consent of the borrower by any court of competer jurisdiction approving a petition seeking reorganization of the bo rower, or appointing a receiver, trustee or liquidator of the borrowe or a substantial part of any of its assets and such order, judgmer or decree shall continue unstayed and in effect for any period of 4 consecutive days; or file a voluntary petition in bankruptcy or fa to remove an involuntary petition in bankruptcy filed against within 45 days of the filing thereof; or

7. Failure to observe any of the terms or conditions of the commi ment letter of the Department.

7:14B-13.33 Default consequences

(a) Whenever any event of default shall have occurred and b continuing, the Department may take one or more of the followin remedial steps:

1. Declare the entire principal amount of the promissory note t be due and payable forthwith, whereupon the promissory note sha become forthwith, due and payable, both as to principal and interes without presentment, demand, protest or other notice of any kin all of which are hereby expressly waived, anything contained in th loan award agreement or in the promissory note to the contra notwithstanding;

2. Take any action at law or in equity to collect the payments the due and thereafter to become due under the promissory note or t enforce performance and observance of any obligation, agreeme or covenant of the borrower under the loan award agreement;

3. Without further notice or demand or legal process, enter upo any premises of the borrower and take possession of the collatera all records and items relating to the collateral and, at the Depar ment's request, the borrower will assemble the collateral and suc records and deliver them to the Department;

4. Sell the collateral but the Department shall give the borrow reasonable notice of the time and place of any public sale of suc collateral or of the time after which any private sale or other intende disposition thereof is to be made. The requirement of reasonab notice shall be met if notice of the sale or other intended dispositio is mailed (by certified mail, postage paid) to the borrower at lea 10 days prior to the time of such sale or disposition or delivered the borrower at least five days prior to the time of such sale disposition. At such sale the Department may sell the collateral f cash or upon credit or otherwise, at such prices and upon such terr as it deems advisable and the Department may bid or becon purchaser at such sale, free of the right of redemption, which hereby waived. The Department may adjourn such sales at the tir and place fixed therefor without further notice or advertisement a may sell such collateral as an entirety or in separate lots as it deer advisable, but the Department shall not be obligated to sell all any part of such collateral at the time and place fixed for such sa if it determines not to do so. Upon the institution of any such actio by the Department, the Department shall be entitled to the appoir ment of a receiver for the collateral without proof of the depreciatio of the value of same; or

5. Terminate all of the borrower's right, title and interest in t facility under the loan award agreement or in equity and the bo rower's rights to possession thereof by an action for foreclosure repossession in accordance with the statutes of the State of Ne Jersey.

i. Upon the institution of any such action by the Department, t Department shall be entitled to the appointment of a receiver for t facility.

(b) No remedy herein conferred or reserved to the Department intended to be exclusive of any other available remedy or remedi but each and every such remedy shall be cumulative and shall be addition to every other remedy given under this subchapter, the lo award agreement or now or hereafter existing at law or in equity by statute. No delay or omission to exercise any right or pow

accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Department to exercise any remedy reserved to it in this subchapter, it shall not be necessary to give notice other than such notice as may be required in this subchapter.

(c) In the event the borrower should default under any of the provisions of this subchapter or the loan award agreement and the Department shall require and employ attorneys or incur other expenses for the collection of payments due or to become due for the enforcement or performance or observance of any obligation or agreement on the part of the borrower, the borrower shall on demand therefor pay to the Department the reasonable fees of such attorneys and other expenses so incurred by the Department.

(d) The Department shall not be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the borrower if a default shall occur.

7:14B-13.34 Noncompliance

(a) In addition to any other rights or remedies available to the Department pursuant to law, in the event of noncompliance with any loan conditions, requirements of this chapter, or loan award agreement requirement or specifications, the Department may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:14B-13.35;

2. Order suspension of the project work pursuant to N.J.A.C. 7:14B-13.36; and/or

3. Terminate or rescind a loan pursuant to N.J.A.C. 7:14B-13.37 and 7:14B-13.38.

7:14B-13.35 Notice of noncompliance

When the Department determines that the borrower is in noncompliance with any condition or requirement of this subchapter or with any loan award agreement specification or requirement, it shall notify the borrower of the noncompliance. The Department may require the borrower, its engineer, and/or contractor to take and complete corrective action within 10 working days of receipt of notice. If the borrower, its engineer, and/or contractor do not take corrective action or if it is not adequate, then the Department may issue a stop work order. The Department may, however, issue a stop work order pursuant to N.J.A.C. 7:14B-13.16 without issuing a notice pursuant to this section.

7:14B-13.36 Stop work orders

(a) The Department may order work to be stopped for good cause. Good cause shall include, but not be limited to, default by the borrower or noncompliance with the terms and conditions of the loan. The Department shall limit use of a stop work order to those situations where it is advisable to suspend work on the project or portion or phase of the project for important program or Department considerations.

(b) Prior to issuance, the Department shall afford the borrower an opportunity to discuss the stop work order with the Department personnel. The Department shall consider such discussions in preparing the order. Stop work orders shall contain:

1. The reasons for issuance of the stop work order;

2. A clear description of the work to be suspended;

3. Instructions as to the issuance of further orders by the borrower for materials or services; and

4. Other suggestions to the borrower for minimizing costs.

(c) The Department may, by written order to the borrower certified mail, return receipt requested) require the borrower to stop all, or any part of, the project work for a period of not more than 45 days after the borrower receives the order, and for any further period to which the parties may agree.

(d) The effect of a stop work order is as follows:

1. Upon receipt of a stop work order, the borrower shall immediately comply with the terms thereof and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the suspension period or within any extension of that period to which the parties shall have agreed, the Department shall either:

i. Rescind the stop work order in full or in part;

ii. Terminate the work covered by such order; or

iii. Authorize resumption of work.

2. If a stop work order is cancelled or the period of the order or any extension thereof expires, the borrower shall promptly resume the previously suspended work. An equitable adjustment shall be made in the loan period, the project, or both of these, and the loan award agreement shall be modified accordingly within discretion of the Department.

7:14B-13.37 Termination of loans

(a) The Department may terminate a loan in whole or in part for good cause subject to neogtiation and payment of appropriate termination settlement costs. The term "good cause" shall include, but not be limited to, substantial failure to comply with the terms and conditions of the loan, or default by the borrower.

1. The Department shall give written notice to the borrower (certified mail, return receipt requested) of intent to terminate a loan in whole or in part at least 10 days prior to the intended date of termination, stating reasons for the proposed termination.

2. The Department shall afford the borrower an opportunity for consultation prior to any termination. After such opportunity for consultation, the Department may, in writing (certified mail, return receipt requested) terminate the loan in whole or in part.

(b) A borrower shall not unilaterally terminate the project work for which a loan has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The borrower shall promptly give written notice to the Assistant Director of any complete or partial termination of the project work by the borrower. If the Department determines that there is good cause for the termination of all or any portion of a project for which the loan has been awarded the Department may enter into a termination agreement or unilaterally terminate the loan effective with the date of cessation of the project work by the borrower. If the Department determines that a borrower has ceased work on a project without good cause, the Department may unilaterally terminate the loan pursuant to this section or rescind the loan pursuant to N.J.A.C. 7:14B-13.38.

(c) The Department and borrower may enter into an agreement to terminate the loan at any time pursuant to terms which are consistent with this chapter. The agreement shall establish the effective date of termination of the project and loan, basis for settlement of loan termination costs, and the amount and date of payment of any sums due either party.

(d) Upon termination, the borrower shall refund or credit to the State of New Jersey that portion of loan funds paid to the borrower and allocated to the terminated project work, except such portion thereof as may be required to meet legal obligations incurred prior to the effective date of termination and as may be otherwise allowable. The borrower shall make no new commitments without Department approval.

1. The borrower shall reduce the amount of outstanding commitments insofar as possible and report to the Assistant Director the uncommitted balance of funds awarded under the loan. The Department shall make the final determination of the allowability of termination costs.

7:14B-13.38 Rescission of loan

(a) The Department may, in writing, rescind the loan if it determines that:

1. Without good cause therefore, substantial performance of the project work has not occurred;

2. The loan was obtained by fraud; or

3. Gross abuse or corrupt practices in the administration of the project have occurred.

(b) At least 10 days prior to the intended date of rescission, the Department shall give written notice to the borrower (certified mail, return receipt requested) of intent to rescind the loan. The Department shall afford the borrower an opportunity for consultation prior to rescission of the loan. Upon rescission of the loan, the borrower shall return all loan funds previously paid to the borrower. The

Department shall make no further payments to the borrower. In addition, the Department shall pursue such remedies as may be available under Federal, State and local law.

7:14B-13.39 Administrative hearing

(a) Within 20 calendar days from receipt of a notice of non-compliance, a stop-work order, or a notice terminating the loan award agreement or rescinding the loan pursuant to the procedures in N.J.A.C. 7:14B-13.35 through 13.38, or from receipt of a written notice from the Department denying a loan application pursuant, the applicant or borrower may request an adjudicatory hearing to contest such action by submitting a written request to the Department which shall include the following information:

1. The name, address, and telephone number of the applicant or borrower and its authorized representative, if any;

2. The applicant's or borrower's factual position on each question at issue and its relevance to the Department's decision;

3. Information supporting the applicant's or borrower's factual position and copies of other written documents relied upon to support the request for a hearing;

4. An estimate of the time required for the hearing (in days and/or hours); and

5. A request, if necessary, for a barrier-free hearing location for disabled persons.

(b) A hearing request not received within 20 days after receipt by the applicant or borrower of the notice being challenged in (a) above, shall be denied by the Department.

(c) During the pendency of the review and hearing, the challenged Department decision shall remain in full force and effect, unless a stay is granted by the Director upon formal request of the recipient.

(d) Following receipt of request for a hearing pursuant to (a) above, the Department may attempt to settle and dispute by conducting such proceedings, meetings, and conferences as deemed appropriate.

(e) If the applicant or borrower fails to include all the information required by (a) above, the Department may deny the hearing request.

(f) If it grants the request for a hearing, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

7:14B-13.40 Definitions

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

"Applicant" means any underground storage tank owner that applies for a loan pursuant to the provisions of this subchapter.

"Assistant Director" means the Assistant Director in the Division of Water Resources in charge of the Ground Water Quality Management Element.

"Balance sheet" means a statement of financial position that reports the assets, liabilities and owners' equity of the business unit at a given time. The statement shall be prepared in accordance with the generally accepted accounting principles.

"Borrower" means an applicant who has received a loan pursuant to the Act and this chapter and has executed a loan award agreement.

"Commitment letter" means a document demonstrating the lender's acceptance of the preliminary loan award which creates a contract to award the loan.

"Credit worthy" means the applicant has the ability to repay the loan and properly manage the loan and project.

"Eligible project cost" means those costs to upgrade the underground storage tank system to meet the requirements of this chapter. Included are the costs for engineering/design services and installation. Ineligible costs shall include, at a minimum, the following:

1. All costs for corrective action, pursuant to N.J.A.C. 7:14B-8;

2. All administrative fees related to the application process;

3. All costs incurred prior to the submission of an application, except under emergency conditions listed in N.J.A.C. 7:14B-13.7;

4. All costs incurred for closure as required by N.J.A.C. 7:14B-9.2 or 3 if the owner does not intend to replace the tank system;

5. Any costs the Department has determined to be excessive; and

6. Any costs not included in the loan award application.

"Eligible project scope" means the repair or replacement of one or more underground storage tanks or installation of a monitoring system on an underground storage tank.

"Fund" means the State Underground Storage Tank Improvement Fund, established by the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., which allocates monies to provide loans to eligible applicants at an interest rate of not more than six percent per year for a term of not more than ten years.

"Gross receipts" means the total receipts of a business prior to deducting expenses.

"Income statement" means a statement of profit and loss which summarizes business activities for a given period and reports the net income or loss resulting from operating and from certain other defined activities. The statement shall be prepared in accordance with generally accepted accounting principles.

"Industry average" means the averages of earnings and financial ratios shown for different industries in the current edition of the Dun & Bradstreet's Industry Norms and Key Business Ratios. A standard based on the combined average gross receipts and average net profit of the industries representing a large segment of applicants, will be utilized when the applicant's industry is not included in the Dun & Bradstreet publication.

"Loan award agreement" means an agreement which constitutes the terms and conditions of the loan award between the Department and the borrower.

"Loan award schedule" means a schedule reflecting the interest rate, loan period and percentage of project costs awarded to eligible applicants.

"Net profit" means the actual profit made during a specific period of business activities, after deducting all costs from the gross receipts.

"Notice of intent to award" means the Department's written notification to an approved loan applicant of the Department's intent to approve a loan.

"Owner" means any person who owns a facility, or in the case of a non-operational storage tank, the person who owned the non-operational storage tank immediately prior to the discontinuation of its use.

"Person" means any individual, partnerships, company, corporation consortium, joint venture, commercial or any other legal entity the State of New Jersey or the United States Government.

"Property" means the borrower's collateral, either real or personal that will be used to secure a loan from the underground storage tank improvement fund.

"Repair" means, for the purpose of N.J.A.C. 7:14B-13, the installation of a corrosion protection system, a spill containment device or an overfill protection device on an underground storage tank.

"Small business" means any business which is a resident in the State, independently owned and operated, not dominant in its field and employs fewer than 100 full-time employees.

"Statement of changes in financial position" means a statement of source and application of funds which summarizes the business operations as well as the financing and investing activities of the business for a given period. The statement shall be prepared in accordance with generally accepted accounting principles.

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Solid and Hazardous Waste Licensing and Revocation Disclosure Statements and Integrity Review

Proposed Amendments: N.J.A.C. 7:26-16.5 and 16.13

Authorized By: Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-126 et seq., specifically, N.J.S.A. 13:1E-128d, 13:1E-18, 13:1E-6, 13:1E-11, and N.J.S.A. 13:1D-9.

DEP Docket Number: 034-89-07.

Proposal Number: PRN 1989-417.

A **public hearing** concerning this proposal will be held on:
September 6, 1989 at 10:00 A.M.
Trenton War Memorial Building
Veteran's Room
Warren Street
Trenton, New Jersey

Submit written comments by September 8, 1989 to:
Mark A. Wenzler, Esq.
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (the Department) is proposing to amend its solid and hazardous waste licensing rules, N.J.A.C. 7:26-16, which implement the State solid and hazardous waste licensing statute, N.J.S.A. 13:1E-126 et seq., commonly known by its Assembly bill number, A-901. In particular, the Department is proposing to amend N.J.A.C. 7:26-16.13, Fees charged by the Attorney General and the Department, in order to provide adequate funding for the A-901 program. The Department is also proposing to amend N.J.A.C. 7:26-16.5, Investigative Report by Attorney General, in order to set the amount of time for which temporary approvals are issued at six months instead of the current one year, as well as to allow for the renewal of such approvals where public exigencies giving rise to the temporary approval continue to exist.

Effective July 2, 1984, at 16 N.J.R. 1766(a), the Department adopted N.J.A.C. 7:26-16, Solid and Hazardous Waste Licensing and Revocation—Disclosure Statements and Integrity Review. Among other things, these rules, at N.J.A.C. 7:26-16.13, set the total fee that may be charged by the Attorney General and the Department for services rendered in the administration of A-901. As originally mandated, the one-time fee was $100.00 to the Attorney General and $100.00 to the Department per individual required to be listed on the disclosure statement required pursuant to N.J.A.C. 7:26-16.3. The Department's portion of the fee, however, was recently increased to $500.00, bringing the total fee per disclosed individual to $600.00 (see 21 N.J.R. 1002(b) (April 17, 1989)).

Since the 1984 adoption, however, it has become clear that both the original fee and the recently increased fee are grossly inadequate to fund the myriad of tasks required of the three entities charged with administering the A-901 program—the Department of Environmental Protection, the Division of Law (DOL) within the Department of Law and Public Safety (L&PS), and the State Police, Solid Hazardous Waste Background Investigation Unit (SHU) within L&PS. Severe understaffing, a substantial backlog in concluding required investigations, and an inability to conduct necessary follow-up compliance checks have resulted in the need to create an expanded and continuing source of funding for the A-901 program.

The additional fee-generated funding is urgently needed if the A-901 program is to be viable. Only about 100 companies out of 1,780 applicants (one in 18) have been fully reviewed since the A-901 program took effect in 1984. There are currently no post-licensing compliance checks for the 1,780 waste entities (with 4,056 key individuals listed on the A-901 disclosure form pursuant to statutory requirements) subject to A-901, and no verification of the approximately 5,000 additional companies (with approximately 11,500 key individuals) which have claimed exemption from A-901 as handlers of only self-generated waste. Since both a company and the key individuals affiliated with that company must be investigated in accordance with N.J.S.A. 13:1E-126 et seq. and N.J.A.C. 7:26-16, there are at least 5,836 (1,780 and 4,056) outstanding investigations which must be conducted under the A-901 program, and possibly hundreds or thousands more. Given this extraordinary workload, it is obvious that the approximately $700,000 generated through the current fee structure since the A-901 program began in 1984 is grossly inadequate to implement the A-901 program to the full extent intended by the Legislature. In fact, about $6.5 million is necessary to fund the A-901 program in Fiscal Year (FY) 1990.

The Department and Attorney General have explored legislative appropriation as a means to obtain the necessary funding for the A-901 program. This route has presently proved unsuccessful, however, and has led the Department and the Attorney General to develop this amendment as the most efficacious and practical alternative to funding from general revenues.

The proposed amendment maintains the $600.00 total fee charged for the investigation of each key individual contained on a company's disclosure form. N.J.A.C. 7:26-16.13, as amended at 21 N.J.R. 1002(b) (April 17, 1989). Additionally, the amendment creates a per-company graduated fee of between $635.00 and $15,650, depending on the number of key individuals required to be listed on a company's disclosure statement pursuant to N.J.A.C. 7:26-16.3 and 4. The per-company portion of the total A-901 program fee will be $635.00 for companies with one key individual, $1,775 for companies with between two and three key individuals, $5,150 for companies with between four and seven key individuals, and $15,650 for companies having eight or more key individuals.

The complete fee schedule and the revenue anticipated to be raised thereby is as follows:

No. of key Indiv.	Fee per Key Indiv.	Company Fee	Total Co. Cost	No. of Co's	Total Revenue
1	600.00	635	1,235	1014	1,252,290
2	600.00	1,775	2,975	278	827,050
3	600.00	1,775	3,575	216	772,200
4	600.00	5,150	7,550	104	785,200
5	600.00	5,150	8,150	50	407,500
6	600.00	5,150	8,750	35	306,250
7	600.00	5,150	9,350	20	187,000
8	600.00	15,650	20,450	18	368,100
9	600.00	15,650	21,050	13	273,650
10	600.00	15,650	21,650	5	108,250
11	600.00	15,650	22,250	3	66,750
12	600.00	15,650	22,850	5	114,250
13	600.00	15,650	23,450	2	46,900
14	600.00	15,650	24,050	1	24,050
15	600.00	15,650	24,650	2	49,300
16	600.00	15,650	25,250	2	50,500
17	600.00	15,650	25,850	0	0
18	600.00	15,650	26,450	1	26,450
19	600.00	15,650	27,050	0	0
20	600.00	15,650	27,650	0	0
21	600.00	15,650	28,250	2	56,500
22	600.00	15,650	28,850	0	0
23	600.00	15,650	29,450	5	147,250
24	600.00	15,650	30,050	0	0
25	600.00	15,650	30,650	1	30,650
26	600.00	15,650	31,250	1	31,250
27	600.00	15,650	31,850	0	0
28	600.00	15,650	32,450	0	0
29	600.00	15,650	33,050	1	33,050
30	600.00	15,650	33,650	0	0
55	600.00	15,650	48,650	1	48,650

*TOTAL REVENUE: $6,031,040

*Includes 12 percent non-compliance margin factored into company fee

The proposed fee structure divides the total number of existing companies currently subject to A-901 into four broad groupings, with each successive grouping paying a higher per-company fee than the previous one. These groupings are as follows:

No. of Key Individuals	No. of Companies	% of Industry by No. of Co.	% of Industry by No. of Key Indiv.	% of Cost
1	1014	57%	25%	20.8%
2-3	494	28%	30%	26.6%
4-7	209	12%	25%	28.1%
8-55	63	3%	20%	24.5%
TOTALS	1780	100%	100%	100%

There are several reasons why the Department drew the lines between the four groupings as set forth above. First, it is clear from the figures above that a majority of the total 1,780 companies currently subject to A-901 are single-person operations. The 1,014 companies disclosing one key individual are generally sole-proprietorships with relatively simple business organizations. Thus, the Department and the Attorney General have concluded that since such single-person firms take proportionally less time to investigate than do firms with many key individuals, these firms should pay proportionally less of the total revenue derived from the per-company portion of the A-901 fee. Likewise, companies with two or three key individuals are generally small, "mom and pop" type operations that similarly take proportionally less time to investigate than do larger firms.

Department records show that companies which disclose between four and seven key individuals tend to be mid-size waste haulers which have somewhat more complex business structures. Investigations of these companies usually are more detailed than those of one to three key individual companies. Companies which disclose more than seven key individuals are generally the larger waste haulers and are often subsidiaries of large corporations. Investigations of these companies tend to consume a great deal of program resources and often require additional disclosure statement filings and subsequent investigations of previously undisclosed individuals. The Department and the SHU must also spend considerable time investigating whether all persons meeting the criteria for being key individuals have been disclosed by these companies. Thus, the per-compan fee of $15,650 reflects the proportionally greater time spent investigatin the largest waste haulers.

From the figures above it can be seen that the one-key individual wast haulers constitute 57 percent of the total 1,780 companies which current have disclosure statements on file with the Department, and constitut 25 percent of the industry in terms of the total number of key individua disclosed by these companies. Thus, the fact that the one-key individu companies are paying 20.8 percent of the program costs represents savings to these small operators. Similarly, the two to three key individu companies, while constituting 30 percent of the industry in terms number of key individuals disclosed and 28 percent of the total numb of companies, are paying only 26.6 percent of the total program cost Companies which fall in the latter two fee groupings are bearing a great proportion of the program costs than represented by their percentage the industry as measured by either the number of key individuals or t total number of companies. Again, this disproportionate burden on t companies falling within the latter two fee groupings is justified by t proportionally greater amount of time spent by the Department and t Attorney General in investigating these companies.

In summary, the Department and the Attorney General believe th the fee structure set out above represents the fairest and most equitab distribution of program costs that the Department, DOL and SHU w incur in administering the A-901 program. Although the economic impa

on the regulated companies will be significant, the expanded fees are necessary in order for the three State agencies responsible for A-901 implementation to carry out their legislative mandate.

The proposed amendment requires that the fee be submitted annually rather than as a one-time fee as is currently required. The continuing source of revenue provided by an annual fee will allow the Department and L&PS to consistently maintain the staff needed to administer the A-901 program. Most importantly, the annualization of the A-901 fee will enable the Attorney General to conduct critical post-licensing compliance checks. Without strong post-licensing investigation to assure compliance with A-901, the benefits of the A-901 program will be greatly diminished.

The proposed amendment maintains the requirements that one total fee be submitted to the Department and that the Department forward the Attorney General's portion of the fee to the Attorney General. Although the Attorney General's portion of the fee is fixed at $100.00 per key individual pursuant to N.J.S.A. 13:1E-128(d), the Department is not so limited. Pursuant to N.J.S.A. 13:1E-18, as recently amended by P.L.1989, c.34, sec. 28, the Department may establish and charge annual or periodic fees for any services it performs in connection with the Solid Waste Management Act of which A-901 is a part. The proposed new structure for Department fees is, as was the original structure, derived from the Department's authority to set fees under the Solid Waste Management Act.

While the Attorney General will continue to receive its statutorily mandated $100.00 fee to cover the costs of preparing the investigative report based on the disclosure statement, all other tasks required under the A-901 program, excluding those costs already budgeted for by the State Police, will be funded from the Department's portion of the increased fees. Thus the Department may, for example, contract with the Attorney General to conduct post-licensing compliance investigations and to fund all A-901 costs incurred by the Division of Law in the rendition of legal services to the Department. The Department's authority to so contract with other public agencies for the performance of any function under the Solid Waste Management Act originates in N.J.S.A. 13:1D-9(g) and N.J.S.A. 13:1E-6b(5). Additionally, N.J.S.A. 52:14-2 and 3 sanction cooperation between State agencies and provide for reimbursement for services rendered as a result thereof. The fee increase shall be effective upon adoption of these amendments.

The Department also proposes to amend N.J.A.C. 7:26-16.5, "Investigative Report by Attorney General," in order to ease certain administrative burdens encountered in the enforcement of licensing criteria under the A-901 statute. Pursuant to N.J.S.A. 13:1E-126 et seq., no person requiring an approved registration under the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., may be licensed to operate prior to the Department's review and approval of a disclosure statement and the Attorney General's investigative report based thereon.

The Department's rules implementing the A-901 statute authorize the issuance of temporary approvals for solid and hazardous waste hauler and facility license applicants prior to review and approval of their disclosure statements and investigative report, and thus, prior to the Department's licensing decision. As currently structured, N.J.A.C. 7:26-16.5(c) provides for the issuance of such temporary approvals "for not more than one year" where the Department determines that certain public exigencies require pre-licensing temporary permit issuance and where the temporary permit is accompanied by an agreement signed by the applicant acknowledging that such agreement becomes void upon its expiration date or upon order of the Department unless a license is subsequently issued by the Department.

A one year temporary approval provided by N.J.A.C. 7:26-16.5 was anticipated to provide sufficient time for dealing with any backlogs in the Attorney General's investigative report on applicants. Due to A-901 program funding difficulties in the Attorney General's Office and due to the size of many of the investigations, however, this backlog has proven to be too large to be eliminated during a one year temporary permit time period. For this reason, the Department, in 1988, began reissuing certain temporary registrations upon their expiration where the public exigency which gave rise to the original temporary registration continued to exist. The Department perceived N.J.A.C. 7:26-16.5 as restricting the issuance of temporary registrations to a one-year period, but allowing for reissuance for additional periods of up to one year. As a result of recent litigation, however, the Department became aware that N.J.A.C. 7:26-16.5 was not framed with sufficient clarity to put the public on notice of this discretion. *I/M/O Stream Encroachment Permit 12400,* 231 *N.J. Super.* 443, 457 (App. Div. 1989), *certif. den.* ____ *N.J.* ____ (1989). Therefore, the Department proposes to amend N.J.A.C. 7:26-16.5 to expressly allow for as many renewals of a temporary permit as are necessary to address the public exigency contemplated in the original rule.

The proposed amendment to N.J.A.C. 7:26-16.5 eliminates the one year restriction in the rule and replaces it with language authorizing temporary permit approvals of six-month duration subject to six-month renewals. As proposed, this amendment will allow for multiple renewals so long as the criteria supporting the original finding of public exigency remain satisfied. Moreover, in limiting the original temporary approval and any subsequent renewals to a six-month duration, the Department will review each situation more frequently to ensure that pre-licensing temporary approval will last no longer than the underlying public exigency which necessitated the issuance of the original temporary approval.

Social Impact

The proposed amendments will have a positive social impact by contributing to the overall enforceability and effectiveness of the A-901 program. The additional funds collected with the increased fees of N.J.A.C. 7:26-16.13 will ensure that the statutory mandate for strict State regulation of those persons involved in the operation of solid and hazardous waste facilities in the State will be implemented to the full extent intended by the Legislature. In particular, proper funding of the A-901 program will enable the Department and the Attorney General to more closely attain the Legislative mandate that "persons with known criminal records, habits, or associations" be precluded from the solid or hazardous waste industries and that "any person known to be so deficient in reliability, expertise, or competence with specific reference to the solid or hazardous waste industries that his participation would create or enhance the dangers of unsound, unfair, or illegal practices, methods, and activities in the conduct of the business of these industries" be removed from any position of authority or responsibility in these industries. Implementing this mandate with adequate funding of the A-901 program will contribute substantially to the general welfare, health and prosperity of the State and its inhabitants by assuring that only responsible persons are involved in the waste industry.

The amendment of N.J.A.C. 7:26-16.5 will also have a positive social impact inasmuch as it will contribute to the overall effective functioning of the solid and hazardous waste industries. In particular, the Department's ability to grant temporary permit approvals to waste haulers and waste disposal facilities under conditions of public exigency will allow it to avert regional disruptions in waste disposal, thereby contributing to the general welfare, health and prosperity of the State's inhabitants who depend on a reliable system of waste removal.

Economic Impact

Whereas only about $700,000 has been generated through the one-time fee collection structure of the existing rules in the five years since A-901 took effect in June of 1984, the increased fees of the proposed amendment will generate a total of $5.3 million per year from the approximately 1,780 waste entities (which have 4,056 key individuals) subject to the A-901 program. The $5.3 million, together with the State Police, Solid Hazardous Waste Background Investigation Unit's budget base of $1.2 million for Fiscal Year 1990 (FY 90), yields a total funding of $6.5 million necessary for the A-901 program in FY 90.

The $6.5 million figure for FY 90 is calculated on the basis of staffing needs necessary for improved A-901 administration in the three entities charged with enforcing A-901 (the Department, the Attorney General, and SHU). The A-901 staffing needs and budgetary requirements for these three agencies are as follows:

1. State Police, Solid and Hazardous Unit: The authorized strength of the Solid and Hazardous Unit (SHU) is 21 enlisted personnel, although its current actual strength is only 19. In order to eliminate the backlog of current cases and establish a necessary, strong post-licensing enforcement presence, a total of 49 enlisted personnel, including the current 19, will be necessary. For FY 90, 37 enlisted personnel will be needed to conduct pre-licensing investigations in order to eliminate the current backlog within the next two to three years. Six of the remaining 12 personnel will undertake post-licensing compliance checks, and the other 6 will perform administrative support functions. As the backlog is decreased, an increasing number of the 37 enlisted personnel will be reassigned from pre to post-licensing investigations. Additionally, 10 clerical personnel will be necessary to support the 49 enlisted personnel for FY 90.

Thus, the total SHU budget for FY 90 amounts to $4,218,831, of which approximately $3 million needs to be raised through the increased fees ($4.2 million minus the $1.2 million already existing in the SHU budget base). The SHU budget breakdown is as follows:

a. Salary	
1 LT.: $52,971 x 1 =	$52,971
3 DSFC: $49,249 x 3 =	$147,747
8 DSG: $44,505 x 8 =	$356,040
37 TPR I: $41,437 x 37 =	$1,533,169
Fringe Benefits = 39.89% =	$833,672
2 Principal Clerk Steno	
$18,316 x 3 =	$36,632
6 Clerk Typists	
$13,001 x 6 =	$78,006
2 Word Processor III	
$15,051 x 2 =	$30,102
Fringe Benefits =	$35,042
b. Cash In Lieu of Maintenance	
LT., DSFC & DSG	
$6,842 x 12 =	$82,104
Detectives	
$6,842 x 37 =	$253,154
c. Office Supplies	$15,000
d. Vehicular (fuel)	$58,800
e. Household & Clothing	$3,000
f. Telephone	$12,000
g. Vehicle (maintenance)	$49,392
h. Rent, Building, Grounds	$185,000
i. 28 Vehicle @ $13,000 each	$464,000
j. Equipment (radios)	$84,000
TOTAL	$4,218,831
ROUNDED	$4.2 million
Existing SHU Budget Base	$1.2 million
Total to be funded through increased fee	$3 million

2. Division of Law: It is anticipated that the Department will require advice, discovery or other legal work on at least one-third of cases resulting from either the pre-licensing or post-licensing investigations. That equals about 600 cases (one-third of the 1,780 entities known to be subject to A-901). There will be a need to add six deputy attorneys general, three legal secretaries and one word processor to the Division of Law (DOL) to work on these cases, together with one deputy position currently devoted to A-901. The total of seven deputies will also be responsible for representing the Department in the hearings and appeals from these cases and, in addition, on cases which arise from fraudulent conduct, if any, of the 5,000 alleged self-generators. The Division of Law budget breakdown is as follows:

a. Salary	
7 Deputy Attorney General III	
$51,035 x 7 =	$357,245
3 Legal Secretary I	
$21,169 x 3 =	$63,507
1 Word Processor Spec. I	
$21,201 x 1 =	$21,201
Fringe Benefits = 24.21% =	$106,997
b. Materials and Supplies	$22,800
c. Additions and Improvements	$31,600
TOTAL	$603,350

3. Department of Environmental Protection: The Department will need 18 additional persons, including clerical support, to provide A-901 services within the Department's Division of Solid Waste Management (DSWM), Division of Hazardous Waste Management (DHWM), Division of Regulatory Affairs (DRA), and Division of Financial Management, Planning and General Services (DFMP&GS). The additional personnel will bring the total Department A-901 program staffing to 28 employees. Part of the total will be assigned to verify whether any of the 5,000 entities claiming exemption from A-901 are indeed only self-generators rather than commercial waste operators.

I. DSWM

The Division of Solid Waste Management within the DEP currently has six professional personnel assigned to A-901 program duties. These duties can be broken down into the two broad categories of registration and permit administration and enforcement.

The DSWM's Bureau of Registration and Permits Administration manages the A-901 program, conducts interviews with all applicants to determine their status, reviews applications for completeness, maintains a computerized tracking system, develops and maintains computer software to enhance data tracking and applicant follow-up capabilities, issues and reviews annual updates for all registrants, maintains security of submitted documents, reviews applications with Regulatory Officers within the DEP's Division of Regulatory Affairs to determine fitness to operate, expedites applications requiring special handling, and issues licenses to operate in the State. Three new positions are required to develop and administer elements of the program intended to evaluate an applicant's reliability, expertise and competence to operate in the State. This will require establishment of criteria for assessment of applicants and using such criteria to perform professional capability assessments of each of the existing 1,780 waste companies currently in the A-901 program.

Currently, two professionals in DSWM's Solid Waste Enforcement Element are involved in checking recent violations of applicants. There is an additional need, however, to conduct verification checks on the 5,000 transporters currently claiming exemption from A-901. Under the amendment, a field unit of four professionals and one clerical support person will be created to investigate possible evasion of the A-901 program licensing requirements.

Listed below is the total DSWM budget requirement for the existing six personnel and the eight additional personnel required for program expansion:

a. Salary	
2 Principal Env't Specialist	
$38,000 x 2 =	$76,000
1 Principal Env't Specialist	$36,000
1 Investigator	$44,000
1 Admin. Analyst II	$40,000
1 Senior Env't Specialist	$32,000
1 Senior Env't Specialist	$30,000
1 Program Development Specialist	$31,000
1 Program Development Specialist	$38,000
1 Suprvsng Env't Compliance Spec.	$33,000
1 Env't Compliance Invst. I	$30,000
1 Env't Compliance Invst. II	$26,000
1 Env't Compliance Invst. III	$22,000
1 Principal Clerk Typist	$18,000
Fringe Benefit = 24.21% =	$110,398
b. Indirect Cost	$85,000
c. Materials and Supplies	$17,000
d. Services Other Than Personnel	$23,000
e. Maintenance and Fixed Charges	$15,000
f. Additions and Improvements	$72,000
TOTAL	$778,488

II. DRA

The Division of Regulatory Affairs within the DEP advises both the DSWM and the DHWM with regard to the A-901 program. The Division currently has a staff of three professionals and one secretarial assistant to service the A-901 program. This amendment will create five additional positions in DRA, including two Regulatory Officers and two Investigators. This level of increased staffing will be necessary to assist DSWM and DHWM in the planned program expansion described above. Additionally, the expanded funding for DRA will allow it to more effectively perform its A-901 program functions, including but not limited to the review of investigative reports prepared by DOL; the conducting of investigations of applicants for A-901 license approval; providing litigation support for Office of Administrative Law hearings and for court proceedings; and rulemaking. The total budget requirement for DRA is as follows:

a. Salary	
1 Project Specialist	$52,000
1 Regulatory Officer I	$54,000
1 Regulatory Officer I	$42,000
1 Regulatory Officer II	$36,000
1 Investigator	$41,000
2 Investigator $31,500 x 2 =	$63,000
1 Sec. Asst. III	$21,000
1 Principal Clerk Steno	$19,000
Fringe Benefit = 24.21% =	$79,409
b. Indirect Cost	$61,000
c. Materials and Supplies	$71,000
d. Services Other Than Personnel	$22,000
TOTAL	$561,409

III. DHWM

Currently there are no personnel in the Division of Hazardous Waste Management of DEP budgeted for by the existing A-901 program. The amendment will create three positions in DHWM to perform duties relevant to the A-901 program. These positions will allow DHWM to fulfill its statutory obligation to review the background of applicants to determine whether they satisfy the "reliability, eligibility and competency" requirement of N.J.S.A. 13:1E-133(a). The budget requirement for DHWM is as follows:

a. Salary	
2 Principal Env't Specialist $36,500 x 2 =	$73,000
1 Tech. Manag. Info. Systems	$23,000
Fringe Benefit = 24.21% =	$23,242
b. Indirect Cost	$18,000
c. Materials and Supplies	$9,000
d. Services Other Than Personnel	$11,000
e. Maintenance and Fixed Charges	$11,000
f. Additions and Improvements	$54,000
TOTAL	$222,242

IV. DFMP&GS

The Division of Financial Management, Planning & General Services within DEP will need one accounting position and one secretarial position in order to service the expanded fee program of this proposal. The DFMP&GS budget requirement is:

a. Salary	
1 Accountant I	$29,000
1 Clerk Typist	$14,000
Fringe Benefit = 24.21% =	$10,410
b. Indirect Cost	$8,000
c. Maintenance and Supplies	$5,000
TOTAL	$66,410

SUMMARY ALL DEP COSTS FOR FY 90

DSWM	$778,488
DRA	$561,409
DHWM	$222,242
DFMP&GS	$66,410
TOTAL	$1,628,549
ROUNDED TOTAL	$1,628,000

SUMMARY ALL A-901 PROGRAM COSTS

SHU	$4,218,831
DOL	$603,350
DEP	$1,628,549
TOTAL	$6,450,730
ROUNDED TOTAL	$6.5 Million
SHU EXISTING BUDGET BASE	$1.2 Million
TOTAL NECESSARY TO FUND WITH FEES FOR FY 90	$5.3 Million

In order to raise the $5.3 million needed to operate the A-901 program in FY 90, the Department and the Attorney General have developed a fee structure that fairly distributes the program costs among the estimated 1,780 solid and hazardous waste companies currently subject to A-901. The $600.00 fee per key individual is the same as is currently required pursuant to N.J.A.C. 7:26-16.13, as amended at 21 N.J.R. 1002(b) (April 17, 1989). And, the per-company portion of the fee is structured so that companies will be paying fees commensurate with the amount of time and resources expended by the State Police, the Division of Law and the Department in administering the A-901 program. In total, the revenue to be raised from the combination of per-key individual and per-company fees is no more than is necessary to meet the $5.3 million budget requirement for FY 90.

The proposed amendment to N.J.A.C. 7:26-16.5 will not result in additional costs to the solid and hazardous waste industries. Any economic impact that does result from this proposed amendment is likely to be positive inasmuch as the Department's ability to issue and renew temporary pre-licensing permits will ensure that vital regional waste disposal operations will not be disrupted while full disclosure review and licensing decision-making are ongoing.

Environmental Impact

Once the solid and hazardous waste industries are free from persons with criminal tendencies or persons who are deficient in expertise, these industries will be run more efficiently and effectively. This, in turn, will result in a positive environmental impact because environmentally unsound methods of disposal will be less likely to exist in industries which are run by competent and honest business people. Although the Department believes that the majority of persons involved in the solid and hazardous waste industries are competent and honest, the existence of just a few corrupt or incompetent firms negatively impacts on the industries as a whole. The Department believes that increased fees to fund the A-901 program will have a positive impact on the entire solid and hazardous waste industries by ensuring that only responsible persons participate in these industries and follow proper and environmentally sound disposal practices in so doing.

Likewise, there will be a positive environmental impact from the proposed amendment to N.J.A.C. 7:26-16.5. Where the Department is authorized to extend temporary pre-licensing permits in cases of public exigency, the potential for regional disruptions in waste disposal will be reduced, thereby averting possible environmental hazards resulting from improperly handled waste.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, P.L. 1986, c. 169, the Department has determined that the proposed amendment to N.J.A.C. 7:26-16.13 will not impose recordkeeping, reporting or other compliance requirements on small businesses as defined by the Act of sufficient burden to justify an exemption from the requirements. Although the Department has determined that the economic impact of compliance with this rule on small businesses will be significant, the Department believes that to provide for an exemption from the rules would be detrimental to public health and the environment by undermining the ability of the Department, DOL and SHU to carry out their legislatively mandated duties. Therefore, no exemption is allowed by the proposed amendment.

The Department has, however, developed a graduated fee structure that is tied to the approximate size of the business regulated. Smaller waste firms (firms with a fewer number of disclosed key individuals) will pay proportionately lower fees than larger waste firms (firms with a greater number of disclosed key individuals). Thus, by using the number of key individuals as a bright-line indicator or close approximation of the size of a waste firm's business, the Department has sought to reduce the economic impact of the proposed amendment on smaller waste firms.

The proposed amendment to N.J.A.C. 7:26-16.5 will not impose additional recordkeeping, reporting or other compliance requirements on small businesses since this amendment allows the Department to issue and renew temporary pre-licensing approvals where public exigencies require them based on disclosure applications already required to be submitted pursuant to N.J.A.C. 7:26-16.

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

7:26-16.5 Investigative Report by Attorney General

(a) The Department shall not issue any license [(other than a temporary registration for not more than one year)] to an applicant until it has received and reviewed an investigative report from the Attorney General.

(b) (No change.)

(c) In its discretion, the Department may issue a temporary registration for not more than [one year] **six months at a time** to an applicant[,] if such issuance is necessary to prevent or ameliorate a hazard to the public health, safety or the environment; to prevent economic hardship to a public body[,]; **or the issuance of a temporary registration** otherwise serves some interest of the general public [, and the]. **The issuance of a temporary registration in all cases is conditional upon the** applicant [signs] **signing** an agreement that it will cease its solid or hazardous waste operations upon the expiration date of the temporary registration if **not renewed by the Department and** a license has not been approved by the Department, or upon order of the Department.

(d) In its discretion, the Department may renew a temporary registration for incremental periods of six months at a time prior to its receipt and review of an investigative report from the Attorney General if such renewal is necessary to prevent or ameliorate a hazard to the public health, safety or to the environment; to prevent economic hardship to a public body; or if the renewal of a temporary registration otherwise serves some interest of the general public. The renewal of a temporary registration in all cases is conditional upon the applicant signing an agreement that it will cease its solid or hazardous waste operations upon the expiration date of the temporary registration if not renewed by the Department and a license has not been approved by the Department, or upon order of the Department.

7:26-16.13 Fees charged by the Attorney General and the Department

Note: The fee for the Attorney General is adopted pursuant to Section 3.d of P.L. 1983, c.392, N.J.S.A. 13:1E-128d. The fee for the Department is adopted pursuant to N.J.S.A. 13:1E-18.

(a) Every [applicant or licensee who files a disclosure statement] **business concern of any type subject to the disclosure requirements of P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.)** shall submit, **upon initial filing and annually thereafter,** a fee to the Attorney General to cover the cost of enforcing P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.) and a fee to the Department to cover the cost of reviewing disclosure statements, **contracting with the Attorney General for post-licensing compliance checks, including special investigations, conducting investigations to verify claims of exemption from A-901,** [and] securing confidential documents, **and other functions in the administration and performance of duties by the Department pursuant to P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.).** [Except as provided in (e) below, the] **The** fee for the Attorney General shall be $100.00 per each individual and the fee for the Department shall be $500.00 per each individual required to be listed in the disclosure statement (other than a non-supervisory employee required to be listed pursuant to N.J.A.C. 7:26-16.4(a)9 or shown to have a beneficial interest in the business of the applicant or licensee other than an equity interest or debt liability interest), **in addition to a per-company fee to be calculated as follows:**

1. Business concerns with one individual required to be listed pursuant to N.J.A.C. 7:26-16.3 and 16.4 shall pay an annual per-company fee of $635.00;

2. Business concerns with two or three individuals required to be listed pursuant to N.J.A.C. 7:26-16.3 and 16.4 shall pay an annual per-company fee of $1,775;

3. Business concerns with four to seven individuals required to be listed pursuant to N.J.A.C. 7:26-16.3 and 16.4 shall pay an annual per-company fee of $5,150; and

4. Business concerns with more than seven individuals required to be listed pursuant to N.J.A.C. 7:26-16.3 and 16.4 shall pay an annual per-company fee of $15,650.

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

(d) If [an applicant or licensee] **a business concern subject to P.L. 1983 c.392 (N.J.S.A. 13:1E-126 et seq.)** files a change of information pursuant to N.J.A.C. 7:26-16.6, and discloses thereon an individual not listed in the disclosure statement information (including any amendments) currently on file with the Department, the [applicant or licensee] **business concern** shall pay additional separate fees of $100.00 to the Attorney General and $500.00 to the Department per each individual so disclosed (other than a non-supervisory employee required to be listed pursuant to N.J.A.C. 7:26-16.4(a)9). **Individuals disclosed pursuant to N.J.A.C. 7:26-16.6 shall be considered to be additions to previously disclosed individuals for the purpose of calculating the per-company portion of the fee. Business concerns shall be required to pay the difference between a lower and higher per-company fee where newly disclosed individuals bring the total number of disclosed individuals to a level requiring a higher fee pursuant to (a) above.**

(e) All individuals or business concerns required to be disclosed pursuant to N.J.A.C. 7:26-16.4(a) 1 and 2 as holding any equity in or debt liability of the original business concern filing the disclosure statement shall be considered to be additions to the original business concern filing the disclosure statement for the purpose of calculating the per-company portion of the fee. The original business concern filing the disclosure statement shall be required to pay the difference between a lower and higher per-company fee where newly disclosed individuals or business concerns bring the total number of disclosed individuals and business concerns to a level requiring a higher fee pursuant to (a) above.

[(e) In the case of an applicant or licensee that is a small, family owned and operated business, the Department will reduce its fee as follows:

1. Where there are three or fewer names listed on the disclosure statement as owners, officers, directors, partners and/or key employees, and two or all three of these individuals are related as spouses or as parent and child, then the Department fee shall be $500.00 per principle residence of the individuals listed.

2. If all three reside at separate addresses, however, the fee must be computed as under (a) above.]

(f) (No change.)

HUMAN SERVICES

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Interim Assistance Program

Proposed Recodification with Amendments: N.J.A.C. 10:38

Proposed Repeal: N.J.A.C. 10:38-5

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4-27.19.

Proposal Number: PRN 1989-390.

Submit comments by September 6, 1989 to:

Robert P. Immordino, Assistant Director
Fiscal and Management Operations
Division of Mental Health and Hospitals
13 Roszel Road
Princeton, New Jersey 08540

The agency proposal follows:

Summary

The New Jersey Department of Human Services, in conjunction with the United States Department of Health and Human Services, developed the Interim Assistance Program. This program permits a State psychiatri

hospital client who is clinically ready for discharge to receive financial assistance. That assistance will be for living expenses while waiting for the Social Security Administration (SSA) to process the client's application for Supplemental Security Income (SSI). Prior to the Interim Assistance Program, SSI-eligible clients would have had to remain hospitalized while awaiting SSA processing of the SSI application. Trial Placement has been a component of Interim Assistance Program. However, there is a concern that clients are returned from Trial Placement to the hospital without due process. The amended Interim Assistance Program reflects elimination of the Trial Placement designation. Since the last publication of the rules, the Division of Mental Health and Hospitals has reorganized its central office. With this reorganization, the Division eliminated the Bureau of Transitional Services. The Division developed a Discharge Oriented Service Plan (DOSP) in order to meet the service needs of our clients. The DOSP enhances clinical treatment for individuals receiving services at the seven State psychiatric hospitals. The DOSP provides a process for inter-disciplinary treatment planning. It also improves patient management and the documentation of patient care.

Staff from the Division of Mental Health and Hospitals' Office of Community Services and Office of Fiscal and Management Operations reviewed the Interim Assistance Program rules and determined they were effectively meeting the objectives they were designed to accomplish. The rules are now being amended to enhance efficiency and clients' rights.

A summary of the text of N.J.A.C. 10:38 follows:

N.J.A.C. 10:38-1—**Introduction**—describes the program, its authority, and its purpose.

N.J.A.C. 10:38-2—**Interim Assistance Eligibility**—provides criteria by which clients are determined to be eligible or ineligible for the program.

N.J.A.C. 10:38-3—**Interim Assistance Case Processing**—allocates organizational responsibility.

N.J.A.C. 10:38-4—**Interim Assistance Payment Procedures**—outlines procedures for authorizing and terminating payments.

N.J.A.C. 10:38-5—**Medicaid Coverage for Interim Assistance Clients**—describes the interaction between the Medicaid and Interim Assistance programs.

N.J.A.C. 10:38-6—**Appeal Procedures**—describes the various processes for seeking review of decision-making.

N.J.A.C. 10:38-7—**Client Income and Resource Monitoring**—outlines procedures and responsibilities for monitoring client income and resources.

The proposed amendments to N.J.A.C. 10:38 update the manual to reflect current organizational responsibilities.

Social Impact

Fundamental clinical and legal principles require that hospitals discharge clients as soon as clinically appropriate. It can take a substantial period of time between application for and receipt of SSI benefits. Many clients lack adequate finances to sustain themselves in the community while waiting for their SSI benefits to commence. The Interim Assistance Program is currently providing financial assistance to approximately 150 clients per month. Without this assistance, many clients would remain institutionalized longer than necessary. This would constitute an inappropriate delay in the resumption of normal community life. The program provides a positive effect in the form of enhanced placement prospects.

Trial Placement has been a component of the Interim Assistance Program. However, there is a concern that clients are returned from Trial Placement to the hospital without due process. The amended Interim Assistance Program reflects elimination of the Trial Placement designation. Before a client can be readmitted to a State psychiatric hospital, he or she must be screened at a designated screening center. The client must meet the criteria for admission to a State psychiatric hospital. This fact, coupled with extension of the program, should be well-received by clients and their families. There will be a positive effect in the form of enhanced placement prospects.

Economic Impact

Psychiatric hospitals are the most expensive location for psychiatric treatment. Continuation of the Interim Assistance Program will reduce costs by enhancing clinically appropriate client discharges from State psychiatric hospitals into community placements, which are less expensive. Further, the program provides for client reimbursement to the State from retroactive SSI benefits. As a result, the State recovers back into its appropriation approximately 75 percent of the program's costs.

Regulatory Flexibility Analysis

The proposed amendment to N.J.A.C. 10:38 enhances client rights as well as the efficiency of the Interim Assistance Program. The regulated group is Division employees. Service providers are considered small businesses under N.J.S.A. 52:14B-16 et seq. The requirement in procedures is simple recordkeeping. This does not require professional assistance. As such, the amendment has no adverse effect on small businesses. There are no further reporting or other compliance requirements on small businesses. Since small businesses are not required to comply with the provisions of this proposal, there is no need for a regulatory flexibility analysis.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:38-5.

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

RECODIFICATION TABLE

Old	New	Old	New
10:38-2	10:38-1.4	10:38-8.3	10:38-6.3
10:38-3.1	10:38-2.1	10:38-8.4	10:38-6.4
10:38-3.2	10:38-2.2	10:38-8.5	10:38-6.5
10:38-3.3	10:38-2.3	10:38-8.6	10:38-6.6
10:38-3.4	10:38-2.4	10:38-8.7	10:38-6.7
10:38-4.1	10:38-3.1	10:38-8.8	10:38-6.8
10:38-4.2	10:38-3.2	10:38-8.9	10:38-6.9
10:38-4.3	10:38-3.3	10:38-8.10	10:38-6.10
10:38-4.4	10:38-3.4	10:38-8.11	10:38-6.11
10:38-4.5	10:38-3.5	10:38-8.12	10:38-6.12
10:38-4.6	10:38-3.6	10:38-8.13	10:38-6.13
10:38-4.7	10:38-3.7	10:38-8.14	10:38-6.14
10:38-6.1	10:38-4.1	10:38-9.1	10:38-7.1
10:38-6.2	10:38-4.2	10:38-9.2	10:38-7.2
10:38-6.3	10:38-4.3	10:38-9.3	10:38-7.3
10:38-6.4	10:38-4.4	10:38-9.4	10:38-7.4
10:38-7.1	10:38-5.1	10:38-9.5	10:38-7.5
10:38-7.2	10:38-5.2	10:38-9.6	10:38-7.6
10:38-7.3	10:38-5.3	10:38-9.7	10:38-7.7
10:38-8.1	10:38-6.1	10:38-9.8	10:38-7.8
10:38-8.2	10:38-6.2		

SUBCHAPTER 1. [INTRODUCTION] **GENERAL PROVISIONS**

10:38-1.1 Program description

(a) Interim Assistance (IA) is a payment procedure developed by the State of New Jersey and the Federal Department of Health and Human Services which permits a client who has been released from a State psychiatric hospital and who has applied for Federal Supplemental Security Income (SSI) benefits to receive State funds while [his/her] **his or her** SSI claim is being evaluated. Through this process, the client [will] **shall** receive a Personal Needs Allowance and have [his/her] **his or her** initial maintenance costs paid by the Division of Mental Health and Hospitals upon release from the hospital. The Division, in turn, [will] **may** directly receive the client's retroactive SSI payment from the Social Security Administration, [will] **may** recoup Interim Assistance expenditures made and [will] **shall** deposit this reimbursement in the hospital Interim Assistance account.

(b) The revolving hospital fund which is thereby created [will] **shall** be used to ensure that:

1. A client [will] **shall** return to the community at an appropriate point in [his/her] **his or her** treatment;

2. A client's income, upon release, [will] **shall** be adequate and at an established standard.

[SUBCHAPTER 2. DEFINITIONS]

10:38-1.4 Definitions

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

. . .

["Bureau of Transitional Services" means the bureau within the Division of Mental Health and Hospitals which processes Interim Assistance, Supplemental Security Income and General Assistance applications for clients in State psychiatric hospitals who are being prepared for release, locates housing and aftercare services for clients,

and monitors the adequacy of their post-discharge housing, financial and social services.]

"Discharge" means legal discharge of a patient from the hospital to which [he/she] **he or she** has been confined, as defined in N.J.S.A. 30:4-23.

"Discharge Coordinator or designee" means the individual responsible for maintaining a housing resource file, providing technical assistance to placement social workers and monitoring the discharge process. This individual may also fulfill the role of Financial Coordinator.

"Discharge Oriented Service Plan" means a document used to coordinate and record all aspects of the discharge planning process.

"Discharge Unit" means a discrete placement unit within the State psychiatric hospital responsible for locating housing, linking to aftercare services, and monitoring the adequacy of post-discharge housing and social services.

"Family care home" means a private home or apartment in which the owner resides with up to three clients.

"Financial Coordinator or designee" means the individual responsible for overseeing the functions of the Financial Entitlement Unit, including the supervision of the Income Maintenance Technician (IMT). This Coordinator is also responsible for monitoring post-discharge financial services. This individual may also fulfill the role of Discharge Coordinator.

"Financial Entitlement Unit or its equivalent" means that institutional unit within the Division of Mental Health and Hospitals which processes Interim Assistance, Supplemental Security Income and General Assistance applications for State psychiatric hospital clients who are being prepared for release.

"General Assistance" means assistance provided by a municipal welfare department to a financially needy person who is ineligible for other categorical assistance programs or who is awaiting an SSI eligibility evaluation.

"Income Maintenance Technician (IMT)" means the individual responsible for processing financial entitlement applications for clients referred for financial services.

["Individual Client Service Discharge Plan" means a document used to coordinate and record all aspects of the discharge planning process. The hospital, Bureau of Transitional Services, community agency, and the client participate in the development and implementation of this plan.]

"Interdisciplinary Treatment Team" means a group of persons who are responsible for evaluating a client's treatment and service needs, monitoring the client's progress and assessing [his/her] **his or her** readiness for discharge. The team is composed of hospital **staff** [, Bureau of Transitional Services,] and community service representatives.

"Interim Assistance Account" means an account established at a State psychiatric hospital which is used to pay for maintenance costs of a client who has been released to the community and who is awaiting an SSI eligibility evaluation.

"Interim Assistance [Statement] **Agreement**" means a [client's] formal agreement between the State of New Jersey and the Federal Department of Health and Human Services which establishes procedures to reimburse the State for financial assistance provided to a client while [his/her] **his or her** SSI application is being evaluated.

. . .

"Personal Needs Allowance (**PNA**)" means funds provided to a client in the community to be used for [his/her] **his or her** incidental personal expenses.

. . .

["Trial placement" means a community living experience for a State psychiatric hospital client who is not yet ready for discharge.]

SUBCHAPTER [3.] 2. INTERIM ASSISTANCE ELIGIBILITY

10:38-[3.1] **2.1** Clients eligible for Interim Assistance

(a) To be determined eligible for Interim Assistance (IA), a client [must] **shall**:

1.-2. (No change.)

3. Have been evaluated by the Interdisciplinary Treatment Team as ready for release to one of the following:

i. Residential health care facility;

ii. Boarding house;

iii. Rooming house; **or**

iv. Transitional residence[.]; **and**

4. Have applied for Supplemental Security Income (SSI) benefits[:].

[5. Have signed form MH-30, Authorization for Reimbursement of Assistance from SSI Award, Community Placements.]

10:38-[3.2] **2.2** Clients ineligible for Interim Assistance

(a) A client in a State psychiatric hospital is not eligible for Interim Assistance when any of the following conditions exist:

1.-3. (No change.)

4. The client is returning to his or her own home or family; **or**

5. The client is on the active SSI rolls[:].

[6. The client refuses to sign form MH-30, Authorization for Reimbursement of Assistance from SSI Award, Community Placements.]

10:38-[3.3] **2.3** Selection criteria

(a) (No change.)

(b) When choices must be made among Interim Assistance applicants, the following selection criteria [will] **shall** be used:

1. Urgency of placement, as determined by the Interdisciplinary Treatment Team, and a clearly established need for Interim Assistance in order to implement the [Individual Client Service Discharge Plan] **Discharge Oriented Service Plan;**

2. (No change.)

10:38-[3.4] **2.4** Approval authority

Approval authority for the Interim Assistance Program [will] **shall** rest with the [Bureau of Transitional Services (BTS)] **Financial Coordinator of the Institutions' Financial Entitlement Unit** of the Division of Mental Health and Hospitals.

SUBCHAPTER [4.]3. INTERIM ASSISTANCE CASE PROCESSING

10:38-[4.1]**3.1** (No change in text.)

10:38-[4.2]**3.2** The Interdisciplinary Treatment Team

(a) The role of the Interdisciplinary Treatment Team in the Interim Assistance case processing system [will] **shall** be to:

1. Regularly evaluate the client's progress while in the hospital and [his/her] **his or her** readiness for community living;

2. Determine the client's need for assistance in financial planning[:] **, including consultation to determine special needs and discharge needs; and**

3. Complete the [Individual Client Service Discharge Plan] **Discharge Oriented Service Plan**, noting the person responsible for financial planning.

10:38-[4.3]**3.3** The hospital social service staff

(a) The [Individual Client Service Discharge] **Discharge Oriented Service** Plan [will] **shall** establish the client's need for assistance in financial planning **and placement needs**. If such a **financial** need is evident and the client appears to meet Interim Assistance eligibility criteria, the hospital social service staff [will] **shall:**

1. Provide the client **or family** with a description of the Interim Assistance Program, its requirements and the client's **or family's** rights and obligations under the program, if assigned client placement responsibility;

2. Obtain the client's signature, if [he/she] **he or she** expresses an interest in the program, on an Interim Assistance Statement and form MH30, if assigned client placement responsibility;

3. Refer the client to the [Bureau of Transitional Services] **Discharge Unit** for [servicing] **financial assistance and if unable to return to family, assist in locating approved residential setting;**

4. Obtain and forward to the [Bureau of Transitional Services **Discharge Unit** a medical history, current staff notes and a social history, including social and financial information;

5. Ensure that a client placed in Interim Assistance is recorded as an "Other" transaction on the hospital daily population movement report;

[6. Provide the hospital business manager with a completed form 1077, Authorization to Release Patients Funds and Welfare Funds, for a client who has personal funds exceeding $500.00]

[7.]**6. Once notified by the business manager that the retroactive SSI check is received and Interim Assistance has been terminated,** [Ensure] **ensure** that [a] **the** client's discharge is recorded properly on the hospital daily population movement report [after the retroactive SSI check is received and Interim Assistance is terminated.] **and that all appropriate hospital staff are notified of discharge; and**

7. Assist the client in the utilization of funds preserved for discharge needs, as well as other remaining personal funds, ensuring that the client's wishes are the primary determinent of the use of these funds, but pointing out needs the client may not have anticipated.

10:38-[4.4]**3.4** [The Bureau of Transitional Services] **Responsibilities of the Discharge and/or Financial Units**

(a) [The Bureau of Transitional Services will] **The Discharge or Financial Unit shall** play a major role in several areas, specifically:

1.-3. (No change.)

4. [Place clients] **Obtain placements** in suitable and approved residential [facilities] **settings** and obtain signed Contracts for Interim Assistance;

5.-6. (No change.)

7. Assist clients in filing and processing appeals; **and**

8. **Notify the Business Manager to** terminate Interim Assistance payments when eligibility or ineligibility for Supplemental Security Income Benefits is established.

(b) The [Bureau of Transitional Services will] **Discharge or Financial Unit shall** maintain a record of each referral received and processed. This record shall contain the dates when:

1.-6. (No change.)

7. An approval or denial of the Supplemental Security Income application is received; **and**

8. (No change.)

(c) The [Bureau of Transitional Services will] **Financial Entitlement Unit shall,** within five working days of receipt of a referral:

1. Submit an initial inquiry to the Social Security Administration to [assist in determining client's eligibility for Interim Assistance] **verify social security numbers and to determine if the client is already a recipient of SSI. (If clients are already on the active roll of SSI, they are not in need of the Interim Assistance Program);**

2. (No change.)

3. Make an assessment of the client's potential Supplemental Security Income eligibility based on available documents and information. This evaluation [will] **shall** result in one of the following decisions:

i. The client is eligible for Interim Assistance payments because [he/she] **he or she** meets the eligibility criteria of the Interim Assistance Program and appears to be potentially eligible for Supplemental Security Income benefits; **or**

ii. The client is ineligible for Interim Assistance payments because [he/she] **he or she** does not meet Interim Assistance eligibility criteria and/or does not appear to be potentially eligible for Supplemental Security Income benefits.

(d) The [Bureau of Transitional Services will] **Financial Entitlement Unit shall,** for a client assessed as eligible for Interim Assistance:

1.-3. (No change.)

4. Forward, within two working days of placement, one copy of the signed MH-30 to the Social Security Administration District Office, one copy to the client and retain one copy for the [Bureau of Transitional Services] **Financial Entitlement Unit's** file;

5.-6. (No change.)

(e) The Discharge Unit shall:

[7.]**1.** [Search for and locate a] **Locate an available, affordable and** suitable approved residential facility for the client. **Such facility shall be licensed by either the Division of Developmental Disabilities, the Department of Community Affairs, or the Department of Health, as appropriate.**

[8.]**2. The placement Social Worker shall** [visit] **visit** the selected site with the client and, if the client finds it acceptable:

i.-iii. (No change.)

(f) The Financial Coordinator shall:

Renumber 9.-12. as **1.-4.** (No change in text.)

[13.]**5.** Notify the client and the hospital business manager, in writing, when Interim Assistance payments are terminated; **and**

[14.]**6.** Send the hospital business manager, if requested, an Interim Assistance maintenance report covering the client's final month on the program.

[(e)]**(g)** The [Bureau of Transitional Services will] **Financial Entitlement Unit shall,** for a client who has been found eligible for Interim Assistance and is subsequently denied SSI benefits:

1. Continue Interim Assistance payments upon authorization by the [Bureau of Transitional Services Area Supervisor] **Financial Coordinator,** if the client files an appeal with the Social Security Administration, during the period of the SSI reconsideration and the hearing at the Administrative Law level;

2.-7. (No change.)

[(f)]**(h)** The [Bureau of Transitional Services will] **Financial Entitlement Unit shall,** for a client assessed as ineligible for Interim Assistance:

1.-2. (No change.)

3. Assist the client in filing an appeal to the [Bureau of Transitional Services Area Supervisor] **Financial Coordinator; and**

4. (No change.)

10:38-[4.5]**3.5** The Office of Fiscal and Management Operations of the Division of Mental Health and Hospitals

(a) The role of the Office of Fiscal and Management Operations of the Division of Mental Health and Hospitals [will] **shall** be to:

1.-2. (No change.)

3. Forward recorded checks to the appropriate hospital business offices; **and**

[4. Notify the appropriate Bureau of Transitional Services offices when checks are received;]

[5.]**4.** Receive copies of form FS-9, Business Manager's Statement to SSI recipient, from the hospital business managers, assure that SSI benefits were disbursed in accordance with Social Security Administration regulations and add this information to the record.

10:38-[4.6]**3.6 Responsibilities of** [The] **the** hospital business office

(a) The hospital business office [will] **shall** be responsible for all fiscal matters relating to the Interim Assistance program other than those described in previous and succeeding sections. Business office staff's specific responsibilities [will] **shall** be to:

1. (No change.)

2. Forward form FS-10 to the designated Social Security Administration District Office within one working day of receipt of notification from the [Bureau of Transitional Services] **Financial Coordinator** regarding **the** client's placement, and provide the [Bureau of Transitional Services] **Financial Coordinator** with one copy of the form;

3. Initiate Interim Assistance payments when authorized in writing by the [Bureau of transitional Services] **Financial Entitlement Unit;**

4. (No change.)

5. Monitor client income sources other than Interim Assistance in accordance with procedures described in N.J.A.C. 10:38-[9]**7;**

6. (No change.)

7. Make monthly payments to the housing provider for validated billings in accordance with procedures described in N.J.A.C. 10:38-[6]**4.3;**

8. Receive **a** client's initial retroactive Supplemental Security Income check from the Office of Fiscal and Management Operations and deposit it into the client's account, **and notify the Financial Entitlement Unit that the check has been received;**

9.-10. (No change.)

11. If a patient was previously receiving SSI and an MH-30 is already on file from a prior application, the initial retroactive check may go directly to the payee. In that event, the business office shall utilize a mechanism to bill the client and recover Interim Assistance advanced;

[11.]**12.** Forward copies of form FS-9 to the [Bureau of Transitional Services] **Financial Entitlement Unit** and to the Office of Fiscal and Management Operations;

[12.]**13.** Conduct administrative review of the retroactive SSI check disbursement upon client's request;

[13.]**14.** File Supplemental Security Income Notice of Interim Assistance Reimbursement Eligibility and Accountability Report, form SSA-8125. (This procedure requires, within 30 days of receipt, an individual accounting for each check received by the Division of Mental Health and Hospitals from the Social Security Administration. Completed form SSA-8125 must be forwarded directly to the Social Security Administration Regional Office, to the attention of State Relations Staff); **and**

[14.]**15.** Terminate Interim Assistance as of the day following [receipt of] **the last day of the period covered by the** client's retroactive Supplemental Security Income check.

10:38-[4.7]**3.7** **Action by** [The] **the** Social Security Administration

(a) The Social Security Administration will:

1.-3. (No change.)

4. Notify the [Bureau of Transitional Services] **Financial Entitlement Unit** of approvals and denials of Supplemental Security Income applications;

5. (No change.)

6. Notify clients and/or representative payees that initial Supplemental Security Income retroactive checks [will] **shall** be forwarded to the Division of Mental Health and Hospitals;

7. (No change.)

AGENCY NOTE: The text of N.J.A.C. 10:38-5, Trial Placement Status, which is proposed for repeal, can be found in New Jersey Administrative Code at N.J.A.C. 10:38-5.

SUBCHAPTER [6.]**4.** INTERIM ASSISTANCE PAYMENT PROCEDURES

10:38-[6.1]**4.1** Authorization of payments

Interim Assistance payments require the authorization of the [Bureau of Transitional Services Area Supervisor] **Financial Coordinator** or [his/her] **his or her** designee.

10:38-[6.2]**4.2** Exempt resources

Client cash resources, [up to a maximum of $500.00, will] **including Federal annuity awards, funds set aside for burial expense or identified special needs, and liened resources up to the amount due for care and maintenance shall** be considered exempt in Interim Assistance eligibility determinations. Upon discharge, this amount, if in the client's account, [will] **shall** be paid to [him/her] **him or her** directly.

10:38-[6.3]**4.3** Business office payment procedures

(a) The hospital business manager, or [his/her] **his or her** designee, [will] **shall** record the date of written notification from the [Bureau of Transitional Services of] **Financial Entitlement Unit verifying** a client's eligibility for Interim Assistance.

(b) The client's initial Personal Needs Allowance payment [will] **shall** be issued in the following manner:

1. The client's Personal Needs Allowance [will] **shall** be mailed directly to [him/her] **him or her** by the business manager or [his/her] **his or her** designee on the day of the client's placement;

2. Payment [will] **shall** be made at the established per diem rate, and [will] **shall** cover the remainder of the month of release;

3. If the client has personal funds [exceeding the $500.00 cash resource exemption], such funds [shall] **may** be utilized; [In this case, the request for the Personal Needs Allowance will be accompanied by an approved form 1077, Authorization to Release Patients Funds and Welfare Funds;] **and**

4. If the client has no personal funds [exceeding the $500.00 cash resource exemption], a written statement from the [Bureau of Transitional Services social worker] **Financial Entitlement Unit**, authorizing a Personal Needs Allowance payment, [will] **shall** be provided to the business manager's designated liaison on the day of the client's placement. Payment [will] **shall** be made from the hospital petty cash fund **or approved special fund**.

(c) Each succeeding monthly Personal Needs Allowance payment [will] **shall** be authorized, in writing, by the [Bureau of Transitional Services] **Financial Entitlement Unit**. [Only the approved form 1077 will be required if the client has personal funds exceeding the $500.00 cash resource exemption.]

(d) The business manager, or [his/her] **his or her** designee, [will] **shall** mail Personal Needs Allowance checks at the per diem rate and covering a full calendar month, to the client at the community placement address on the first working day of each month.

(e) The client's Interim Assistance maintenance payment [will] **shall** be calculated and disbursed as follows:

1. At the end of each month, the business manager [will] **shall** obtain a completed invoice form AR 50/54, from the housing provider;

2. The invoice [will] **shall** be compared for accuracy with the signed Contract for Interim Assistance and the [Bureau of Transitional Services] **Financial Entitlement Unit's** Interim Assistance maintenance report, if utilized; **and**

3. Validated payments from the Interim Assistance account [will] **shall** be made to the housing provider by the 10th calendar day of the following month at the established maintenance per diem rate.

10:38-[6.4]**4.4** Termination [or] **of** payments

(a) Interim Assistance payments shall be terminated for an eligible client:

1. [On the day after] **As of the day after the last day of the period covered by** a retroactive Supplemental Security Income check received by the hospital business manager; or

2. When a client has been formally determined to be ineligible for Supplemental Security Income benefits by the Social Security Administration. This shall be interpreted to mean that Interim Assistance payments may continue through the SSI reconsideration and the hearing at the Administrative Law level if approved by the [Bureau of Transitional Services Area Supervisor] **Financial Coordinator**.

(b) Retroactive county billing shall be pursued by the hospital business office, utilizing form 1113, Billing Classification Report, in a case where a client is denied Supplemental Security Income benefits, **or when the initial SSI check is less than the amount of Interim Assistance advanced**.

(c) The client shall be notified of Interim Assistance termination by the [Bureau of Transitional Services] **Financial Entitlement Unit**.

SUBCHAPTER [7.]**5.** MEDICAID COVERAGE FOR INTERIM ASSISTANCE CLIENTS

10:38-[7.1]**5.1** Institutional Medicaid coverage

An Interim Assistance recipient [will] **shall** be eligible for institutional Medicaid coverage until [his/her] **his or her** Supplemental Security Income application is processed and [he/she] **he or she** is discharged.

10:38-[7.2]**5.2** Procedures

(a) To ensure continued institutional Medicaid coverage for an Interim Assistance client, the following procedures [will] **shall** be followed:

1. The **individual completing the** hospital daily population movement report [will] **shall** list an Interim Assistance client as released to "Other".

2. Form FD-34, Medicaid validation, [will] **shall** be completed by the designated hospital representative on the date of placement, and on the first of each month thereafter, and forwarded to the contracted housing provider; **and**

3. The housing provider may use the FD-34, Medicaid validation to obtain medical care for the client.

10:38-[7.3]**5.3** Termination of institutional Medicaid coverage

(a) Upon notification by the [Bureau of Transitional Services **Financial Entitlement Unit** of the client's approval for Supplemental Security Income benefits and community Medicaid, the hospital [will] **shall** list the client as "Discharged" on the daily population movement report.

(b) The client's institutional Medicaid coverage [will] **shall** be terminated as of the last day of the month of [his/her] **his or her** discharge.

(c) The housing provider [will] **shall** return the currently valid (last issued) form FD-34 to the hospital social service department.

SUBCHAPTER [8.]6. APPEAL PROCEDURES

10:38-[8.1]**6.1** Right to appeal

(a) An Interim Assistance client shall have the right to appeal an adverse eligibility decision in the following situations:

1. The client has been denied Interim Assistance by the [Bureau of Transitional Services] **Financial Entitlement Unit** and [he/she] **he or she** has filed an application for Supplemental Security Income benefits; **or**

[2. The client has been recommended for Trial Placement status, the client has been denied Interim Assistance by the Bureau of Transitional Services and he/she has filed an application for Supplemental Security Income benefits;]

[3.]**2.** The client has been found eligible for Interim Assistance and has subsequently been terminated from the Interim Assistance program for reasons other than the receipt of Supplemental Security Income benefits.

10:38-[8.2]**6.2** Notice of decision and right [to] **of** appeal

(a) The [Bureau of Transitional Services] **Financial Entitlement Unit** shall, within five working days of an adverse eligibility decision, notify the client, in writing, of such decision and shall furnish [him/her] **him or her** with a summary statement giving the factual and/or legal basis upon which such decision was based.

(b) The client shall also, at the same time, be advised in writing of [his/her] **his or her** right to appeal an adverse eligibility decision and of the procedure to be followed in filing an appeal.

(c) (No change.)

10:38-[8.3]**6.3** Procedure for filing appeal

(a) The client or [his/her] **his or her** representative may provide either written or oral notice to the [Area Supervisor, Bureau of Transitional Services] **Financial Coordinator of the Discharge or Financial Entitlement Office**, of [his/her] **his or her** intention to appeal an adverse eligibility decision.

(b) Such notice must be provided to the [Area Supervisor, Bureau of Transitional Services,] **Financial Coordinator** within 20 calendar days of the date of mailing of the adverse eligibility decision and summary statement to the client.

(c) The [Area Supervisor, Bureau of Transitional Services,] **Financial Coordinator** shall, within three working days of receipt of the client's notice of intention to appeal, provide the client with written acknowledgement of such receipt.

(d) A request for appeal received after the time period specified shall be denied, unless an unusual situation, [e.g.,] **such as** client illness, exists. In such a case, an additional 10 calendar days may be allowed by the [Bureau of Transitional Services Area Supervisor] **Financial Coordinator** for providing notice of intention to appeal.

(e) The [Bureau of Transitional Services] **placement** worker shall assist the client in providing the [Area Supervisor, Bureau of Transitional Services] **Financial Coordinator** with notice of [his/her] **his or her** intention to appeal.

10:38-[8.4]**6.4** Scheduling of [Bureau] **Financial Entitlement Unit's** review—rights of client

(a) A [bureau] review shall be scheduled by the [Bureau of Transitional Services] **Financial Entitlement Unit** within 10 calendar days of receipt of the client's notice of intention to appeal.

(b) (No change.)

(c) The client and [his/her] **his or her** representative shall have the right to inspect, prior to and at the review, all [Bureau of Transitional Services] **Financial Entitlement Unit** generated documents. The client and [his/her] **his or her** representative [will] **shall** be made aware of other documents contained in the [Bureau of Transitional Services] **Financial Entitlement Unit's** file. These [will] **shall** be made available to the client and [his/her] **his or her** representative upon the receipt by the [Bureau of Transitional Services] **Financial Entitlement Unit** of proper authorization from the originating person or agency.

(d) The client shall have the right to present any and all evidence which will support [his/her] **his or her** claim and to question any evidence upon which the denial or termination of Interim Assistance was based.

10:38-[8.5]**6.5** [Bureau] **Financial Entitlement Unit's** review

(a) The [bureau] review shall be conducted by [a professional Bureau of Transitional Services] **an** employee, at [a] **the** supervisory level or above, designated as a reviewing officer, other than the person who made the original eligibility determination. Such reviewing officer shall be thoroughly familiar with the requirements of the Interim Assistance program and relevant Social Security Administration regulations.

(b) (No change.)

(c) Only those persons whose presence or testimony are essential, [i.e.,] **that is** persons presenting testimony and persons appearing under N.J.A.C. 10:38-[8.4]**6.4**(b), shall be permitted to attend the review.

(d) The reviewing officer shall determine eligibility for Interim Assistance solely upon the documents and testimony submitted to [him/her] **him or her** at the time of the review.

(e) (No change.)

(f) If neither the client nor [his/her] **his or her** representative appears at the scheduled review, after having received proper notification of such review, the client's appeal shall be considered to have been abandoned and the appeal shall be denied, unless the reviewing officer is provided with prior notice by the client or [his/her] **his or her** representative of [his/her] **his or her** inability to attend due to unavoidable circumstances. Postponement may be granted by the reviewing officer for a period not to exceed 10 calendar days from the originally scheduled review date.

(g) If a mutually satisfactory agreement between the client and the [Bureau of Transitional Services] **Financial Entitlement Unit** is reached prior to the time of the review, the review may be cancelled by the reviewing officer, or discontinued if begun, at the client's request in writing.

10:38-[8.6]**6.6** Results of [Bureau] **the financial entitlement unit's** review

(a) If the reviewing officer concludes, after hearing all the evidence, that the client is eligible for Interim Assistance, [he/she] **he or she** shall, within five calendar days of the review, notify the client and [his/her] **his or her** representative to that effect and shall also advise the [Bureau of Transitional Services] **Financial Entitlement Unit's** staff person who made the original eligibility determination that Interim Assistance must be provided to the client effective the date of [his/her] **his or her** placement in a community setting.

(b) If the reviewing officer concludes, after hearing all the evidence, that the client is ineligible for Interim Assistance, the reviewing officer shall, within five calendar days of the review, notify the client, [his/her] **his or her** representative and the [Bureau of Transitional Services] **Financial Entitlement Unit** of the decision. The reviewing officer shall advise the client and [his/her] **his or her** representative of the client's right to have the decision reviewed at the Divisional level.

(c) The reviewing officer shall prepare a written report of [his/her] **his or her** findings, based on the evidence presented, summarizing what transpired at the review. Copies of this report shall be provided to the client, [his/her] **his or her** representative, the [Bureau of Transitional Services] **Financial Entitlement Unit**, the Chief Executive Officer of the hospital, and to the Assistant Director, Office of Fiscal and Management Operations, within five calendar days of the review.

(d) The [bureau] review and resulting decision by the reviewing officer shall be treated and recognized as the initial administrative decision of the client's claim for Interim Assistance.

10:38-[8.7]**6.7** Effect of determination by the Social Security Administration

(a) If, prior to the review date, the Social Security Administration determines that the client is eligible for Supplemental Security Income benefits, then the client, if [he/she] **he or she** meets all eligibility requirements, shall be eligible for Interim Assistance from the date of [his/her] **his or her** placement in a community setting until [he/she] **he or she** begins to receive Supplemental Security Income benefits.

(b) If, prior to the review date, the Social Security Administration determines that the client is ineligible for Supplemental Security Income benefits, then the client's sole recourse shall be through the

Social Security Administration and [his/her] **his or her** Interim Assistance appeal shall be denied.

10:38-[8.8]**6.8** Divisional review

(a) The client shall have the right to a divisional review of the [bureau] **Financial Entitlement Unit's** reviewing officer's decision.

(b) A divisional review must be requested, in writing, within 10 calendar days of issuance of the [bureau] **Financial Entitlement Unit's** reviewing officer's decision, and must be submitted to the Assistant Director, Office of Fiscal and Management Operations, Division of Mental Health and Hospitals.

(c) (No change.)

(d) The [Bureau of Transitional Services] **Financial Entitlement Unit** shall assist the client in requesting a divisional review.

(e) The [Bureau of Transitional Services] **Financial Entitlement Unit** shall be responsible for advising the client regarding the availability of legal representation through the Community Health Law Project or local legal services corporation, as appropriate, and shall assist the client in communicating [his/her] **his or her** desire for such representation.

(f) The client, and/or representative, shall be permitted to submit comments on the [bureau] review, as well as additional evidence to substantiate [his/her] **his or her** claim, to the Assistant Director, Office of Fiscal and Management Operations. Such comments and/or evidence must be submitted within 15 calendar days of the issuance of the [bureau] **Financial Entitlement Unit's** reviewing officer's decision.

10:38-[8.9]**6.9** Results of divisional review

(a) The Assistant Director, Office of Fiscal and Management Operations, or [his/her] **his or her** designee, shall review the [bureau] **Financial Entitlement Unit's** reviewing officer's decision and shall affirm or reject such decision.

(b) The Assistant Director, Office of Fiscal and Management Operations, shall, within 10 calendar days of receipt of the client's request for review, notify the client, [his/her] **his or her** representative and the [Bureau of Transitional Services] **Financial Entitlement Unit** of the results of the Divisional review.

(c) If the [bureau] **Financial Entitlement Unit's** reviewing officer's decision is affirmed, such decision shall be treated and recognized as the final administrative decision of the client's claim for Interim Assistance. The client, [his/her] **his or her** representative and the [Bureau of Transitional Services] **Financial Entitlement Unit** shall be so advised.

(d) (No change.)

(e) If the [Bureau] **Financial Entitlement Unit's** reviewing officer's decision is rejected, the client shall be declared eligible for Interim Assistance benefits from the date of [his/her] **his or her** community placement and the client, [his/her] **his or her** representative and the [Bureau of Transitional Services] **Financial Entitlement Unit** shall be so advised.

10:38-[8.10]**6.10** Appeal to the hospital business manager of computation of net payment

(a) An Interim Assistance client shall have the right to appeal to the hospital business manager regarding the procedures used to compute the net payment from [his/her] **his or her** retroactive Supplemental Security Income check.

(b) The client shall, within five working days of receipt of [his/her] **his or her** retroactive Supplemental Security Income check by the hospital, be provided with a statement **by the hospital business manager or designee** detailing the manner in which the net payment was computed. The client shall also be provided with a written statement regarding [his/her] **his or her** right to appeal such computation.

(c) The client shall, within 20 calendar days of mailing of the above statement, be required to serve written or oral notice upon the hospital business manager of [his/her] **his or her** dissatisfaction with the computation and of [his/her] **his or her** intention to appeal.

(d) The [Bureau of Transitional Services] **Financial Entitlement Unit** shall assist the client in communicating to the hospital business manager [his/her] **his or her** intention to appeal.

10:38-[8.11]**6.11** Business manager's review

(a) (No change.)

(b) The business manager, or [his/her] **his or her** designee, shall meet with the client as scheduled and explain to [him/her] **him or her** the procedures used to compute the net payment from the client's retroactive Supplemental Security Income check.

(c) The business manager, or [his/her] **his or her** designee, shall compute the amount of the net payment.

(d) (No change.)

(e) The client shall have the right to be represented at the review by a person of [his/her] **his or her** choice.

(f) The client shall have the right to present any and all evidence that would support [his/her] **his or her** claim for a larger net payment.

(g) The business manager, or [his/her] **his or her** designee, may require the attendance of the [Bureau of Transitional Services] **Financial Coordinator and/or placement** social worker at the review for the purpose of assisting the client and the business manager in the full development of facts.

10:38-[8.12]**6.12** Results of business manager's review

(a) The business manager shall advise the client and the client's representative, in writing, within five calendar days of the review of [his/her] **his or her** decision. Copies of this notice shall also be provided to the [Bureau of Transitional Services] **Discharge or Financial Entitlement Unit,** the Chief Executive Officer of the hospital, and [to] the Assistant Director, Office of Fiscal and Management Operations.

(b) The business manager, or [his/her] **his or her** designee, shall advise the client of [his/her] **his or her** right to a divisional review.

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

10:38-[8.13]**6.13** Divisional review

(a) The client shall have the right to a divisional review of the procedure used by the business manager in computing the client's net payment from [his/her] **his or her** retroactive Supplemental Security Income check.

(b) (No change.)

(c) The [Bureau of Transitional Services] **Discharge or Financial Entitlement Unit** shall assist the client in requesting a divisional review.

(d) The [Bureau of Transitional Services] **Discharge or Financial Entitlement Unit** shall be responsible for advising the client regarding the availability of legal representation through the Community Mental Health Law Project or local legal services corporation, as appropriate, and shall assist the client in communicating [his/her] **his or her** desire for such representation.

10:38-[8.14]**6.14** Results of divisional review

(a) The Assistant Director, Office of Fiscal and Management Operations, or [his/her] **his or her** designee, shall review the business manager's computation of the client's net payment and shall affirm or reject such computation.

(b) The Assistant Director, Office of Fiscal and Management Operations, shall, within 10 calendar days of receipt of the client's request for a review, notify the client, [his/her] **his or her** representative, the business manager and the [Bureau of Transitional Services] **Financial Entitlement Unit** of the results of the divisional review.

(c) If the business manager's computation is affirmed, such decision shall be treated and recognized as the final administrative decision of the client's claim for a larger net payment. The client, [his/her] **his or her** representative, the business manager and the [Bureau of Transitional Services] **Discharge or Financial Entitlement Unit** shall be so advised.

(d) The client shall have the right to request a **further** hearing before an Administrative Law judge if [he/she] **he or she** is dissatisfied with the Assistant Director's decision. Such request must be submitted to the [Assistant Director] **Division of Economic Assistance, Bureau of Administrative Review and Appeals,** within 10 calendar days of issuance of the Assistant Director's decision. Upon receipt of such request, the [Assistant Director] **Bureau** shall immediately refer the matter to the Office of Administrative Law for **scheduling of** a hearing

before an Administrative Law judge, **pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.**

(e) (No change.)

SUBCHAPTER [9.]7. CLIENT INCOME AND RESOURCE MONITORING

10:38-[9.1]**7.1**

(No change in text.)

10:38-[9.2]**7.2** Responsibilities of the hospital business manager

(a) The hospital business manager [will] **shall** be responsible for recouping the total amount of Interim Assistance payments made, first from the client's retroactive Supplemental Security Income check, then from the client's personal funds [exceeding the $500.00 resource exemption] and finally from the client's other resources.

(b) The net balance of funds controlled by the hospital [will] **shall** be directed to the client upon his discharge.

10:38-[9.3]**7.3** Chief Executive Officer [is] **as** representative payee for client income

(a) When the Chief Executive Officer of the hospital is payee for the client's available income other than Interim Assistance, the hospital business manager [will] **may** recoup Interim Assistance expenditures as client income payments are received and [will] **shall** deposit recoveries in the Interim Assistance account.

(b) The client [will] **shall** be notified by the business manager, in writing, that recoveries [will] **may** be made in this manner.

10:38-[9.4]**7.4** Client or non-institutional agent [is] **as** payee for available client income

(a) When an Interim Assistance client receives or has available income directed to a payee other than the Chief Executive Officer of the hospital, the business manager [will] **shall** bill the client and/or the payee on a monthly basis, in accordance with the Payee Agreement.

(b) The Business Manager's Financial Inquiry form [will] **shall** be mailed to the client and to the housing provider at the end of each month that the client is eligible for and receives Interim Assistance payments. Invoice form AR 50/54 **for next month's payment** [will] **shall** be attached to the Financial Inquiry form sent to the housing provider.

(c) When the Financial Inquiry form is returned to the hospital business manager showing additional available income, the business manager [will] **shall** direct the client and/or payee, in writing, to make payments from the additional income to the hospital in accordance with the Payee Agreement.

10:38-[9.5]**7.5** Client or non-institutional agent [is] **as** payee for anticipated income

(a) When an Interim Assistance client or representative payee has not begun to receive anticipated other income payments, the Business Manager's Financial Inquiry form [will] **shall** be mailed to the client and to the housing provider at the end of each month that the client is eligible for and receives Interim Assistance payments. Invoice form AR 50/54 [will] **for next month's payment shall** be attached to the inquiry form sent to the housing provider.

(b) When the Financial Inquiry form, which indicates available income, is returned to the business manager, [he/she will] **he or she shall** direct the client and/or payee to make payments to the hospital in accordance with the Payee Agreement.

10:38-[9.6]**7.6** Refusal to honor payee agreement—client

(a) When an Interim Assistance client refuses to honor the Payee Agreement, the following procedures [will] **shall** be followed:

1. The business manager [will] **shall** notify the [Bureau of Transitional Services] **Financial Entitlement Unit** of this fact;

2. [The Bureau of Transitional Services will] **A representative of the Discharge or Financial Entitlement Unit shall,** within five working days, visit the client and review the Payee Agreement with [him/her] **him or her**;

3. The business manager [will] **shall** continue to make full Interim Assistance payments until the client's discharge if the client makes full reimbursement to the hospital; **and**

4. Interim Assistance [will] **shall** be terminated immediately if the client continues to refuse to make reimbursement.

10:38-[9.7]**7.7** Refusal to honor payee agreement—representative payee

(a) When a representative payee refuses to honor the Payee Agreement or questions any of its stipulations, the following procedures [will] **shall** be followed:

1. The hospital business manager [will] **shall** notify the [Bureau of Transitional Services] **Financial Coordinator** of this fact;

2. The [Bureau of Transitional Services will] **Financial Entitlement Unit shall,** within 10 working days, contact the representative payee, clarify the situation and encourage [him/her] **him or her** to comply with the Payee Agreement;

3. The [Bureau of Transitional Services worker will] **Financial Entitlement Unit shall** have the client initiate necessary procedures to have a new representative payee appointed if compliance with the terms of the Payee Agreement is not forthcoming;

4. Interim Assistance payments [will] **shall** continue while payee reassignment is being effected; **and**

5. (No change.)

10:38-[9.8]**7.8** Termination of Interim Assistance

(a) When notified by the [Bureau of Transitional Services] **Financial Entitlement Unit** that the client's Interim Assistance has been terminated, the business manager [will] **shall**:

1. (No change.)

2. Refer to the [Bureau of Transitional Services] **Discharge or Financial Entitlement Unit**, within 30 calendar days after mailing of the bill, instances of failure by the client and/or representative payee to make payment to the hospital of any outstanding balance;

3. The [Bureau of Transitional Services] **Discharge or Financial Entitlement Unit** shall review the matter with the client and/or representative payee, as necessary, in an effort to effect reimbursement; **and**

4. If the client and/or representative payee continue to fail or refuse to make payment to the hospital of any outstanding balance, the [Bureau of Transitional Services will] **Discharge or Financial Entitlement Unit shall** immediately refer the matter to the Division of Mental Health and Hospitals' attorney for possible legal action.

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Notice of Administrative Change
Redesignation of Division of Public Welfare as Division of Economic Assistance
N.J.A.C. 1:10 Public Welfare Hearings

Take notice that, pursuant to P.L. 1989, c.88, the Division of Public Welfare (DPW) in the Department of Human Services was redesignated the Division of Economic Assistance (DEA). All references to the Division of Public Welfare (DPW) in the public welfare hearings rules of the Office of Administrative Law, N.J.A.C. 1:10, are, by this notice, changed to the Division of Economic Assistance (DEA). These changes will be incorporated into the text of the rules in the August, 1989 update to the New Jersey Administrative Code.

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Relocation Assistance and Eviction
Recovery of Relocation Assistance Costs
Adopted New Rule: N.J.A.C. 5:11-8.5

Proposed: May 1, 1989 at 21 N.J.R. 1039(a).
Adopted: June 27, 1989 by Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs.
Filed: July 3, 1989 as R.1989 d.402, **without change.**

Authority: N.J.S.A. 20:4-10, 20:4-4.1 and 20:4-4.2.

Effective Date: August 7, 1989.
Expiration Date: March 10, 1994.

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

Full text of the adoption follows.

5:11-8.5 Recovery of relocation assistance costs

(a) Any displacing agency that receives a State grant-in-aid shall, as a condition of the receipt of that grant-in-aid, prosecute in a civil or criminal penalty action any real property owner who is or might be, in the judgment of either the displacing agency or the Department, responsible for any housing or construction code violations that resulted in displacement and consequent eligibility for relocation assistance.

(b) Once there has been a final court adjudication in any civil or criminal penalty action brought under (a) above and paragraph (a) of section 1 of P.L. 1983, c. 536 (N.J.S.A. 20:4-4.1), and once the relocation assistance costs have been determined, the displacing agency shall promptly present a statement of relocation costs, indicating the date by which payment must be made, to the real property owner.

(c) In the event that payment is not made by the real property owner within 10 days of the date on which payment is due, interest on the unpaid balance shall accrue at the annual rate of 18 percent, pursuant to paragraph (b) of section 1 of P.L. 1983, c. 536 (N.J.S.A. 20:4-4.1) and the displacing agency shall prepare and file a lien statement pursuant to paragraph (c) of said section 1 of P.L. 1983, c. 536. The displacing agency shall assign to the Department an interest in the lien that is equal to the unrepaid amount of the grant-in-aid, plus accrued interest thereon. The displacing agency shall assist the Department, as may be required, in any foreclosure, by the Department, of the lien.

(d) The displacing agency shall pay to the Department, out of any funds recoverd by it from the real property owner, a proportion of such recovered funds that is the same as the proportion of the total relocation assistance resulting from code enforcement at that owner's property that was paid by the Department.

(e) In the event that the displacing agency does not elect to bring a civil action to recover relocation assistance costs, pursuant to section 1 of P.L. 1984, c.30 (N.J.S.A. 20:4-4.2), the displacing agency shall, at the request of the Department, assign its right to recovery of such funds to the Department. In the event of any recovery in any such case, the Department shall repay to the displacing agency a proportion of the recovered funds, exclusive of attorneys' fees and costs, that is the same as the proportion of the relocation assistance that was paid by the displacing agency from its own funds.

(c)

DIVISION OF HOUSING AND DEVELOPMENT

Emergency Shelters for the Homeless
Visitation Rights; Facilities with Children
Adopted Amendments: N.J.A.C. 5:15-3.1 and 3.4

Proposed: June 5, 1989 at 21 N.J.R. 1509(a).
Adopted: July 11, 1989 by Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs.
Filed: July 12, 1989 as R.1989 d.412, **without change.**

Authority: N.J.S.A. 55:13C-5.

Effective Date: August 7, 1989.
Expiration Date: May 1, 1994.

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

Full text of the adoption follows.

5:15-3.1 Enumeration of rights

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

(c) At a minimum, the facility must afford each resident the following rights and protections which shall be set forth in the resident rules. The residents shall be permitted to exercise these rights without fear of reprisal.

1. (No change.)

2. To receive visitors in designated areas of the facility during reasonable hours and under such conditions as the licensee shall specify in the resident rules;

3.-13. (No change.)

5:15-3.4 Resident services; facilities with children

(a) In all emergency shelters wherein children reside, the following services shall be provided as a minimum:

1. Sleeping area and an area outside of the sleeping area where families may socialize;

2.-4. (No change.)

(b) Children shall not be permitted to reside in Class II facilities.

EDUCATION

(d)

STATE BOARD OF EDUCATION

Notice of Administrative Correction
Special Education
Program Criteria; Home Instruction
N.J.A.C. 6:28-4.5

Take notice that the Department of Education has requested an administrative correction to N.J.A.C. 6:28-4.5, Program criteria; home instruction, as adopted in the May 15, 1989 New Jersey Register at 21 N.J.R.

1385(a). In paragraph (b)4, the Department wishes to clarify that the reference to "[t]his instruction" means the 10 hours per week minimum set forth in the preceding sentence. As the change is clarifying in nature and does not alter the effect of the rule provision, the Office of Administrative Law has agreed to the change, pursuant to N.J.A.C. 1:30-2.7(a)3.

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

6:28-4.5 Program criteria; home instruction

(a) (No change.)

(b) A pupil classified as educationally handicapped shall have his or her individualized education program implemented through one to one instruction at home or in another appropriate setting when it can be documented that no other program option is appropriate at that time.

1.-3. (No change.)

4. Instruction shall be provided for no fewer than 10 hours per week. [This] **The 10 hour** instruction per week shall be accomplished in no fewer than three visits by a teacher on at least three separate days.

(c) (No change.)

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Perinatal Services

Readoption: N.J.A.C. 8:33C

Proposed: May 15, 1989 at 21 N.J.R. 1187(a).

Adopted: July 17, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner of the Department of Health (with approval of the Health Care Administration Board).

Filed: July 17, 1989 as R.1989 d.417, **without change.**

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Effective Date: July 17, 1989.

Expiration Date: July 17, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: Newark Beth Israel Medical Center expressed support for the proposed extension of N.J.A.C. 8:33C for two years beyond August 6, 1989. The hospital felt the extension would give the Department an opportunity to review more carefully current trends and clinical developments prior to amendment of existing rules.

RESPONSE: The Department acknowledges Newark Beth Israel support for readoption of the perinatal regulation and is proposing the readoption of these rules without change.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:33C.

(b)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Computerized Tomography (CAT/CT) Services

Readoption: N.J.A.C. 8:33G

Proposed: May 1, 1989 at 21 N.J.R. 1061(a).

Adopted: July 17, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: July 17, 1989 as R.1989 d.416, **without change.**

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Effective Date: July 17, 1989.

Expiration Date: July 17, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:33G.

INSURANCE

(c)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Notice of Administrative Correction
Life and Health Insurance Advertising
Endorsements by Third Parties
Adopted New Rule: N.J.A.C. 11:2-11.6
Adopted Amendments: N.J.A.C. 11:2-11.1, 11.18, 23.3, 23.5 and 23.8

Take notice that the text of adopted new rule N.J.A.C. 11:2-11.6 and the adopted amendments to N.J.A.C. 11:2-11.1, 11.18, 23.3, 23.5 and 23.8 as published in the July 17,1989 New Jersey Register at 21 N.J.R. 2039(a) was erroneously published without the incorporation of changes upon adoption, as filed by the Department with the Office of Administrative Law (see R.1989 d.391) and as explained in the Notice of Adoption's Summary of Public Comments and Agency Responses and the Agency Initiated Changes summary. As published in this notice pursuant to N.J.A.C. 1:30-2.7(a)3, these changes upon adoption are effective August 7, 1989.

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

11:2-11.6 Endorsements by third parties

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

(f) If a spokesperson is directly or indirectly compensated for making an endorsement, such fact shall be disclosed by use of the phrase "This is a Paid Endorsement" or by words of similar meaning, in the manner provided by (e) above. The requirements of this subsection do not apply where the spokesperson is a company officer *, ***a company director or an employee*** who is paid generally, but not specifically, for making the advertisement.

(g) (No change from proposal.)

(h) An advertisement shall not state or imply that an insurer *[or]* *,* a policy or contract *, ***or any type or line of insurance*** has been approved or endorsed by any individual, group of individuals, society, association, organization, governmental agency or other entity, unless such is the fact and any proprietary relationship between *[an organization]* ***such individual(s) or entity*** and the insurer is disclosed and the prior written approval of the individual, group of individuals, society, association, organization, governmental agency or other entity has been secured. ***Prior written approval shall not be required in cases where the endorsing individual is a company officer, company director or an employee.***

(i)-(k) (No change from proposal.)

(l) Endorsements concerning Medicare supplement insurance shall be filed with the Division of Life and Health of the Department of Insurance at least 30 days prior to their first use. Radio and television *[testimonials or]* endorsements shall be filed in transcribed form.

(m) (No change from proposal.)

11:2-11.18 Insurers' responsibility and control; advertising file; certificate of compliance

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

(e) All such advertisements shall be maintained in said file *[until the completion by the Department of Insurance of the next market conduct examination of the insurer]* ***for a period of five years from their last use***.

(f) (No change.)

11:2-23.5 Disclosure requirements

(a)-(j) (No change.)

(k) Endorsements by third parties must comply with the following requirements:

1.-5. (No change from proposal.)

6. If a spokesperson is directly or indirectly compensated for making an endorsement, such fact shall be disclosed by use of the phrase "This is a Paid Endorsement" or by words of similar meaning in the manner provided by (k)5 above. The requirements of this paragraph do not apply where the spokesperson is a company officer ***, a company director or an employee*** who is paid generally, but not specifically for making the advertisement.

7. (No change from proposal.)

8. An advertisement shall not state or imply that an insurer *[or a]* *,* policy or contract ***, or any type or line of insurance*** has been approved or endorsed by any individual, group of individuals, society, association, organization, governmental agency or other entity, unless such is the fact and any proprietary relationship between *[an organization]* ***such individual(s) or entity*** and the insurer is dislosed and the prior written approval of the individual, group of individuals, society, association, organization, governmental agency or other person has been secured. ***Prior written approval shall not be required in cases where the endorsing individual is a company officer, company director or employee.***

9.-12. (No change from proposal.)

11:2-23.8 Insurers' responsibility and control: advertising file; certificate of compliance

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

(e) All such advertisements shall be maintained in said file *[until the completion by the Department of Insurance of the next market conduct examination of the insurer]* ***for a period of five years from their last use***.

(f) (No change.)

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Notice of Administrative Correction
Insurer's Responsibility and Control; Advertising File; Certificate of Compliance
N.J.A.C. 11:2-23.8

Take notice that the Office of Administrative Law has discovered an error in the text of N.J.A.C. 11:2-23.8(e) proposed for amendment at 21 N.J.R. 970(a), which amendment was changed upon adoption in the July 17, 1989 Register at 21 N.J.R. 2039(a).

The amendment proposed was the deletion of the phrase "for a period of time not less than four years" and the addition of, "until the completion by the Department of Insurance of the next market conduct examination of the insurer." Omitted from the rule text in the notice of proposal was the phrase which followed the proposed deletion, "after the last use of such advertisement." Upon adoption, the proposed amending language was replaced with "for a period of five years from their last use." As this adopted language renders superfluous the phrase omitted from the notice of proposal, the phrase is deleted from the rule by this notice of administrative correction, pursuant to N.J.A.C. 1:30-2.7(a)3.

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

11:2-23.8 Insurer's responsibility and control; advertising file; certificate of compliance

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

(e) All such advertisements shall be maintained in said file for a period of five years after their last use [after the last use of such advertisement].

(f) (No change.)

TRANSPORTATION

(b)

DESIGN AND RIGHT OF WAY

Right of Way
Relocation Assistance
Adopted Repeals and New Rules: N.J.A.C. 16:6

Proposed: May 15, 1989 at 21 N.J.R. 1273(a).

Adopted: July 10, 1989 by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Filed: July 17, 1989 as R. 1989 d. 421, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-27, 27:7-72 through 27:7-88 and the Uniform Transportation Replacement Housing and Relocation Act (P.L. 1972 c. 47 as amended by P.L. 1989, c. 50, effective March 14, 1989).

Effective Date: August 7, 1989.

Expiration Date: August 7, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: A comment was received from the Right-of-Way Officer, Region One, New Jersey Division of the U.S. Department of Transportation, Federal Highway Administration, 25 Scotch Road, Trenton, New Jersey 08628-2595. The comments suggested inconsequential language changes to comply with the provisions of 49 CFR 24.401(d). The terms as used in the proposal imply discretion on the part of NJDOT regarding the mortgage term to be used in calculating the payment.

RESPONSE: The Department agrees and therefore proposes to amend the language appearing in N.J.A.C. 16:6-2.7 (h) and (h)2, as suggested by the Federal Highway Administration.

COMMENT: A comment was received from Shanley & Fisher, P.C., a law firm which represents Amni America, Inc. an outdoor advertising company. The commenter referred to various sections of the Uniform Transportation Replacement Housing and Relocation Act, found at N.J.S.A. 27:7-72 et seq.

The commenter expressed the view that the term "business" could include activities of the outdoor advertising industry. N.J.A.C. 16:6-2.3(e) sets forth specific payments with respect to advertising signs. Of concern was the singling out of advertising signs for specific method of payment rather than reference to the general provisions for business relocation payments, including the fixed payment in lieu of payment for moving and related expenses. Also, the commenter expressed the view that the fixed payments are not adequate and do not cover loss of future income.

RESPONSE: The recent amendment (P.L. 1989, c. 50) to the State's Uniform Transportation Replacement Housing and Relocation Act was required to bring the State into conformance with changes made to the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 by the Surface Transportation and Uniform Relocation Assistance Act of 1987, P.L. 100-17 (23 U.S.C. §§ 101 et seq.). The State Legislature specified throughout P.L. 1989, c. 50 that the rules of the N.J. Commissioner of Transportation comport with the new Federal standards. The Federal Highway Administration, as the designated lead agency of the federal government for relocation assistance matters, has adopted regulations pursuant to the Federal Uniform Act (see *Federal Register* 8912, March 2, 1989). As the instant rules are patterned after these Federal regulations, the provisions of N.J.A.C. 16:6-2.3(e) follow 49 CFR 24.303(e) on the matter of advertising signs.

Regarding the adequacy of the fixed payments, this rulemaking likewise follows the Federal standards and in so doing complies with the overall statutory requirements for uniformity. Also, this rulemaking pertains to relocation assistance payments, something conceptually different from payments for the loss of future business income.

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

CHAPTER 6
RELOCATION ASSISTANCE

SUBCHAPTER 1. GENERAL PROVISIONS

16:6-1.1 Purpose

The intent of the rules contained in this chapter is to comply with the provisions of the Uniform Transportation Replacement Housing and Relocation Act, N.J.S.A. 27:7-72 et seq, as amended, including P.L. 1989, c.50.

16:6-1.2 Relocation notices

(a) As soon as is practicable, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's relocation program. The term "agency" means the entity, public or private, including the State of New Jersey, Department of Transportation, counties, municipalities, and other public entities, utilizing State or Federal funds under an aid program administered by the State of New Jersey, Department of Transportation. The written description shall accomplish at least the following:

1. Inform the person that he or she may be displaced for the project and generally describe the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s);

2. Inform the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims and other necessary assistance to help the person successfully relocate;

3. Inform the person that he or she will not be required to move without at least 90 days advance written notice, and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available to them; and

4. Describe the person's right to appeal the agency's determination as to a person's application for assistance for which a person may be eligible.

(b) Eligibility for relocation assistance shall begin on the date of initiation of negotiations for the occupied property. Initiation of negotiations means the delivery of the initial written offer of just compensation by the agency to the owner or the owner's representative, to purchase the real property. When this occurs, all occupants shall promptly be notified, in writing, of their eligibility for applicable relocation assistance.

(c) Ninety-day notice requirements are as follows:

1. No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

2. The agency shall issue the notice 90 days before it expects the person to be displaced or earlier.

3. The 90 day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating at least 30 days in advance, the specific date by which he or she must move. If the 90 day notice is issued before a comparable replacement dwelling is made available, the notice shall state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available per these regulations.

4. In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the agency determines that a 90 day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety.

16:6-1.3 Availability of comparable replacement dwelling before displacement

(a) No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (described in (b) below) has been made available to the person pursuant to this chapter. Where possible, three or more comparable replacement dwellings shall be made available. Only in those situations when the local housing market does not contain three comparable dwellings, may the agency make fewer than three referrals.

(b) The term "comparable replacement dwelling" means a dwelling which the Agency determines to be:

1. Decent, safe and sanitary;

2. Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present;

3. Adequate in size to accommodate the occupants;

4. In an area not subject to unreasonable adverse environmental conditions;

5. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

6. On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses;

7. Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance; and

8. Within the financial means of the displaced person.

i. A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180 day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential, all increased mortgage interest costs, and all incidental expenses, plus any additional amount required to be paid under replacement housing of last resort.

ii. A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling.

iii. For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length of occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such rental assistance must be paid under replacement housing of last resort.

(c) A comparable replacement dwelling will be considered to have been made available to a person if:

1. The person is informed of its location;

2. The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

3. Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(d) The agency may grant a waiver of the policy in (a) above in any case where it is demonstrated that a person must move because of a major disaster, presidentially declared national emergency, or other emergency requiring immediate vacation of the real property which constitutes substantial danger to the health or safety of the occupants or the public.

(e) In lieu of the aforementioned provisions regarding comparable replacement dwellings, whenever a person is required to relocate for a temporary period because of an emergency, the agency shall:

1. Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling;

2. Pay the actual reasonable out of pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

3. Make available to the displaced person, as soon as practicable, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling.)

16:6-1.4 Relocation planning, advisory services, and coordination

(a) During the early stages of development, programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by the agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

1. An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families and the handicapped when applicable.

2. An estimate of the number of comparable replacement dwellings in the area, including price ranges and rental rates, that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted.

3. An estimate of the number, type and size of the businesses, farms and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

4. Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

(b) Relocation assistance advisory services requirements are as follows:

1. The agency shall carry out a relocation assistance advisory program which satisfies applicable State requirements and offers the services described in 2 below. If the agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

2. The advisory program shall include such measures, facilities and services as may be necessary or appropriate in order to:

i. Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

ii. Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in N.J.A.C. 16:6-1.3(c).

(1) As soon as practicable, the agency shall inform the person, in writing, of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(2) Where practicable, housing shall be inspected prior to being made available to assure that it meets applicable standards. If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe and sanitary.

(3) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require the agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(4) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

iii. Provide current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations, and assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

iv. Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

v. Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

3. Any person who occupies property acquired by the agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the agency.

(c) Relocation activities shall be coordinated with project work and other displacement causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized.

16:6-1.5 Eviction for cause

(a) Eviction for cause shall conform to applicable State law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the agency determines that:

1. The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice, is later evicted; or

2. The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

3. In either case, the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance as set forth in this part.

(b) For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

(c) A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the agency to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under State law. A displacing agency may, at its discretion, consider such a squatter to be in lawful occupancy.

16:6-1.6 General requirements—claims for relocation payments

(a) Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person shall be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) The agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as practicable following receipt of sufficient documentation to support the claim.

(c) If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) All claims for a relocation payment shall be filed with the agency within 18 months after, for tenants, the date of displacement;

for owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

This time period shall be waived by the agency, for good cause as determined by the agency.

(e) If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) The agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, the agency may deduct from relocation payments any rent that the displaced person owes the agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling. The agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) If the agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant, in writing, of its determination, the basis for its determination, and the procedures for appealing that determination.

SUBCHAPTER 2. PAYMENTS FOR MOVING AND RELATED EXPENSES

16:6-2.1 Payments for actual reasonable moving and related expenses; residential moves

(a) Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person is entitled to payment of his or her actual moving and related expenses, as the agency determines to be reasonable and necessary, including expenses for:

1. Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the agency determines that relocation beyond 50 miles is justified;

2. Packing, crating, unpacking, and uncrating of the personal property;

3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property;

4. Storage of the personal property for a period not to exceed 12 months, unless the agency determines that a longer period is necessary;

5. Insurance for the replacement value of the property in connection with the move and necessary storage;

6. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available; and

7. Other moving related expenses that are not listed as ineligible under N.J.A.C. 16:6-2.5, as the agency determines to be reasonable and necessary.

16:6-2.2 Fixed payment for moving expenses—residential moves

Any person displaced from a dwelling or seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under N.J.A.C. 16:6-2.1. This allowance shall be determined according to the applicable schedule maintained by the Bureau of Property and Relocation. In those instances involving a Federal project, the schedule shall be approved by the Federal Highway Administration.

16:6-2.3 Payment for actual reasonable moving and related expenses; nonresidential moves

(a) Any business or farm operation which qualifies as a displaced person pursuant to N.J.S.A. 27:7 et seq., as amended, is entitled to payment for such actual moving and related expenses, as the agency determines to be reasonable and necessary, including expenses for:

1. Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified;

2. Packing, crating, unpacking, and uncrating of the personal property;

3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property. This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right of way to the building or improvement are excluded.);

4. Storage of the personal property for a period not to exceed 12 months, unless the agency determines that a longer period is necessary;

5. Insurance for the replacement value of the personal property in connection with the move and necessary storage;

6. Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit or certification;

7. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available;

8. Professional services necessary for:

i. Planning the move of the personal property;

ii. Moving the personal property; and

iii. Installing the relocated personal property at the replacement location;

9. Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move;

10. Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

i. The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price); or

ii. The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles);

11. The reasonable cost incurred in attempting to sell an item that is not to be relocated;

12. Purchase of substituted personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

i. The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade in of the replaced item; or

ii. The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate;

13. Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed $1,000 as the agency determines to be reasonable, which are incurred in searching for a replacement location, including:

i. Transportation;

ii. Meals and lodging away from home;

iii. Time spent searching, based on reasonable salary or earnings; and

iv. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site; and

14. Other moving-related expenses that are not listed as ineligible under N.J.A.C. 16:6-2.5, as the agency determines to be reasonable and necessary.

(b) The following notification and inspection requirements apply to payments under this section:

1. The agency shall inform the displaced business or farm, in writing, of the requirements of (b) 2 and 3 above as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person.

2. The displaced business or farm operator shall provide the agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the agency may waive this notice requirement after documenting its file accordingly.

3. The displaced business or farm operator shall permit the agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) If the displaced business or farm elects to take full responsibility for its move, the agency may make a payment for the moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the agency or prepared by qualified staff. At the agency's discretion, a payment for a low cost (generally less than $1,000) or uncomplicated move may be based on a single bid or estimate.

(d) Upon request and in accordance with applicable law, the business or farm operation shall transfer to the agency ownership of any personal property that has not been moved, sold, or traded in.

(e) The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

1. The depreciated reproduction cost of the sign, as determined by the agency, less the proceeds from its sale; or

2. The estimated cost of moving the sign, but with no allowance for storage.

16:6-2.4 Fixed payment for moving expenses; nonresidential moves

(a) A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with (e) below, but not less than $1,000 nor more than $20,000. The displaced business is eligible for the payment if the agency determines that:

1. The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move, and the business vacates or relocates from its displacement site;

2. The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the agency determines that it will not suffer a substantial loss of its existing patronage;

3. The business is not part of a commercial enterprise having more than three other properties/locations which are not being acquired by the agency, and which are under the same ownership and engaged in the same or similar business activities;

4. The business is not operated at the displacement building solely for the purpose of renting such as a dwelling to others;

5. The business is not operated at the displacement site solely for the purpose of renting the site to others;

6. The business contributed materially to the income of the owner or operator of the business during the two taxable years prior to displacement. The term "contribute materially" means that during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the agency determines to be more equitable, a business or farm operation:

i. Had average annual gross receipts of at least $5,000; or

ii. Had average annual net earnings of at least $1,000; or

iii. Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources;

iv. If the application of the above criteria creates an inequity or hardship in any given case, the agency may approve the use of other criteria as determined appropriate.

(b) In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

1. The same premises and equipment are shared;

2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

3. The entities are held out to the public, and to those customarily dealing with them, as one business; and

4. The same person or closely related persons own, control, or manage the affairs of the entities.

(c) A displaced farm operation may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in acccordance with (e) below, but not less than $1,000 nor more than $20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the agency determines that:

1. The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

2. The partial acquisition caused a substantial change in the nature of the farm operation.

(d) The term "nonprofit organization" means an organization that is incorporated as a nonprofit organization under the laws of New Jersey or other State jurisdiction, and is exempt from payment of Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. § 501). A displaced nonprofit organization may choose a fixed payment of $1,000 to $20,000 in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the agency demonstrates otherwise. Any payment in excess of $1,000 must be supported with financial statements for the two 12 month periods prior to the acquisition. The amount to be used for the payment is the average of two years annual gross revenues less administrative expenses.

(e) The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State and local income taxes during the two taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the agency determines is satisfactory.

16:6-2.5 Ineligible moving and related expenses

(a) A displaced person is not entitled to payment for:

1. The cost of moving any structure or other real property improvement in which the displaced person reserved ownership;

2. Interest on a loan to cover moving expenses;

3. Loss of goodwill;

4. Loss of profits;

5. Loss of trained employees;

6. Any additional operating expenses of a business or farm operation incurred because of operating in a new location, except as provided in N.J.A.C. 16:6-2.6(b)10;

7. Personal injury;

8. Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the agency;

9. Expenses for searching for a replacement dwelling;

10. Physical changes to the real property at the replacement location of a business or farm operation, except as provided in N.J.A.C. 16:6-2.3(a)3 and 16:6-2.6(b); or

11. Costs for storage of personal property on real property already owned or leased by the displaced person.

16:6-2.6 Reestablishment expenses—nonresidential moves

(a) In addition to the payments available under N.J.A.C. 16:6-2.3, a small business (a business having at least one but not more than 500 employees working at the site being acquired), farm or nonprofit organization may be eligible to receive a payment, not to exceed $10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(b) Reestablishment expenses must be reasonable and necessary, as determined by the agency. They may include, but are not limited to, the following:

1. Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance;

2. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business;

3. Construction and installation costs, not to exceed $1,500 for exterior signing to advertise the business;

4. Provision of utilities from right of way to improvements on the replacement site;

5. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling or carpeting;

6. Licenses, fees and permits when not paid as part of moving expenses;

7. Feasibility surveys, soil testing and marketing studies;

8. Advertisement of replacement location, not to exceed $1,500;

9. Professional services in connection with the purchase or lease of a replacement site;

10. Estimated increased costs of operation during the first two years at the replacement site, not to exceed $5,000 for such items as:

i. Lease or rental charges;

ii. Personal or real property taxes;

iii. Insurance premiums; and

iv. Utility charges, excluding impact fees;

11. Impact fees or one time assessments for anticipated heavy utility usage; and

12. Other items that the agency considers essential to the reestablishment of the business.

13. Expenses in excess of the regulatory maximums set forth in (b)3, 8 and 10 above, may be considered eligible if large and legitimate disparities exist between costs of operation at the displacement site and costs of operation at an otherwise similar replacement site. In such cases, the regulatory limitation for reimbursement of such costs may be waived by the agency, but, in no event, shall total costs payable under this section exceed the $10,000 statutory maximum.

(c) The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary or otherwise eligible:

1. Purchase of capital assets, such as, office furniture, filing cabinets, machinery or trade fixtures;

2. Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation;

3. Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in (b)5 above;

4. Interest on money borrowed to make the move or purchase the replacement property; and

5. Payment to a part time business in the home which does not contribute materially to the household income.

16:6-2.7 Replacement housing payment for 180 day homeowner occupants

(a) A displaced person is eligible for the replacement housing payment for a 180 day homeowner occupant if the person:

1. Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

2. Purchases and occupies a decent, safe, and sanitary replacement dwelling as defined at N.J.A.C. 16:6-2.9(f) within one year after the later of the following dates (except that the agency may extend such one year period for good cause as determined by the agency);

i. The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court; or

ii. The date the agency's obligation under N.J.A.C. 16:6-1.3 is met.

(b) The replacement housing payment for an eligible 180 day homeowner-occupant may not exceed $22,500 (see also, N.J.A.C. 16:6-2.10). The payment under this section is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

1. The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with (c) below; and

2. The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with (h) below; and

3. The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with (i) below.

(c) The price differential to be paid under (b) 1 above is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

i. The reasonable cost of a comparable replacement dwelling as determined in accordance with (d) below; or

ii. The purchase price of the decent, safe and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(d) The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling, defined at N.J.A.C. 16:6-1.3(b).

1. If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data. An obviously overpriced dwelling may be ignored.

i. If a displaced person purchases the comparable dwelling upon which the supplement was predicated, but cannot acquire the property for the adjusted price, it is appropriate to increase the replacement housing payment to the actual purchase amount.

2. If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

3. If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the agency will offer to purchase the entire property. If the owner refuses to sell the remainder to the agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

4. To the extent practicable, comparable replacement dwellings shall be selected from the neighorhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(e) If the displacement dwelling unit was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling unit shall

be considered its acquisition cost when computing the price differential.

(f) To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be added to the acquisition cost of the displacement dwelling when computing the price differential.

(g) If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling, shall be the sum of:

1. The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

2. The cost of making the unit a decent, safe, and sanitary replacement dwelling, as defined at N.J.A.C. 16:6-2.9(f); and

3. The current fair market value for residential use of the replacement site, unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

4. The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(h) The displacing agency shall determine the factors to be used in computing the amount to be paid to a displaced person under (b) 2 above. The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized *[over the term of the old or new mortgage, as determined by the agency,]* with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bonafide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (h) 1 through 5 below shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

1. The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

2. The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, *[as determined by the agency]* ***whichever is shorter***.

3. The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

4. Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

i. They are not paid as incidental expenses;

ii. They do not exceed rates normal to similar real estate transactions in the area;

iii. The agency determines them to be necessary; and

iv. The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

5. The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

(i) The incidental expenses to be paid under (b)3 above are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

1. Legal, closing and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees;

2. Lender, FHA, or VA application and appraisal fees;

3. Loan origination or assumption fees that do not represent prepaid interest;

4. Certification of structural soundness and termite inspection when required;

5. Credit report;

6. Owner's and mortgagee's evidence of title, for example, title insurance, not to exceed such costs for a comparable replacement dwelling;

7. Escrow agent's fee;

8. State revenue or documentary stamps, sales or transfer taxes (not to exceed such costs for a comparable replacement dwelling); and

9. Such other costs as the agency determines to be incidental to the purchase.

(j) A 180 day homeowner occupant, who could be eligible for a replacement housing payment under (a) above, but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed $5,250, computed and disbursed in accordance with N.J.A.C. 16:6-2.8.

16:6-2.8 Replacement housing payment for 90 day occupants

(a) A tenant (a person who has the temporary use and occupancy of real property owned by another) or owner occupant displaced from a dwelling is entitled to a payment not to exceed $5,250 for rental assistance, as computed in accordance with (b) below, or downpayment assistance, as computed in accordance with (c) below, if such displaced person:

1. Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

2. Has rented, or purchased and occupied a decent, safe and sanitary replacement dwelling within one year (unless the agency extends this period for good cause as determined by the agency) after:

i. For a tenant, the date he or she moves from the displacement dwelling; or

ii. For an owner occupant, the later of:

(1) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of just compensation is deposited with the court; or

(2) The date he or she moves from the displacement dwelling.

3. The payment to an owner occupant under this section may not exceed the comparable amount computed under N.J.A.C. 16:6-2.7 if the person had been eligible for such payment.

(b) Rental assistance payments are determined as follows:

1. An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed $5,250 for rental assistance (see also N.J.A.C. 16:6-2.10). Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

i. The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

ii. The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

2. The base monthly rental for the displacement dwelling is the lesser of:

i. The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the agency. (For an owner occupant, the fair market rent for the displacement dwelling will be utilized. For a tenant who paid little or no rent for the displacement dwelling, the fair market rent will be used, unless its use would result in a hardship, as determined by the agency, because of the person's income or other circumstances); or

ii. Thirty percent of the person's average gross household income. (If the person refuses to provide appropriate evidence of income or

s a dependent, the base monthly rental shall be established solely on the criteria in (b)2i above.) A full time student or resident of an nstitution may be assumed to be a dependent, unless the person demonstrates otherwise; or

iii. The total of the amounts designated for shelter and utilities f receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

3. Utility costs are defined as expenses for heat, lights, water and sewer.

4. A rental assistance payment may, at the agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by N.J.A.C. 16:6-2.9(e), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(c) Downpayment assistance payments are determined as follows:

1. An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would have received under (b) above if the person had rented a comparable replacement dwelling, but instead chose to purchase. The payment to a displaced homeowner shall not exceed the amount the owner would have received under N.J.A.C. 16:6-2.7(b) if he or she had met the 180 day occupancy requirement. A displaced person eligible to receive a payment as a 180 day owner occupant under N.J.A.C. 16:6-2.7(a) is not eligible for this payment.

2. The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

16:6-2.9 Additional rules governing replacement housing payments

(a) Before making a replacement housing payment or releasing a payment from escrow, the agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe and sanitary dwelling, as defined at (f) below.

(b) A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

1. Purchases a dwelling;

2. Purchases and rehabilitates a substandard dwelling;

3. Relocates a dwelling which he or she owns or purchases;

4. Constructs a dwelling on a site that he or she owns or purchases;

5. Contracts with a builder for the purchase or construction of a dwelling on a site that the person owns or purchases; or

6. Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(c) No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in this chapter for a reason beyond his or her control, including:

1. A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the agency; or

2. Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the agency.

(d) A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under N.J.A.C. 16:6-2.8 is eligible to receive a replacement housing payment under N.J.A.C. 16:6-2.7 or 2.8 if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed one year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under N.J.A.C. 16:6-2.7 or 2.8.

(e) A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payments shall not be paid to the heirs or assigns, except that:

1. The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

2. The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy the decent, safe and sanitary replacement dwelling.

3. Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

(f) The term "decent, safe and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply unless waived by the agency for good cause as determined by the agency. The dwelling shall:

1. Be structurally sound, weathertight, and in good repair;

2. Contain a safe electrical wiring system adequate for lighting and other devices;

3. Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees Fahrenheit) for a displaced person;

4. Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contain a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage system, and adequate space and utility service connections for a stove and refrigerator;

5. Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress; and

6. For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(g) Displaced persons shall not be entitled to receive duplicative payments under N.J.A.C. 16:6-2.7, 2.8 and 2.10.

16:6-2.10 Replacement housing of last resort

(a) Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants as specified in N.J.A.C. 16:6-2.7 and 2.8, as appropriate, the agency shall provide additional or alternative assistance under the provisions of this section. Any decision to provide last resort housing assistance must be adequately justified either:

1. On a case by case basis, for good cause, which means that appropriate consideration has been given to:

i. The availability of comparable replacement housing in the project or program area;

ii. The resources available to provide comparable housing; and

iii. The individual circumstances of the displaced person; or

2. By a determination that:

i. There is little, if any, comparable replacement housing available to displaced persons within an entire project or program area and, therefore, last resort housing assistance is necessary for the area as a whole;

ii. A project or program cannot be advanced to completion in a timely manner without last resort housing assistance; and

iii. The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to toal project or program costs.

(b) Notwithstanding any provision of this section, no person shall be required to move from a displacement dwelling unless comparable replacement housing is made available to such person. No person may be deprived of any rights the person may have under Federal law or this chapter. The agency shall not require any displaced person to accept a dwelling provided by the agency under this chapter (unless the agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) The agency shall have broad latitude in implementing this section, but implementation shall be for reasonable cost, on a case by case basis unless an exception to case by case analysis is justified for an entire project.

1. The methods of providing replacement housing of last resort include, but are not limited to:

i. A replacement housing payment in excess of the limits set forth in N.J.A.C. 16:6-2.7 and 2.8. A rental assistance subsidy under this section may be provided in installments or in a lump sum at the agency's discretion;

ii. Rehabilitation of or additions to an existing replacement dwelling;

iii. The construction of a new replacement dwelling;

iv. The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest free;

v. The relocation and, if necessary, rehabilitation of a dwelling;

vi. The purchase of land and/or a replacement dwelling by the agency and subsequent sale or lease to, or exchange with, a displaced person;

vii. The removal of barriers to the handicapped; or

viii. The change in status of the displaced person with his or her concurrence, from tenant to homeowner when it is more cost effective to do so, as in cases where a downpayment may be less expensive than a last resort housing rental assistance payment.

2. Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling including upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with N.J.A.C. 16:6-1.3(b)2.

3. The agency shall provide assistance under this section to a displaced person who is not eligible to receive a replacement housing payment under N.J.A.C. 16:6-2.7 or 2.8 because of failure to meet the length of occupancy requirements, when comparable replacement rental housing is not available at a rental rate within the person's financial means, which is 30 percent of the person's gross monthly household income. Such assistance shall cover a period of 42 months.

16:6-2.11 Mobile homes; applicability

This section through N.J.A.C. 16:6-2.15 describe the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this section. Except as modified by this section, such a displaced person is entitled to a moving expense payment in accordance with N.J.A.C. 16:6-2.1 and a replacement housing payment in accordance with N.J.A.C. 16:6-2.7 or 2.8 to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

16:6-2.12 Moving and related expenses; mobile homes

(a) A homeowner occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her mobile home on an actual cost basis in accordance with N.J.A.C. 16:6-2.1. A nonoccupant owner of a rented mobile home is eligible for actual cost reimbursement under N.J.A.C. 16:6-2.3. However, if the mobile home is not acquired by the agency, but the homeowner occupant obtains a replacement housing payment under one of the circumstances described at N.J.A.C. 16:6-2.13(a)3, the owner is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

(b) The following provisions apply to payments for actual moving expenses under N.J.A.C. 16:6-2.3:

1. A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting and awnings, which were not acquired, anchoring of the unit, and utility "hook-up" charges.

2. If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe, and sanitary, and the agency determines that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.

3. A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the agency determines that payment of the fee is necessary to effect relocation.

16:6-2.13 Replacement housing payment for 180 day mobile homeowner occupants

(a) A displaced owner occupant of a mobile home is entitled to a replacement housing payment, not to exceed $22,500 under N.J.A.C. 16:6-2.7 if:

1. The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

2. The person meets the other basic eligibility requirements at N.J.A.C. 16:6-2.7(a); and

3. The agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the agency but the owner is displaced from the mobile home because the agency determines that the mobile home:

i. Is not and cannot economically be made decent, safe and sanitary;

ii. Cannot be relocated without substantial damage or unreasonable cost;

iii. Cannot be relocated because there is no available comparable replacement site; or

iv. Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) If the mobile home is not acquired, and the agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at N.J.A.C. 16:6-2.7(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

16:6-2.14 Replacement housing payment for 90 day mobile home occupants

(a) A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed $5,250 under N.J.A.C. 16:6-2.8 if:

1. The person actually occupied the displacement mobile home or the displacement site for at least 90 days immediately prior to the initiation of negotiations;

2. The person meets the other basic eligibility requirements a N.J.A.C. 16:6-2.8(a); and

3. The agency acquires the mobile home and/or mobile home site or the mobile home is not acquired by the agency but the owner o tenant is displaced from the mobile home because of one of th circumstances described at N.J.A.C. 16:6-2.13(a)3.

16:6-2.15 Additional provisions governing relocation payments to mobile home occupants

(a) Circumstances surrounding both the mobile home and mobil home site shall be considered when determining a replacement hous ing payment. For example, a displaced mobile home occupant ma have owned the displacement mobile home and rented the site or ma have rented the displacement mobile home and owned the site. Als a person may elect to purchase a replacement mobile home and ren a replacement site, or rent a replacement mobile home and purchas a replacement site. In such cases, the total replacement housin payment shall consist of a payment for a dwelling and a paymen for a site. However, the total replacement housing payment unde N.J.A.C. 16:6-2.7 or 2.8 shall not exceed the maximum paymen provided therein.

(b) The following apply in determining the cost of a comparabl replacement dwelling:

1. If a comparable replacement mobile home is not available th replacement housing payment shall be computed on the basis of th reasonable cost of a conventional comparable replacement dwelling

2. If the agency determines that it would be practical to relocat the mobile home, but the owner occupant elects not to do so, th agency may determine that, for the purpose of computing the pric differential under N.J.A.C. 16:6-2.7(c), the cost of a comparabl replacement dwelling is the sum of:

i. The value of the mobile home;
ii. The cost of any necessary repairs or modifications to the mobile home; and
iii. The estimated cost of moving the mobile home to a replacement site.
(c) If the mobile home is not actually acquired, but the occupant is considered displaced, "initiation of negotiations" is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under this section.
(d) If the owner is reimbursed for the cost of moving the mobile home under this section, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.
(e) The acquisition by the agency of a portion of a mobile home park property may leave the remaining part of the property that is not adequate to continue the operation of the park. If the agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this chapter.

SUBCHAPTER 3. ORGANIZATION AND PROCEDURES

16:6-3.1 Exercise of powers
The Department of Transportation may exercise, on behalf of any county, municipality, or other entity, as the case may be, the powers granted to these agencies under P.L. 1989, c.50 (N.J.S.A. 27:7-72 et seq., as amended), and under this chapter.

16:6-3.2 Delegation of powers
Ordinarily, the Bureau of Property and Relocation, within the Division of Right of Way, will be responsible for administering this chapter and the attendant Federal and State law, on behalf of the Commissioner of Transportation.

16:6-3.3 Appeal of agency determination
(a) Any aggrieved person may file a written appeal, regardless of form, with the agency in any case in which the person believes that the agency has failed to properly consider the person's application for assistance under this chapter. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a relocation payment.
(b) The appeal must be initiated within 90 days after the person receives written notification of the agency's determination on the person's claim. The written appeal should be addressed to the Right of Way District Supervisor. If the matter is not resolved to the person's satisfaction, the person may request an in-person review by writing to the New Jersey Department of Transportation, 1035 Parkway Avenue, (CN600), Trenton, New Jersey 08625, Attention: Director of Right of Way, who is the Commissioner's authorized designee to hear appeals.
(c) A person has the right to be represented by legal counsel or other representative in connection with the appeal, but solely at the person's own expense. The person shall be permitted to inspect and copy all materials pertinent to the appeal, except materials which are classified as confidential by the agency. The agency may impose reasonable conditions on the person's right to inspect, consistent with applicable laws. In deciding an appeal, the agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.
(d) Promptly after receipt of all information submitted by a person in support of an appeal, the agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the agency shall advise the person of his or her opportunity to request a contested case before the Office of Administrative Law, conducted 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.

16:6-3.4 Federal law
The administration of relocation assistance shall be provided consistent with applicable Federal law and regulations.

(a)

TRANSPORTATION OPERATIONS

Speed Limits

Routes N.J. 29 in Hunterdon County and U.S. 206 in Mercer County

Adopted Amendments: N.J.A.C. 16:28-1.72 and 1.77

Proposed: June 5, 1989 at 21 N.J.R. 1501(b).
Adopted: July 7, 1989 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: July 11, 1989 as R.1989 d.411, **without change.**

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

Effective Date: August 7, 1989.
Expiration Date: June 1, 1993.

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

Full text of the adoption follows.

16:28-1.72 Route U.S. 206 including U.S. 206 and U.S. 130
(a) The rate of speed designated for the certain parts of Route U.S. 206 described in this subsection, shall be established and adopted as the maximum legal rate of speed.
1. For both directions of traffic:
i. through ii. (No change.)
iii. In Mercer County:
(1) Hamilton Township:
(A) Zone 1: 45 miles per hour between the northerly end of the bridge over the Crosswicks Creek and Whitehorse Avenue (mileposts 38.45 to 38.88); thence
(B) Zone 2: 35 miles per hour between Whitehorse Avenue and Cedar Lane except with a "25 mph when flashing" school speed zone within the Holy Angels Catholic School zone (mileposts 38.88 to 40.71); thence
Redesignate (c) through (e) as (b) through (d) (No change in text.)

16:28-1.77 Route 29
(a) The rate of speed for the certain parts of State highway Route 29 described in this section shall be established and adopted as the maximum legal rate of speed:
1. For both directions of traffic:
i. through xi. (No change.)
xii. Zone 12: 25 mph in Stockton Borough to Route 523 (milepost 19.2); thence
(1) "15 mph when flashing" school speed zone within the Stockton Elementary School Zone.
xiii. through xiv. (No change.)

(b)

POLICY AND PLANNING
OFFICE OF AVIATION

Airport Improvement Safety Aid

Adopted New Rules: N.J.A.C. 16:56

Proposed: June 5, 1989 at 21 N.J.R. 1502(a).
Adopted: July 7, 1989 by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.
Filed: July 13, 1989 as R.1989 d.413, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-44 and the Airport Safety Act of 1983, N.J.S.A. 6:1-89 et seq.

Effective Date: August 7, 1989.
Expiration Date: August 7, 1994.

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. 16:56.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Public Employees' Retirement System School Year Employees

Adopted Amendment: N.J.A.C. 17:2-4.3

Proposed: April 17, 1989 at 21 N.J.R. 979(a).
Adopted: July 12, 1989 by the Public Employees' Retirement System, Janice Nelson, Secretary.
Filed: July 17, 1989 as R.1989 d.423, **without change.**

Authority: N.J.S.A. 43:15A-17.

Effective Date: August 7, 1989.
Expiration Date: December 17, 1989.

Summary of Public Comments and Agency Responses:
COMMENT: A commenter suggested the rule be clarified to more fully explain the rule's purpose as set out in the proposal's impact statements. That a definition of "full year" be included in the rule was also suggested.
RESPONSE: The Board considers the proposed rule language to be sufficiently clear to generate the effects explained in the proposal. The Board does not consider the suggested definition necessary, as that term is unchanged from the rule as previously in effect.

Full text of the adoption follows:

17:2-4.3 School year members
Members whose salaries for a school year are considered as a full year's compensation shall be given service credit in the proportion that the time employed bears to the duration of the school year, but not more than one year's credit shall be given during any consecutive 12 months.

(b)

DIVISION OF PENSIONS

Public Employees' Retirement System Work-Related Travel; Accidental Disability Retirement and Accidental Death Benefit Coverage

Adopted New Rule: N.J.A.C. 17:2-6.27

Proposed: May 15, 1989, at 21 N.J.R. 1258(a).
Adopted: July 12, 1989, the Public Employees' Retirement System, by Janice Nelson, Secretary.
Filed: July 17, 1989 as R.1989 d.422, **without change.**

Authority: N.J.S.A. 43:15A-17.

Effective Date: August 7, 1989.
Expiration Date: December 17, 1989.

Summary of Public Comments and Agency Responses:
COMMENT: A commenter suggested that, should an employer expect an employee to attend dinners or social events, such attendance should be considered "in performance of duty" for the purposes of the rule.
RESPONSE: The Board prefers to consider such situations on a case-by-case basis rather than adopt a broad rule change to cover such a contingency.

Full text of the adoption follows:

17:2-6.27 Work-related travel; accidental disability retirement and accidental death benefit coverage

(a) A member whose duties include regular or occasional travel in the course of employment will be considered in the "performance of his regular or assigned duties" for the purposes of accidential disability retirement or "in the actual performance of duty" for the purposes of accidental death benefits during employment-related travel as provided in this section. For the purposes of this section, "in performance of duty" means and includes both "performance of regular or assigned duties" and "in the actual performance of duty."

(b) If a member's duties require or authorize the member to travel between a regularly assigned office or workplace and other locations, or among other locations, the member is in performance of duty during travel between a regularly assigned office or workplace and other locations, or among other locations.

(c) If a member's duties require or authorize the member to travel between his or her place of residence and a location other than an office or workplace of the employer to which the member is regularly assigned or near to the regularly assigned office or workplace to perform the duties of the employment, the member is in performance of duty when he or she completely leaves the property of his or her residence and begins to travel to the other location, or until he or she begins entry to the property of residence after travel from the other location, and all expenses of the travel are paid for by the employer. A member's duties are considered to authorize or require travel from the place of residence to a location other than a regularly assigned office or workplace of the employer in the following situations:

1. The member's regular or assigned duties involve field work which requires or authorizes the member to travel to locations other than a regularly assigned office or workplace of the employer to perform his or her duties and do not require the member to report to a regularly assigned office or workplace before or after traveling to other locations. Travel by the member between a regularly assigned office or workplace of the employer and the place of residence of the member is not considered part of the member's duties.

2. The member's regular or assigned duties are usually performed at an office or workplace of the employer to which the member is regularly assigned but occasionally require or authorize travel to other locations.

3. The member is authorized or required by his or her employer to respond to an emergency situation outside of the member's regularly scheduled work hours, regardless of whether the member goes to a regularly assigned office or workplace or another location, or whether the expenses of the travel are paid for by the employer or the member.

4. The member is attending a meeting, seminar, convention or a similar type of work-related activity as authorized or required by the employer at a location other than a regularly assigned office or workplace, regardless of whether the expenses of the travel are paid for by the employer or the member. Where there are social or recreational activities associated with the work-related activity or attendance requires living accommodations, only travel to and from the general activity and participation in and travel to and from the work-related functions of the activity are considered part of the duties of the member. Activities related to social or recreational functions or living accommodations are not considered part of the duties of the member.

(d) In all cases, a certification from the employer is required and must include a copy of the member's job description, a statement of the member's work schedule on the day of the travel in question and proof of or a statement by the employer that the travel was authorized or required by the employer and was paid for by the employer.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Equal Employment Opportunity
Quarterly Reporting of Casino Business with Minority and Women's Business Enterprises
Adopted New Rule: N.J.A.C. 19:53-2.7.

Proposed: June 5, 1989 at 21 N.J.R. 1507(a).
Adopted: July 14, 1989 by the Casino Control Commission, Walter N. Read, Chairman.
Filed: July 14, 1989 as R.1989 d.414, **without change.**

Authority: N.J.S.A. 5:12-63(c), 69 and 190.

Effective Date: August 7, 1989.
Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

Comments on the proposed new rule were submitted by the Division of Gaming Enforcement (Division), the Atlantic City Branch of the National Association For The Advancement of Colored People (N.A.A.C.P.), the South Jersey Chapter of the National Business League (National Business League) and Resorts International Hotel, Inc. (Resorts).

COMMENT: The Division supported the adoption of the proposed rule as published on the basis that the required quarterly reports will enable the regulatory agencies and casino licensees to assess compliance with the requirements of N.J.A.C. 19:53-2 at a time when corrective action might still be implemented.

RESPONSE: The Commission concurs with the Division's comment.

COMMENT: Resorts opposed the adoption of the proposed new rule on two grounds. First, Resorts relied upon the fact that sections 186 and 187 of the Casino Control Act, N.J.S.A. 5:12-186 and 187, only require annual expenditure reports, as opposed to the quarterly reports contemplated by the proposed new rule.

RESPONSE: The Commission rejects this comment. Section 190 of the Act clearly gives the Commission the authority to "develop such other regulations as may be necessary to interpret and implement" the set-aside requirements of the Act. As noted above, the Commission agrees with the Division that periodic reporting during the annual compliance period will be of benefit to both the State and casino licensees by encouraging licensees to monitor their own compliance and to take corrective measures as necessary.

COMMENT: Resorts also opposed the proposed new rule on the basis that it requires expenditure reports to be submitted to both the Commission and the Division, while the Act only requires reports to the Commission.

RESPONSE: The Commission rejects this comment as well. Pursuant to section 76 of the Act, N.J.S.A. 5:12-76, the Division is obligated, among other things, to investigate violations of the Act and regulations, to enforce the provisions of the Act and regulations and to provide the Commission with all information necessary for all proceedings involving enforcement of the Act or regulations. Clearly, the Division has the right to receive any report filed with the Commission.

COMMENT: The National Business League and the NAACP, while supporting the concept of quarterly reporting requirements, opposed the adoption of the proposed new rule because it does not require casino licensees to report casino business with certified minority and women's business enterprises by reference to particularized categories of goods and services. According to the commenters, the failure of the new rule to include a requirement that casino licensees utilize a wide range of business enterprises will enable licensees to meet their statutory obligations by concentrating their set-aside efforts in one or two major purchasing categories, such as entertainment and construction. This, in turn, will preclude the successful achievement of the statutory goal of creating opportunity "for fuller participation and economic parity by Minority and Women business enterprises functioning in the casino industry."

RESPONSE: While the Commission agrees with the National Business League and the NAACP that Article 13 of the Act, N.J.S.A. 5:12-184 et seq., is designed to encourage casino licensees to make good faith efforts to utilize the full spectrum of minority and female business enterprises available to serve the casino industry, the Commission does not believe that Article 13 authorizes the Commission to require casino licensees to demonstrate expenditures in any particular category of good or service other than those created by the statute. Clearly, if the Legislature had intended to require casino licensees to make expenditures in a specific category, as it did in N.J.S.A. 5:12-187 for bus business, it would have done so. By contrast, the implementing rules adopted by the Commission, N.J.A.C. 19:53-2, recognize that the statutory goal can better be achieved by requiring casino licensees to make good faith efforts to utilize the services of certified minority and women's business enterprises at all times, regardless whether the licensee has met the statutory goal for the general purchasing category (see discussion in Notice of Adoption at 21 N.J.R. 781(b)). Accordingly, the comments of the National Business League and NAACP have not been incorporated into the new rule.

Full text of the adoption follows.

19:53-2.7 Quarterly expenditure reports

(a) Each casino licensee shall submit to the Commission and the Division a quarterly report on its purchases of goods and services, excluding bus business, listing:

1. The total dollar value of all disbursements for goods and services made by the casino licensee during the quarter and the year to date, recorded in accordance with the requirements of N.J.A.C. 19:53-2.4;

2. The name of each certified MBE or WBE with whom the casino licensee did business during the quarter, as well as:

i. The certification status of the enterprise (MBE or WBE);

ii. The total dollars disbursed to the enterprise; and

iii. The total amount of dollars, if any, which were disbursed to the certified MBE or WBE by a contractor pursuant to an agreement authorized by N.J.S.A. 5:12-186c;

3. The total dollar amount of disbursements made to certified MBEs and WBEs during the quarter and the year to date by either the casino licensee or its contractors, listed by MBEs, WBEs and combined total, and the percentage of the total disbursements reported pursuant to (a)1 above that each listed amount represents; and

4. The total dollar amount of disbursements made during the quarter and the year to date to certified MBEs and WBEs by contractors pursuant to agreements authorized by N.J.S.A. 5:12-186c.

(b) Each casino licensee shall submit to the Commission and the Division a quarterly report listing for each category of bus business identified in N.J.A.C. 19:53-2.6 the following:

1. The total dollar value of all disbursements in the category made by the casino licensee during the quarter and the year to date, recorded in accordance with the requirements of N.J.A.C. 19:53-2.6;

2. The name of each certified MBE or WBE with whom the casino licensee did bus business during the quarter, as well as the information required by (a)2i and ii above; and

3. The total dollar value of disbursements made to certified MBEs and WBEs during the quarter and the year to date by the casino licensee, listed by MBEs, WBEs and combined total, and the percentage of the total disbursements reported pursuant to (b)1 above that each listed amount represents.

(c) Each quarterly report required pursuant to (b) above shall also include:

1. The total dollar amount of disbursements in both categories of bus business combined made by the casino licensee during the quarter and the year to date; and

2. The total dollar amount of disbursements in both categories of bus business combined made to certified MBEs and WBEs during the quarter and the year to date by the casino licensee, listed by MBEs, WBEs and combined total, and the percentage of the total disbursements reported pursuant to (c)1 above that each listed amount represents.

(d) The quarterly reports required by this section shall be filed with the Commission and the Division within 15 days of the expiration of the quarter. Casino licensees operating under a calendar year compliance period pursuant to N.J.A.C. 19:53-2.3 and 19:53-2.5 shall file reports on a calendar quarter basis. All other casino licensees shall file quarterly reports in accordance with a schedule approved by the Commission.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF REGULATORY AFFAIRS

Procedure for Filing a Rulemaking Petition

Adopted New Rule: N.J.A.C. 7:1-1.2

Proposed: January 17, 1989 at 21 N.J.R. 102(a).
Adopted: July 6, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: July 17, 1989 as R.1989 d.419, **without change.**

Authority: N.J.S.A. 13:1B-3 and N.J.S.A. 52:14B-4.

DEP Docket Number: 046-88-12.
Effective Date: August 7, 1989.
Expiration Date: September 16, 1990.

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

Full text of the adoption follows:

7:1-1.2 Procedure to petition for a rule

(a) Unless otherwise provided in Title 7 of the New Jersey Administrative Code, this section shall constitute the Department of Environmental Protection's rules regarding the disposition of all requests for rulemaking pursuant to N.J.S.A. 52:14B-4(f).

(b) Any interested person may petition the Department of Environmental Protection to promulgate, amend or repeal any rule of the Department of Environmental Protection. Such petition must be in writing, signed by the petitioner, and must state clearly and concisely:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request;
4. The petitioner's interest in the request, including any relevant organization affiliation or economic interest;
5. The statutory authority under which the Department of Environmental Protection may take the requested action; and
6. Existing Federal or State statutes and rules which the petitioner believes may be pertinent to the request.

(c) Petitions for the promulgation, amendment or repeal of a rule by the Department of Environmental Protection shall be addressed to:

Department of Environmental Protection
CN 402
Trenton, New Jersey 08625
Attention: Administrative Practice Officer
Division of Regulatory Affairs

(d) Any document submitted to the Department of Environmental Protection that is not in substantial compliance with this section shall not be deemed to be a petition for rulemaking requiring further agency action.

(e) Upon receipt by the Department of a petition for rulemaking, the following shall occur:

1. The petition shall be dated, stamped and logged;
2. The petition shall be referred to the relevant Department division or other Department office, as appropriate; and
3. A notice of petition shall be prepared and filed within 15 days of receipt with the Office of Administrative Law in compliance with N.J.A.C. 1:30-3.6(a).

(f) Within 30 days following receipt of a petition, the Department shall mail to the petitioner and file with the Office of Administrative Law for publication in the New Jersey Register a notice of action on the petition which shall contain the information prescribed by N.J.A.C. 1:30-3.6(b).

(g) In accordance with N.J.A.C. 1:30-3.6(c), the Department's action on a petition may include:

1. Denial of the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referral of the matter for further deliberations, the nature of which shall be specified and which shall conclude upon a specified date. The results of these further deliberations shall be mailed to the petitioner and shall be submitted to the Office of Administrative Law for publication in the New Jersey Register.

(b)

DIVISION OF WATER RESOURCES

Surface Water Quality Standards

Adopted Repeal: N.J.A.C. 7:9-4 Indexes A, B, C, D, E, F, G and Guide to Use of Indexes B through F

Adopted New Rule: N.J.A.C. 7:9-4.15

Adopted Amendments: N.J.A.C. 7:9-4.4, 4.5, 4.6 and 4.14(c)

Proposed: July 18, 1988 at 20 N.J.R. 1597(a).
Adopted: July 14, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: July 17, 1989 as R.1989 d.420, **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-1 et seq., specifically 13:1D-9f, N.J.S.A. 58:10A-1 et seq. specifically 58:10A-4 and 58:10A-5, and N.J.S.A. 58:11A-1 et seq., specifically 58:11A-7, 58:11A-8, 58:11A-9, 58:11A-10.

DEP Docket Number: 024-88-06.
Effective Date: August 7, 1989.
Expiration Date: January 21, 1991.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection ("Department") is adopting amendments to the Surface Water Quality Standards (N.J.A.C. 7:9-4) as part of the triennial review process required by the Federal Water Pollution Control Act, 33 U.S.C. §§1251-1376 (1987) ("the Clean Water Act"). The Department is repealing N.J.A.C. 7:9-4 Indexes A, B, C, D, E, F, G and the Guide to Use of Indexes B through F. The Indexes have now been codified as tables in N.J.A.C. 7:9-15. The proposed amendments to N.J.A.C. 7:9-4.4, 4.5 and 4.6(c)4iii are being adopted without change.

The Department has reconsidered adding the proposed uncertainty factor for species sensitivity in N.J.A.C. 7:9-4.6(c)5iii. This proposed change was based on recommended uncertainty factors set forth in the September 1985 United States Environmental Protection Agency ("USEPA") publication, "Technical Support Document for Water Quality Based Toxics Control" (USEPA, Office of Water, EPA/440/4-85-032) which was published four months after the Department's 1985 triennial review. The USEPA document lists an uncertainty factor of 10 for "species sensitivity" for acute or chronic tests using one vertebrate and one invertebrate. The Department anticipates requiring dischargers to perform self-monitoring for chronic toxicity using only one or two test organisms. In order to ensure that aquatic biota would be adequately protected using this number of test species, the Department proposed modifying the formula at N.J.A.C. 7:9-4.6(c)5iii from LC=I(100) to LC=I(1,000). The extra uncertainty factor of 10 was added to account for testing with less than three species.

The extra uncertainty factor of 10 was developed by USEPA in 198. based on the limited data then available. USEPA is currently in the process of revising their technical support document and has indicated to the Department that the uncertainty factor will either be revised (based on updated data) or eliminated entirely. Since the Department does not wish to adopt an uncertainty factor that is technically outdated, it has decided to not adopt the proposed revision. The Department plans to conduct a thorough review of its overall approach for developing water quality based whole effluent toxicity limits during the next year and will propose appropriate changes in the near future. The original effluent toxicity limitation formula LC=I(100) will be retained.

The Department is not adopting the additional toxics criteria proposed for inclusion in N.J.A.C. 7:9-4.14(c). A large number of comments sharply critical of these proposed criteria was received during the public comment period. These criticisms fall into two categories. The first category of critical comments dealt with the proposal of criteria that incorporate

economic and technological factors. The second category of critical comments dealt with the proposal of criteria that was based on considerations relevant to finished drinking water in public water supplies. Because of these comments, the Department is reevaluating this issue and will repropose appropriate criteria at a later date. Until this reevaluation is completed, for chemicals for which the Department has not adopted criteria, the Department will use the best available scientific information in the development of chemical specific water quality based effluent limitations in accordance with N.J.A.C. 7:9-4.6(c)4iii and the Department's past practices. The USEPA methodology for development of section 304(a) criteria will be used in the development of water quality based effluent limitations and will be based on human health effects and protection of the aquatic biota. During this interim period, the best available scientific information to be used in development of water quality based effluent limitations will be the most recent values published by the USEPA pursuant to Section 304(a) of the Federal Clean Water Act, with the following modifications to reflect updated scientific information: for those compounds for which New Jersey has developed updated human toxicity factors pursuant to N.J.S.A. 58:12A-12 et seq., those factors will be used; for those compounds in the USEPA's Integrated Risk Information System (IRIS), other than those addressed pursuant to N.J.S.A. 58:12A-12 et seq., human toxicity factors in the IRIS database will generally be used; and for aquatic biota protection, for those compounds in the USEPA Aquatic Information Retrieval (AQUIRE) database, aquatic toxicity information in the AQUIRE database will generally be used. Where water quality based effluent limitations must be calculated for chemicals for which the USEPA has not published section 304(a) criteria, the Department will calculate the limitations using the best available scientific information. For this process, preference will generally be given to human toxicity factors provided in the data sources described earlier, and to aquatic information provided in AQUIRE. The Department does not necessarily intend to use this interim procedure as a model for its final methodology for developing ambient surface water quality criteria.

Two public hearings were held on September 1, 1988 to provide interested parties the opportunity to present testimony on the proposed amendments. The comment period closed on September 2, 1988. The Department received written testimony from 28 persons and four persons presented comments at the public hearings.

COMMENT: The public has not been given a detailed accounting of the economic, social and environmental impacts of each proposed change in the existing standards. The commenter requests that this be done.

RESPONSE: Under the mandate of the New Jersey Administrative Procedure Act ("APA"), N.J.S.A. 52:14B-1 et seq., the Department shall:

"Prepare for public distribution at the time the notice appears in the Register a statement setting forth a summary of the proposed rule, a clear and concise explanation of the purpose and effect of the rule, the specific legal authority under which its adoption is authorized, and a description of the expected socio-economic impact of the rule; . . . ." N.J.S.A. 52:14B-4(a)(2).

The Department's rule proposals also include an environmental impact statement. The Department strives to make these statements as thorough and informative as possible, while recognizing that they are intended to be brief statements (see N.J.A.C. 1:30-3.1(a)5i). The Department is required to provide the public with impact statements for each of its rule proposals as a whole, not for each and every element included in a rule proposal.

COMMENT: Why were both public hearings held on the same day?

RESPONSE: The Department was attempting to complete the triennial review/revision of its surface water quality standards by September 30, 1988 because of commitments made to the USEPA. Development of the proposed standards and supporting basis and background document took longer than scheduled and, when they were completed, there was very little time to schedule hearings on separate days. Rather than holding only one public hearing the Department scheduled two hearings on one day.

COMMENT: Why was one hearing held at 10:00 A.M. when most people are at work?

RESPONSE: The Department held one hearing at 10:00 A.M. so that anyone who was being sent to testify as part of their employment could attend during normal working hours. Two people came to the 10:00 A.M. hearing and seven people, representing three groups, came to the evening hearing. This would seem to indicate that the 10:00 A.M. hearing was almost as well attended as the evening hearing and served a valid purpose.

COMMENT: Why did the Department decide not to hold public meetings to inform the public about the proposal, as has been its past practice?

RESPONSE: The Department did not hold public meetings on the proposed revisions to the standards because the schedule for the completion of the review did not allow for additional meetings. In the future, time permitting, the Department will try to hold informational meetings on topics relevant to the Surface Water Quality Standards ("Standards") revisions. The New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., specifically provides for such meetings as part of the pre-proposal process "An agency may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons with respect to contemplated rulemaking." (See N.J.S.A. 52:14B-4(e)).

COMMENT: Traditionally, the Department has held public hearings on proposed revisions to the Surface Water Quality Standards in three locations throughout the State, with those locations apportioned roughly to the south, central and north sections of the State. No hearing was scheduled for the northern section of New Jersey this time and the commenter requests that the previous policy of three hearings be reinitiated in the future on proposed revisions to the Surface Water Quality Standards.

RESPONSE: Total attendance at the two public hearings held on this proposal was less than a dozen people. At the hearing held in Cherry Hill, on this proposal, the State's representatives outnumbered the people attending the hearing. The hearings held in 1985 were attended by a similarly small number of people. With such a low turnout it is difficult to justify holding three hearings.

COMMENT: Why has the public's right to participate in the establishment of such important rules been cut back?

RESPONSE: The public's right to participate in the establishment of the Surface Water Quality Standards has not been cut back. Under the New Jersey Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., the Department is required to "(a)fford all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing." (See N.J.S.A. 52:14B-4(a)(3)). The Department held two public hearings on the proposed rules. The public must be notified, under the requirements of the Administrative Procedure Act, of the rule proposal by publishing an appropriate notice in the New Jersey Register and by some secondary means of notification. The Department published notice of this rule proposal and the public hearings to be held on it in two separate issues of the New Jersey Register. Legal advertisements were placed in six newspapers which in the aggregate covered all regions of the state. Additionally, over 450 notices were mailed directly to interested parties. A public comment period of 30 days is required under the Administrative Procedure Act. The initial public comment period on the proposal was 45 days. Based upon requests from the public the public comment period was extended to October 14, 1988, resulting in an 89 day public comment period. Hence this comment period was almost three times as long as required under the Administrative Procedure Act.

COMMENT A: Because the selection of the type of chronic test is important, the Department should not promulgate this portion of the rules until it has promulgated corresponding proposed changes to the laboratory certification rules, N.J.A.C. 7:18. The lack of any protocol precludes the meaningful interpretation of test results leading to false positives with resultant problems on whether or not they are permit exceedances and subsequent interpretation by the public.

COMMENT B: Short term chronic aquatic toxicity tests provided a substantial benefit which justified their extra costs, but whole life cycle tests do not. Unfortunately, the Department has not yet modified its laboratory certification rules in N.J.A.C. 7:18 to provide for chronic tests, despite the fact that N.J.A.C. 7:9 was revised in 1985 in part to allow for chronic testing. Until N.J.A.C. 7:18 is amended, no one in the regulated community has any assurance as to the kinds of tests which are going to be imposed, and accordingly no meaningful opportunity to comment intelligently on the desirability of the change.

COMMENT C: Because of the greater expense of chronic testing, smaller companies should be allowed the option to continue to use the acute test plus an application factor.

COMMENT D: After the establishment of a sufficient data base, dischargers should be allowed to use the acute/chronic ratio to minimize testing costs.

COMMENT E: Only short-term chronic tests should be required. The full life-cycle tests would add very considerably to the regulatory burden, without any corresponding gain for the public.

RESPONSE: These comments deal with the type of chronic bioassay test to be run to determine compliance with chronic whole-effluent toxicity limitations in NJPDES permits. This topic was not part of the proposal and is not part of the Surface Water Quality Standards. The

issues raised would be dealt with as part of NJPDES proceedings or in the context of the New Jersey Laboratory Certification rules, N.J.A.C. 7:18.

COMMENT: The Department's procedures for measuring both fecal coliform levels and bromine to calculate chlorine-produced oxidants fall short of any recognized standards and lack any established protocols.

RESPONSE: The Department has not proposed measuring fecal coliform levels and bromine to calculate chlorine-produced oxidants.

COMMENT: The fecal coliform test is a procedure that is widely used and understood. The change over from the fecal coliform test to enterococci bacterial characterization test is not justified. The enterococci bacteria characterization test is still being researched and is not widely understood. Few scientists are experienced with its applications.

RESPONSE: The fact that the fecal coliform test is widely used and understood does not make it an appropriate analytical procedure to protect people from pathogenic organisms in the water. As discussed in the basis and background document that accompanied the proposal, epidemiological studies conducted by the USEPA showed no relationship between fecal coliform levels and the incidence of gastrointestinal disease. These same studies demonstrated a significant correlation between levels of enterococci and the incidence of gastrointestinal disease. The lack of correlation with fecal coliforms and the strong correlation with enterococci provides a scientifically sound justification for the proposed change.

The concerns expressed about the enterococci test procedures not being widely understood, that few scientists are experienced and that the procedures are still being researched relate to any new test procedure that is proposed for use. The test is one that has undergone substantial review and has been determined by the USEPA and the Department to be a valid test. As with any test that is not in regular use, not everyone is familiar and experienced with it. Additional research is routinely conducted on tests that are widely understood and accepted (for example, bioassay tests). Examples of other tests adopted by the Department during the past two triennial reviews of the Standards which could have been described as "not widely understood," "few scientists are experienced with it" and "it is still being researched", include the fecal coliform test (which replaced testing for total coliforms) and whole effluent toxicity testing. The Department has dealt with this concern by adopting the enterococci criteria in addition to the fecal coliform criteria to allow time for familiarization with the procedure, its application and the relationship, if any, between fecal coliform levels and enterococci levels. All of this was discussed in the basis and background document.

COMMENT A: The majority of the water quality standards published in N.J.A.C. 7:9-4.14, Surface Water Quality Criteria, are chronic standards. Beginning in the mid-1980's, EPA has revised section 304(a) criteria documents to reflect that chronic criteria are based on the premise that long term (or continuous) exposure to such levels of water quality will not adversely affect the aquatic organisms. For these reasons, EPA recognizes that chronic standards may be established as 30 day standards or four day standards (where frequent short term exceedance well above the chronic standard may occur). EPA documents (including the 1984 National Criteria Document for Ammonia) expressly recognize that a 30 day standard is appropriate for municipal discharges in that effluent variability is generally low and frequent exceedance of the chronic criteria should not occur where appropriate return flows are utilized (30/Q/5 or 30/Q/10). The criteria documents establish acute standards as 24 hour criteria and chronic standards as longer term requirements. Consequently, chronic criteria should not apply over a 24 hour period. A chronic symptom cannot occur in such a short timeframe. Consistent with EPA's numerous section 304(a) criteria documents (which the Department states "represent minimum acceptable best available scientific information"—N.J.A.C. 7:9-4.6(e)4iii) chronic criteria must only apply to a chronic event timeframe (4 day average where significant variability is expected and 30 day average where low variability is expected.

COMMENT B: A number of comments were received questioning the Department's current ambient water quality criteria for un-ionized Ammonia. These comments indicated that the criteria are too stringent, based on outdated information, and are not valid.

COMMENT C: The proposed "TM" (trout maintenance) standard for ammonia is inappropriate. Trout maintenance fisheries (whether transient adult or put-and-take) do not represent situations where long term exposure occurs or reproduction needs to be protected.

COMMENT D: With regard to the Department's proposed trout maintenance "TM" standard (for un-ionized ammonia), water quality plays a relatively minor role in the health of the species when habitat conditions in trout maintenance streams are the limiting factor. Under these circumstances the proposed standard 0.02 mg/l (which is based upon a computational error and minimally must be changed to 0.31 mg/l) is inappropriate where full life cycle protection is not needed.

Information provided in the EPA's National Criteria Document supports a standard over three times higher than the Department's proposed trout maintenance ("TM") standard. Minimally, the Department should utilize the current NT standard (0.05 mg/l) for the TM streams. This standard would recognize that absolute protection is not needed in receiving waters with physical habitat restrictions. This provides a substantial level of protection that avoids any significant growth or mortality impacts while allowing the species to inhabit successfully.

COMMENT E: The ammonia criterion for FW2-NT waters should be the same as those proposed by the USEPA (49 FR 4551, 2/7/84)

COMMENT F: Information provided in USEPA's National Criteria Document for Ammonia supports a standard over three times higher than the Department's proposed trout maintenance ("TM") standard. Minimally, the Department should utilize the current NT standard (0.05 mg/l for the TM streams. This standard would recognize that absolute protection is not needed in receiving waters with physical habitat restrictions This provides a substantial level of protection that avoids any significant growth or mortality impacts while allowing the species to inhabit successfully.

RESPONSE: The current New Jersey ambient water quality criteria for un-ionized ammonia are based on section 304(a) criteria recommendations published prior to 1984. During development of this proposal the Department examined the latest information on ambient water quality criteria for un-ionized ammonia. That examination indicated that if the State used the most recent section 304(a) criteria recommendations published by the USEPA, some dischargers would receive more stringent limitations, some less stringent limitations and others would see no change. Because of the questions raised about the un-ionized ammonia criteria, the validity of the scientific information upon which the criteria were based, and the applicability of the national criteria to New Jersey it was decided, by Commisioner Dewling, to hire a consultant to perform a special study of this matter. Since this study could not be complete in time for the proposal of these amendments to the Surface Water Quality Standards, the Department has continued the existing criteria. At such time as the study is completed, revised criteria may be proposed.

One commenter's perception of water quality playing a relatively unimportant role when habitat conditions play a limiting role, shows a misunderstanding of the surface water quality standards process, in general. The first step in the process is the establishment of designated uses; next criteria are developed to protect the uses. Where the use, because of habitat conditions, is inappropriate the Department should be petitioned to change the designated use of the waters in question. As long as the designated use remains unchanged the adopted criteria must be protective of that use.

COMMENT: A proper quality control/quality assurance program for chronic toxicity proposed and promulgated through N.J.A.C. 7:18 will minimize problems of misinterpretation of test results leading to false positives with resultant problems on whether or not there are permit exceedances. The absence of such a program will also lead to the same situation which caused the Department to suspend acute toxicity testing with mysid shrimp in February 1987.

RESPONSE: The Department, through the NJPDES permitting program, will be monitoring quality control/quality assurance procedures for chronic toxicity tests just as they do currently for acute toxicity by reviewing the toxicity test reports and results. The problem which caused the Department to suspend acute toxicity testing with mysid shrimp in February 1987 had nothing to do with a proper quality control program promulgated through N.J.A.C. 7:18, but had to do with a problem with test organism availability and supplier quality.

COMMENT: The commenter believes that if companies achieve four consecutive positive chronic test results they should be allowed to automatically revert back to the use of annual chronic testing.

RESPONSE: With a parameter as important as toxicity, the Department would not allow an automatic reduction in testing frequency unless a complete review of the toxicity data demonstrated that such a reduction was warranted. Furthermore, the Department cannot automatically reduce testing requirements in a NJPDES permit. A reduction in testing frequency is considered a major modification, in accordance with N.J.A.C. 7:14A-2.12 and 2.14, which must be made in accordance with the procedures in N.J.A.C. 7:14A-7 and 8 for a draft permit modification.

COMMENT: After the establishment of a sufficient data base, dischargers should be allowed to use the acute/chronic ratio to minimize testing costs.

RESPONSE: N.J.A.C. 7:9-4.6(c)5i already allows the option to use a discharge specific application factor which is equivalent to an acute/chronic ratio. There may, however, be cases where no acute/chronic ratio can be calculated, such as where the LC50 is greater than 100 percent effluent. This option therefore, will be determined on a case by case basis through individual permit actions.

COMMENT: The Department should, as part of implementing the antidegradation provisions of these rules, indicate that any additions to a stream or other surface water body must be considered adverse to that water body unless it is demonstrated in a convincing manner to the Department by those who are bringing about the addition that such addition does not adversely affect the beneficial uses of the stream. The burden of proof should be on the discharger, developer, etc., it should not be on the public or the Department to prove that the developer, discharger, etc. is having an adverse impact.

RESPONSE: The Department's antidegradation policies are, among other things, intended to prevent the degradation of water quality that is better than is necessary to protect the designated (beneficial) uses. No demonstration concerning impacts on designated uses is required in implementing this section of the Surface Water Quality Standards. Under existing State and Federal regulations on antidegration, the act of changing instream water quality is sufficient to qualify as degradation.

COMMENT: All treatment levels for discharge should insure that the maximum protection of the health and well-being of the public is provided.

RESPONSE: State and Federal rules require that the criteria adopted be set at the level necessary to protect the designated uses of the subject waters. Treatment levels established by the Department for dischargers must be established to insure that the surface water quality criteria are not violated and that existing water quality that is better than the criteria is not degraded. The only way to provide maximum protection for the health and well-being of the public is to prohibit the discharge of pollutants completely. Such a prohibition is not considered to be necessary to adequately protect the public.

COMMENT: The proposed rules, purportedly based on the "best available scientific information", fail to recognize advances in water quality modeling. This is demonstrated by the proposed rules' failure to amend the requirement that all water quality standards shall be achieved for flow above the seven day once in 10 year low flow.

RESPONSE: The use of the MA7CD10 stream flow in the Surface Water Quality Standards is not based on the current state of modeling. Instead, use of the MA7CD10 flow represents a policy decision by the Department to be conservative in establishing regulatory requirements based upon modeling. No information has been brought to the Department's attention which would lead the Department to conclude that a change should be made at this time.

COMMENT: Although the Department may not wish to abandon its current wasteload allocation procedures (steady state at 7/Q/10), the rules (at the option of the discharger based on site specific information) should minimally recognize and allow the following:

(1) Design stream flows other than 7/Q/10 where such flows will be adequately protective; and

(2) Use of statistical modeling to determine compliance with standards on a one in three year exceedance basis.

RESPONSE: Applicable State and Federal rules allow the states to establish water quality criteria that incorporate some reserve capacity and that take into account uncertainties and modeling limitations. The Department uses the MA7CD10 flow to insure that it is taking a conservative approach which will provide some margin for error. Departmental evaluations of other design stream flows have not indicated that adoption of a less conservative flow is warranted at this time.

As for using statistical modeling to determined compliance with Standards on a one in three year exceedance basis, this is not a matter that is covered by the Surface Water Quality Standards. Nothing in the Surface Water Quality Standards allows for a once in three year exceedance. Additionally, the Department did not propose anything that allowed for such an exceedance.

COMMENT: For the SE2 or the FW2-NT water, there is no criteria for the enterococci. Does this mean that the old fecal coliform criteria must be applied?

RESPONSE: Criteria for Enterococci were proposed and are being adopted for FW2-NT waters. These criteria are being adopted in addition to the fecal coliform criteria for FW2 waters. This means that both criteria must be applied to these waters. For SE2 waters the commenter is correct and only the fecal coliform criteria must be applied.

COMMENT: One commenter had a question about N.J.A.C. 7:9-4.14(c), number four under the substance column ("Floating colloidal color and setteable solids, petroleum hydrocarbons and other oils and grease.") The commenter believes the narrative criteria, "None noticeable in the water . . ." etc. is too ambiguous. This narrative criteria should be replaced with specific numerical criteria.

RESPONSE: The commenter did not provide any supporting information indicating that the existing language is ambiguous, nor did the commenter provide any recommendations concerning appropriate numerical criteria. Absent problems with their use, the Department sees no need to replace the existing criteria.

COMMENT: Why is there no total phosphorus criteria for the SE2 or FW2-NT waters?

RESPONSE: The total phosphorus criteria in the Surface Water Quality Standards apply to all FW2 waters, including FW2-NT. No criteria have been established for total phosphorus for any of the saline waters of the State because there is not enough information available.

COMMENT: The Department's proposed rules should allow for the use of normal laboratory water rather than ambient water, for all dilutions, including the controls.

RESPONSE: These rules do not cover the procedures to be followed in conducting whole effluent toxicity tests. This issue should be raised during revisions to the Laboratory Certification rules, N.J.A.C. 7:18, or as part of the proceedings on specific permits (when the toxicity test procedure is not covered by N.J.A.C. 7:18).

COMMENT: The Department should establish a water quality criteria for arsenic several times higher than the EPA criteria. To do otherwise would improperly impose standards that yield no identifiable environmental benefits, particularly in the absence of any use attainability analysis.

RESPONSE: The Federal Water Quality Standards Regulations, (40 CFR §131 (1989)) require states to establish criteria that are protective of designated uses. In this instance the criteria in question are for the protection of human health and were established based upon federally published recommendations. No changes to the existing criteria were included in this proposal. In the context of the commenter's letter it appears that the commenter is questioning the validity of the criteria based upon an examination of available information on protection of the aquatic biota instead of protection of human health. Establishing criteria several times higher than those currently in place for protection of human health would be expected to have adverse impacts on exposed individuals.

COMMENT A: The Department has failed to update the criteria for the heavy metals, even though the USEPA has published new Ambient Aquatic Life Water Quality Criteria documents. The Department, in its response document in 1985, indicated that it would reconsider the criteria for the heavy metals once USEPA had finalized its criteria documents for the heavy metals. Since USEPA's ambient aquatic life water quality criteria for the heavy metals and the toxic effect of the heavy metals on the aquatic life are due to many species of a given metal, the Department's continued use of the heavy metal criteria has no basis and improperly subjects the regulated community to unduly stringent standards that yield no identifiable environmental benefits.

COMMENT B: The Department's proposed heavy metals criteria are based on total heavy metal content for a particular element. This is well known to be a technically invalid approach. It has been known for many years that only part of the total of many heavy metals and for that matter for many other contaminants is normally available to affect aquatic life. To base water quality standards on total metals today is inappropriate and represents a level of understanding of the impacts of chemicals such as metals on aquatic life of that known in the mid-1960's. The USEPA's adoption of total metals as a basis for their criteria represents a bureaucratic problem that exists within the USEPA regarding development of appropriate analytical techniques. The February 7, 1984 proposed criteria involving an acid leachable fraction was a far better approach toward assessing the available forms of heavy metals than the total metals approach. Some states such as Colorado are adopting more reasonable approaches toward assessing available forms of metals than the USEPA has released and the State of New Jersey proposes to do. The Department should not base their standards for heavy metals and other contaminants on the total contaminant concentration

The approach the Department should follow is that total heavy metal limits should be guidelines as to when further work should be done to the aquatic system. Techniques are readily available today to make a proper assessment of whether the total heavy metals present in a particular system is likely to have an adverse impact on aquatic life or other

beneficial uses of the water. It is in the best interest of the State of New Jersey, its water resources quality, and economic development to follow the more technically-valid approach than the approach that is proposed which uses mid-1960's approaches for limiting heavy metals concentrations in the water. Note that these same problems occur for other contaminants such as PCB's.

RESPONSE: The comment shows a misunderstanding of the existing and proposed amendments. There are no proposed criteria for the heavy metals in the proposal. What is contained in the proposal, relative to the heavy metals, is the addition of identifiers to show whether the criteria are based on scientific information for the protection of human health, protection of the aquatic biota or both. In all cases the existing criteria for the heavy metals are based upon protection of human health. The rest of the comment demonstrates the need for this clarification (the addition of identifiers) since the comment focuses on the criteria relative to protection of the aquatic biota.

COMMENT: Does the following list include all documents which identify the information and data upon which the Division of Water Resources relied in arriving at the surface water quality criteria for heavy metals which are set forth in the Department's July 1988 Rule proposal, at 20 N.J.R. 1600:

1. "Basis and Background for the Proposed Water Quality Standards", DEP, Division of Water Resources, June 6, 1988;
2. "Basis and Background for the Proposed Surface Water Quality Standards and Waste Water Discharge Requirements", DEP, Division of Water Resources, November 1984;
3. "Response to Public Comments on the Surface Water Quality Standards and Water Discharge Requirements", DEP, Division of Water Resources, April 1985;
4. "Basis and Background for the proposed Revisions to Surface Water Quality Standards", DEP, February 1980;
5. "Summary of Comments and Responses to Comments (etc.)" for March 1981 Surface Water Quality Standards, DEP.

RESPONSE: The proposal did not include any proposed criteria for the heavy metals, merely informational identifiers to indicate the basis for the criteria. The references in the question do not represent all of the documents upon which the Department relied in arriving at the criteria for heavy metals in the July 1988 proposal. Additional documents relied on in arriving at the existing criteria include publications of the United States Public Health Service concerning acceptable levels of heavy metals in drinking water, Delaware River basin Commission documents on the same topic, and USEPA Drinking Water Criteria recommendations. Finally, it must be reiterated that the commenter's letter dealt with questions related to the heavy metals criteria with an underlying assumption that the criteria were designed to protect the aquatic biota. In fact the criteria were based on human health protection. This incorrect assumption led the commenter to incorrect conclusions concerning the existing criteria.

COMMENT A: Several comments were raised regarding the addition of an uncertainty factor of 10 to the formula found in N.J.A.C. 7:9-4.6(c)5iii to account for uncertainties associated with chronic toxicity testing with less than three different test species. Concerns included: (a) the absence of the option to conduct concurrent testing with three species to determine the most sensitive species rather than including the uncertainty factor in the toxicity limit calculation; (b) the adequacy of the factor of 10 when testing with only one species; (c) the validity of the Department's requiring testing with less than three species; and (d) the conservativeness of the formula including the basis for using the 7Q10 in the same formula.

COMMENT B: The Department should reconsider the arbitrary change in the toxicity limitation formula found in N.J.A.C. 7:9-4.6(c)5iii. The Department's proposed change, increasing the uncertainty factor from 100 to 1,000, is based on information found in USEPA's publication, "Technical Support Document for Water Quality—Based Toxics Control". This USEPA document suggests using effluent toxicity formula as a measure of whether or not the particular waste stream requires further testing to determine its specific toxicity in the environment to which it is discharged. However, N.J.A.C. 7:9-4.6(c)5 allows the formula to be used to establish whole effluent toxicity limits. The State of New Jersey has not shown any scientific evidence to support its need to raise the uncertainty factor in their formula 10-fold and it appears that the State is attempting to use the technical information developed by the USEPA as a regulatory tool instead of as a tool for assessing a waterbody's ability to accept waste stream and maintain water quality which was USEPA's intent as stated in the referenced Document on page 15. "EPA recommends the concept of levels of uncertainty be used in judging the adequacy of a site-specific data for evaluating impact and calculating effluent requirements".

COMMENT C: Decreasing the acceptable waste water quality (based on chronic toxicity testing) by a factor of 10 simply to facilitate the Department performing toxicity testing is not warranted. The Department should be held to the same standards and statistically valid testing procedures as the rest of the scientific community. Typically this involves utilizing many more than three organisms for such tests. The economic impact of lowering the toxicity limit has not been assessed and could be significant, and the Department has not included in this proposal allowances for use of statistically more reliable chronic toxicity bioassays (that is, using more organisms) without imposing the lowered toxicity limit. At the very least, when more statistically reliable tests are performed, the chronic toxicity limitation should be kept at 100.

COMMENT D: Raising the toxicity factor from the present 100 to 1,000 is one of the major changes proposed for inclusion in the New Jersey surface water criteria. The basis and background document states that the uncertainty factor of 10 applied to the toxicity factor accounts for testing with fewer than three species. The Department quotes the USEPA document "Technical Support Document for Water Quality-based Toxics Control" in defining the uncertainty factor used in the adjustment of toxicity data to account for unknown variations. Where toxicity is measured on only one test species, other species may exhibit more sensitivity to that effluent. An uncertainty factor would adjust measured toxicity *upward* and *downward* (emphasis added) to cover the sensitivity range of other potentially more or less sensitive species."

In proposing to include the uncertainty factor of 10, New Jersey has only chosen to adjust the measured toxicity upward, rather than in both directions as suggested by the USEPA definition. Furthermore, the present formula for determining the chronic toxicity limit is already very conservative. It is based on the critical instream concentration, I, calculated from the minimum average seven consecutive day upstream flow occurring once in ten years (commonly referred to as "7Q10"), which has a 0.2 percent probability of occurring.

N.J.A.C. 7:9-4.6(c)5ii(1) defines the critical instream waste concentration for non-tidal streams or small tidal streams with a cross-sectional area not greater than 1,000 square feet and a 7Q10 freshwater inflow not greater than 10 cubic feet per second as:

$$I = \frac{Q_E}{Q_E + Q_S}$$

Where Q_E = effluent flow
Q_S = upstream freshwater MA7CD10 ("7Q10") flow.

The present rules calculate the effluent toxicity limitation

From: $L_C = I\ (100)$

Where: L_C = toxicity limitation expressed as a chronic no observed effect concentration (NOEC), in percent effluent.

Under the present formula, chronic toxicity testing on the undiluted effluent occurs only when the 7Q10 flow is zero (I = 1.0) or the effluent flow is far greater than the freshwater 7Q10 flow (I approaches 1.0). The proposed formula:

$$L_C = I\ (1000)$$

and the proposed N.J.A.C. 7:9-4.6(c)5iv rule, "if the calculated limit L_C, is greater than 100 percent effluent, the draft limit shall be 100" means that for I values greater than or equal to .01, the chronic toxicity testing would be conducted on the undiluted effluent. According to the definition, the critical instream waste concentration will be greater than or equal to 0.1 whenever the streamflow, Q_S, is less than or equal to nine times the effluent flow, Q_E.

For example, if the effluent flow is 100 gallons per minute and the receiving stream flow is 850 gallons per minute, then:

$$I = \frac{Q_E}{Q_E + Q_S}$$

$$I = \frac{100}{100 + 850}$$

$$I = 0.105$$

L_C = (1000) (proposed)
L_C = 0.105 x 1000
L_C = 105%, use LC = 100% (proposed)

This is completely unrepresentative of what would actually be observed in the stream and unfairly penalizes the discharger. This is also an unreasonable multiplication of safety factors which results in an unrealistic situation. The NOEC already provides a conservative evaluation of toxicity. The use of a 7Q10 flow (which is a short time interval occurrence) in conjunction with a chronic test result is another safety factor. Finally, the use of a 10-fold multiplier on the actual concentration of the effluent in the stream is yet another safety factor.

RESPONSE: The above comments concern the Department's proposed amendment to N.J.A.C. 7:9-4.6(c)5iii. The proposed amendment consisted of adding a factor of 10 to the whole effluent toxicity limitation formula. The Department has reconsidered adding the proposed uncertainty factor for species sensitivity in N.J.A.C. 7:9-4.6(c)5iii. This proposed change was based on recommended uncertainty factors set forth in the September 1985 United States Environmental Protection Agency ("USEPA") publication, "Technical Support Document for Water Based Toxics Control" (USEPA, Office of Water, EPA-440/4-85-032) which was published four months after the Department's 1985 triennial review. The USEPA document lists an uncertainty factor of 10 for "species sensitivity" for acute or chronic tests using one vertebrate and one invertebrate." The Department anticipates requiring dischargers to perform self-monitoring for chronic toxicity using only one or two test organisms. In order to ensure that aquatic biota would be adequately protected using this number of test species, the Department proposed modifying the formula at N.J.A.C. 7:9-4.6(c)5iii from LC=I(100) to LC=I(1000). The extra uncertainty factor of 10 was added to account for testing with less than three species.

The extra uncertainty factor of 10 was developed by USEPA in 1985 based on the limited data then available. USEPA is currently in the process of revising their technical support document and has indicated to the Department that the uncertainty factor will either be revised (based on updated data) or eliminated entirely. Since the Department does not wish to adopt an uncertainty factor that is technically outdated, it has decided to not adopt the proposed revision. The Department plans to conduct a thorough review of its overall approach for developing water quality based whole effluent toxicity limits during the next year and will proposed appropriate changes in the near future. The original effluent toxicity limitation formula (LC=I(100)) will be retained.

COMMENT: The Department should modify the antidegradation policy applicable to Category I waters to prohibit man-made wastewater discharges to these waters.

RESPONSE: Prohibiting man-made wastewater discharges is viewed as appropriate only in those situations where the Department is trying to preserve waters for posterity in their natural condition. Category I waters are not intended to be preserved for posterity in their natural condition. The Department believes that the Category I waters can be adequately protected by implementation of the current antidegradation policies for these waters.

COMMENT: How did the Department determine which waters "wholly contained within federal or state land or special holdings that are preserved for posterity" should be classified as FW1?

RESPONSE: In the early 1960's an inter-departmental committee was formed to identify waters which should be preserved for posterity. The inter-departmental committee was comprised of representatives from what are now the Division of Fish, Game and Wildlife, the Division of Water Resources, the Division of Parks and Forestry, the Department of Health, the Department of Commerce, Energy and Economic Development and the Newark Watershed Conservation and Development Authority. The members of the committee identified waters which, to their knowledge, encompassed a system that should be preserved for posterity, which was not subject to any man-made discharges of wastewater, and which was wholly contained within publicly held lands. The waters identified by the committee were then field checked to ensure that they met all of the selection criteria. Finally, the State Department of Health promulgated a rule effective September 1, 1964 which classified the waters identified by the committee as FW1 Waters.

COMMENT: What reasoning did the Department use to determine that FW1 waters that are "wholly contained within federal or state land or special holdings that are preserved for posterity" are more worthy of protection than shellfish waters of exceptional resource value or waters wholly contained within county or municipal parks or fish and wildlife lands?

RESPONSE: The Department never made a final determination that certain waters were more worthy of protection than other waters. What did happen was that an initial determination of waters that should be classified as FW1 was made. The waters that were initially selected also served as the basis for the definition of FW1 waters. Part of the selection of these initial waters was that they be in pristine condition and not subject to the discharge of any man-made wastewaters. There is nothing to prevent interested parties from proposing changes to the definition of FW1 waters or from proposing other waters for classification as FW1, or any other classification. In fact, the Department modified the Surface Water Quality Standards in 1985 to add a section which spells out how interested parties may petition the Department for reclassification of waters to more restrictive uses (see N.J.A.C. 7:9-4.11).

COMMENT: Does the Department believe that trout production waters should be protected less than State parkland waters?

RESPONSE: The Department does not have a general position on this. Some State parkland waters receive the same protection as trout production wastes under the antidegradation policies, while others receive more protection or less protection, depending on the antidegradation category of the waters in question. If interested parties believe that certain trout production waters are in a pristine condition, meet the definition of FW1 waters, are not currently receiving any man-made wastewater discharges and should be classified as FW1, they should petition the Department pursuant to N.J.A.C. 7:9-4.11 to reclassify the waters in question. The Department will evaluate the supporting documentation and reach a decision that is specific to the waters in question.

COMMENT A: It would have been very helpful in reviewing the water body classification tables if changes to stream classifications and additions of stream segments not previously included (if any) had been indicated by some sort of distinguishable mark.

COMMENT B: Why didn't the Department include a list of the streams with modified classifications for public review?

RESPONSE: Omission of a list of streams proposed for a change in classification was an oversight resulting from the decision to repeal and readopt the classification Indexes as Tables. As originally drafted, the proposed revisions to the Standards had all proposed changes to the classifications underlined. When it was decided to repeal the classification Indexes and propose classification Tables instead, an unanticipated result was that the entire classification listing was then an addition to the Standards which would have been underlined, and the changes would not have showed up. A list of the proposed changes should have been added to the Basis and Background Document to cover this. Unfortunately, the fact that the changes were no longer differentiated was not noticed. However, all of the proposed changes were set forth in the July 18, 1988 New Jersey Register publication and were therefore open to public comment.

COMMENT: Why were only waterways upstream from trout waters reclassified and upgraded?

RESPONSE: The commenter is incorrect in stating that only waters upstream of waters previously classified as trout waters were subject to reclassification. It is true that most of the proposed reclassifications involved trout waters. The reason is that the majority of the proposed reclassifications were based on recommendations from the Bureau of Freshwater Fisheries. Their recommendations were based on survey work done in and around trout waters. The purpose of the surveys is to refine the list of waters identified as trout waters. No other requests for changes to classifications were received before the proposal was made.

COMMENT: Were there other water bodies perhaps within or bordering parklands that may have been upgraded as well?

RESPONSE: No other waters were brought to the attention of the Department for upgrading before the proposed revisions to the New Jersey Surface Water Quality Standards, N.J.A.C. 7:9-4, were published. While there may be other waters that could be upgraded, the Department was not aware of them when the proposal was published in July 1988.

COMMENT: What were the reasons for making the classification of some streams less restrictive?

RESPONSE: There were three situations that led to making stream reclassifications less restrictive. The first was where the Bureau of Freshwater Fisheries did stream survey work and found that waters which were classified for use by trout were not, in fact, supporting trout. The second situation was brought to light during the Department's efforts to map the FW1 and Category I waters. At some point over the last 15 years development occurred within the watershed of certain waters classified as FW1. The presence of development meant that these waters were no longer in a pristine condition and they were proposed for reclassification to FW2 (for example, Van Campens Brook in the Delaware River Basin). The third situation occurred where classifications were incorrectly published in the New Jersey Register or in the New Jersey

Administrative Code and the Department proposed corrections of these errors (for example, Smith Creek in the Passaic, Hackensack, New York Harbor Complex Basin).

COMMENT: The names, present classification, proposed classification and reasoning for the proposed change in classification should be provided for all surface water classifications proposed for change.

RESPONSE: The waters listed immediately below are those whose classification was proposed for change on the basis of field survey work done by the Bureau of Freshwater Fisheries. This field survey work provided actual field data on the use of the waters by trout and served as the basis for the proposed changes. The listing provides the name of the stream, its classification under the 1985 standards and its proposed classification. The Department intends to adopt each of the proposed classifications.

Stream Name	1985 Class.	Proposed Class.
Atlantic Coastal Basin		
BRISBANE LAKE		
(Mill Run)—Mill Run from its source to Brisbane Lake	FW2-TM(C1)	FW2-NT(C1)
(Mill Run)—Mill Run from the outlet of Brisbane Lake to the Manasquan River	FW2-TM(C1)	FW2-NT†
...		
LONG SWAMP BROOK		
(Squankum)—Entire length, except segment within the boundaries of Allaire State Park	FW2-TM	FW2-NT
(Allaire)—Segment within the boundaries of Allaire State Park	FW2-TM(C1)	FW2-NT(C1)
...		
TOMS RIVER		
MAIN STEM		
(Whitesville)—Rt. 547 Bridge to Pinelands Protection and Preservation Area Boundaries at the NJ Central Railroad tracks, except tributaries described separately, under Tributaries below	PL	PL(tm)
(Manchester)—NJ Central Railroad tracks to Rt. 571 Bridge, except tributaries described separately, under Tributaries below	FW2-NT	FW2-TM
DOVE'S MILL BRANCH		
(Van Hiseville)—Entire length, except the segment described separately below	FW2-TM	FW2-NT
(Holmansville)—Stream and tributaries within Butterfly Bogs Wildlife Management Area	FW2-TM(C1)	FW2-NT(C1)
...		
Delaware River Basin		
BARKERS MILL BROOK		
(Independence)—Entire length	FW2-NT	FW2-TM
...		
DEER PARK POND		
(Allamuchy)—Deer Park Pond outlet stream downstream to Musconetcong River	FW2-NT(C1)	FW2-TM(C1)
...		
PEQUEST RIVER		
(Pequest)—Segment and tributaries within the boundaries of the Pequest Wildlife Management Area	FW2-NT(C1)	FW2-TM(C1)
...		
POHATCONG CREEK TRIBUTARIES		
(Greenwich)—Entire length	FW2-TM	FW2-TP(C1)
(Willow Grove)—Entire length	FW2-TM	FW2-TP(C1)
...		
WELDON BROOK		
(Jefferson Township)—From source to, but not including, Lake Shawnee	FW2-NT	FW2-TM
...		
Passaic, Hackensack and New York Harbor Complex Basin		
BEAVER BROOK		
(Meriden)—From Splitrock Reservoir Dam downstream to Meriden Road Bridge	FW2-NT	FW2-TM
...		
CUPSAW BROOK		
(Ringwood)—From Cupsaw Lake dam downstream to Wanaque Reservoir	FW2-TM	FW2-TM
...		
LAKE STOCKHOLM BROOK		
(Stockholm)—Entire length, except tributaries described separately below	FW2-TM	FW2-TP(C1)
(Stockholm)—Westerly tributary located entirely within the boundaries of the Newark Watershed	FW1(tm)	FW1(tp)
(Stockholm)—Brook between Hamburg Turnpike and Williamsville-Stockholm Rd. to its confluence with Lake Stockholm Brook, north of Rt. 23	FW1(tm)	FW1(tp)
...		
PEQUANNOCK RIVER TRIBUTARIES		
(Lake Kampfe)—Source to, but not including, Lake Kampfe	FW2-NT	FW2-TM
(Lake Kampfe)—Lake Kampfe to Pequannock River, except tributary described separately below	FW2-TM	FW2-NT
(Lake Kampfe)—Tributary within the boundaries of Norvin Green State Forest, originating west on Torne Mtn.	FW2-TM(C1)	FW2-NT(C1)
...		
PRIMROSE BROOK		
(Harding)—Source of Rt. 202 bridge	FW2-TM	FW2-TP(C1)
(Harding)—Rt. 202 bridge to Lees Hill Road bridge	FW2-NT	FW2-TP(C1)
...		
RAMAPO RIVER (Mahwah) TRIBUTARY		
(Oakland)—Entire length	FW2-NT	FW2-TP(C1)
...		
TIMBER BROOK		
(Kitchell)—Entire length, except tributary described separately below	FW2-TM	FW2-NT
(Farney State Park)—Headwater segment of tributary to Timber Brook within Farny State Park	FW2-TM(C1)	FW2-NT(C1)
WHIPPANY RIVER TRIBUTARIES		
(E. of Brookside)—Entire length	FW2-NT	FW2-TM
(E. of Washington Valley)—Entire length	FW2-NT	FW2-TM
(Gillespie Hill)—Entire length	FW2-NT	FW2-TP(C1)
...		

† The C1 designation was dropped from this listing in error during the preparation of the proposal documents. Note that this has been corrected in the text of the adoption.

Wallkill River Basin		
TOWN BROOK		
(Vernon)—Entire length	FW2-NT	FW2-TM
...		
WAWAYANDA CREEK		
(Vernon)—State line to Pochuck Creek, except unnamed tributary described below	FW2-NT	FW2-TM

The other changes that were proposed to surface water classifications were for Brushwood Pond, Van Campens Brook and Smith Creek. Brushwood Pond was proposed for reclassification from FW2-NT(C1) to FW2-TM(C1) because it is less than five acres in size, located at the headwaters of High Mountain Brook (an FW2-TP(C1) stream), and should be protected as a trout maintenance water until a field survey can be conducted. (Brushwood Pond is a listed water body because of its location in a state park and its designation as a C1 water body. The proposed classification affords it the same trout waters status as would have been afforded to it had it not been listed due to its designation as a C1 water body.) The proposed change to Van Campens Brook was discussed previously in this document. Finally, the proposed change for Smith Creek is really the correction of a typographical error made during the 1985 revision of the Standards.

COMMENT: The proposal documents contain no indication that the proposed Standards include the downgrading of certain surface waters.

RESPONSE: The discussion of the changes to Indexes B through F states that, "The identification of trout production, trout maintenance, and nontrout waters incorporate the changes recommended by the Bureau of Freshwater Fisheries as listed in Part Four of "Classification of New Jersey Waters as Related to Their Suitability for Trout" (NJDEP; January 1988)." The report cited lists the waterway, its 1985 classification and the proposed classification. This provides an indication of waters proposed for upgrading and downgrading. In the future, proposed revisions to surface water classifications will be included in the Basis and Background document to make it easier for interested parties to review the proposal.

COMMENT: The information omitted from the proposal documents s so important and the proposal documents are deficient to such an extent as to make reissuance of notice necessary.

RESPONSE: To the extent that this comment pertains to sections of he adopted rule, the Department did not omit any necessary information rom the proposal or its supporting basis and background document. As ndicated in a previous response, omission of a separate list of streams roposed for a change in classification was an oversight by the Departnent, but the necessary information was contained in the proposal.

COMMENT: The classification of the segment of Morses Creek within he Bayway refinery should be held in abeyance pending the completion f the separate hearings that were promised by the Department.

RESPONSE: The Department has agreed to hold a separate hearing n the request to reclassify the subject portion of Morses Creek. It should e noted however that the Department has not proposed a change to he classification of Morses Creek. The Department has proposed leaving he classification of Morses Creek unchanged until a hearing is held, and decision made in accordance with 33 U.S.C. §1326(a)(1987). This section llows a thermal discharger to make a demonstration to the Department hat the effluent limitations in its NJPDES permit for thermal discharges re more stringent than necessary to assure the protection and propaation of a balanced, indigenous population of shellfish, fish and wildlife n and on the body of water into which the discharge is made. Where uch a demonstration is successfully made, a section 316(a) variance ould be granted and the Department would make necessary revisions o the New Jersey Surface Water Quality Standards. It is anticipated that ermit conditions which could change as a result of a change in the lassification of Morses Creek would be considered during the development or issuance of a permit for the Bayway refinery.

COMMENT: The Department should hold a separate hearing on the urface water quality standards for Oyster Creek and Barnegate Bay, as reviously agreed to by the Department.

RESPONSE: The Department intends to hold a hearing on the surface ater quality standards for Oyster Creek and Barnegat Bay that is separte from the State's triennial review of its Standards. This hearing will e held as part of the State's review of the federal Clean Water Act (33 J.S.C. §1326(a)(1987) Section 316(a) variance request which was reviously submitted. This procedure allows a thermal discharger to emonstrate to the Department that the effluent limitations in its NJPDES permit for thermal discharges are more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish in and on the body of water into which the discharge is made. The information to be reviewed for the surface water quality standards and Section 316(a) issues overlap so much that it would be wasteful and unnecessarily duplicative to review these matters separately.

COMMENT: The New Jersey Surface Water Quality Standards should include a provision for petitioning the Department to reclassify specific waters of the State as outstanding national resources waters. Any such provision should indicate that the party petitioning the Department is responsible for submitting evidence supporting the exceptional nature of the resource.

RESPONSE: The New Jersey Surface Water Quality Standards already contain a section which spells out the procedure to be followed for petitioning the Department to reclassify waters for more restrictive uses (see N.J.A.C. 7:9-4.11). Because this petitioning provision is included in the current rules, no change to the Surface Water Quality Standards is deemed necessary.

COMMENT: Part of the process for designating waters as outstanding national resource waters should be the identification and detailed description of the "uses" to be protected and the delineation of the salient water quality charateristics of those waters.

RESPONSE: N.J.A.C. 7:9-4.11 already specifies that, "Documentation supporting the petition for reclassification for more restrictive use(s) shall be prepared by the petitioner for such reclassification . . ." The Department anticipates that part of the documentation submitted would have to be a detailed description of the uses to be protected and a discussion of the salient water quality characteristics.

COMMENT: The New Jersey Surface Water Quality Standards should make it clear that drinking water sources can be designated as outstanding national resource waters.

RESPONSE: Any type of waters can be designated as outstanding national resource waters if it can be shown that they are of exceptional value and should be considered to be of national interest. Drinking water sources could certainly qualify if they are significant enough to be of national interest.

COMMENT: Implementation of New Jersey's antidegradation policy for outstanding national resource waters depends on knowing quantitatively, in detail, what the characteristics of the waters are. How much is known about the ambient concentration of metals, organics, nutrients and suspended solids in most waters in New Jersey?

RESPONSE: While there is some data on the ambient concentration of these substances in the State's waters, there is certainly not a comprehensive data base. Because of this, when the Department evaluates proposed actions involving outstanding national resource waters the first step to be taken is to evaluate the adequacy of the existing data on ambient water quality. Where the existing data base is inadequate, additional sampling of the waters in question would be required.

COMMENT: How does the Department determine what constitutes a "change" in water quality in waters classified as outstanding national resource waters?

RESPONSE: The Department compares the existing water quality, as determined through an examination of existing water quality data or through examination of water quality data obtained through a supplemental sampling program, to the water quality calculated to result from implementation of the project under consideration. In most cases some form of mathematical modeling would be used to calculate the instream water quality resulting from a proposed project.

COMMENT: Does the State's antidegradation policy for outstanding national resource waters mean that the Department will not approve any activity which might cause "any" change in the concentration of any pollutant of health or environmental concern anywhere in the water, including at the point of discharge?

RESPONSE: As discussed in the proposal package, the Department has proposed a modification to the antidegradation policies applicable to outstanding national resource waters. This proposed modification would allow changes in water quality toward "natural water quality". This modification has been proposed to ensure that cleaning up an existing discharge or nonpoint source of pollution would not be prohibited by the antidegradation policy. The Department may allow a mixing zone within which some change in water quality might occur. Where the Department to decide to allow a mixing zone, it would have to determine that sufficient documentation exists to show that a mixing zone could exist without detriment to the resource being protected. In the absence of such documentation, no mixing zone would be allowed.

COMMENT: What is the Department's rationale for equating mere change with an automatic degradation of water quality in waters designated as outstanding national resource waters?

RESPONSE: The Department wrote the antidegradation policy for outstanding national resource waters to comply with the Federal Water Quality Standards Regulation (40 CFR §131 (1989)). The relevant section of the Federal regulation states, "the State shall develop and adopt a statewide antidegradation policy . . . The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following: . . . Where high quality waters constitute an outstanding national resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected." (40 CFR §131.12 (1989)).

COMMENT: Please clarify what, if any, impact the change in the antidegradation policy for outstanding national resource waters will have on the use and siting of septic systems and on-site wastewater treatment plants in areas draining to such waters.

RESPONSE: The rule recognizes that changes in water quality which deviate in either direction from natural quality may be deleterious to indigenous species in certain waters. This relationship holds true in the Pinelands, where individual species and community structure are sensitive to change in pH. The rules makes the existing policy more rational, as it specificly allows for change in water quality toward natural quality to allow for pollution mitigation required by the Department.

The rule change should substantially support existing Department policy regarding septic systems and on-site wastewater treatment plants in such areas. The Department regulates, communal, on-site wastewater treatment plants under the New Jersey Pollutant Discharge Elimination System program (see N.J.A.C. 7:14A). The Department has proposed separate rules, (see N.J.A.C. 7:9A) which will regulate individual wastewater treatment systems. Finally, the Pinelands Commission also regulates the use of septic systems within its jurisction. Actions taken by the Pinelands Commission must be at least as stringent as those required by the Surface Water Quality Standards or by the Standards for Construction of Individual Subsurface Sewage Disposal Systems (N.J.A.C. 7:9-2). Permitting actions taken by the Department and the Pinelands Commission must currently comply with the more stringent existing language of N.J.A.C. 7:9-4.5. Therefore, the impact of the proposed rule change will be to ease the restrictions imposed by N.J.A.C. 7:9-4.5 while still protecting the unique resources of the Pinelands.

COMMENT: The basic problem with the antidegradation policy is in how the Department determines whether there has been a degradation. Degradation, when discussed in the context of water quality, must, if it is to be a meaningful discussion, focus on an impairment of uses, not simply a change in concentration of contaminants as the Department uses the term antidegradation. For many contaminants there is a toxicity threshold below which no known adverse impacts will occur even though the concentrations of the contaminant may be increased significantly.

RESPONSE: The Department's antidegradation policies have been established following the approach developed by the United States Environmental Protection Agency as contained and discussed in the preamble to its final Federal water quality standards rule (48 Fed. Reg. 51400 (1983)). This antidegradation approach evisions three tiers of protection. The first tier is protection of existing and designated instream uses. The second tier is protection of water quality that is currently better than the quality need to protect the existing and designated uses. Finally, the third tier provides special protection of waters for which the ordinary use classifications and water quality criteria would not provide enough protection (Outstanding National Resource Waters). The comment deals only with implementation aspects of the first tier of the overall antidegradation strategy. When the second and third tiers are considered, the comment loses its validity because when the stated objective is protection of water quality better than that needed to protect the uses, an examination of the impacts on uses would, by the nature of the objective, not show any adverse impacts on uses.

COMMENT: The Department should modify its antidegradation policies to indicate that any addition to a surface water is considered adverse unless it is demonstrated that such addition does not adversely impact the beneficial uses of the surface water.

RESPONSE: The suggested change in language would only be needed if the Department were going to modify its antidegradation policies to focus exclusively on protection of uses. As discussed earlier, the Department's antidegradation policies go beyond simply protecting uses and are intended to protect water quality that is better than the level of water quality needed to protect the uses. No change will be made to the antidegradation policies.

COMMENT: The description of Pinelands waters, in the Basis and Background document, as "below" what is often accepted as good water quality should be revised to use words with a less negative connotation.

RESPONSE: Careful consideration will be given to the use of words with a less negative connotation in describing Pinelands waters in future documents. While the Department agrees that the use of language with a less negative connotation would convey the thought without unnecessary negative connotations, it does not view it as an issue of sufficient magnitude to withdraw and reissue its proposal package.

COMMENT: All segment descriptions which include the phrase "Pinelands Protection and Preservation Areas" should be revised to the term "Pinelands Area". Parts of streams are usually within either the Protection or Preservation Area. The Pinelands Area is the sum of the two areas, and would be a more accurate description in almost all cases.

RESPONSE: The commenter has not provided sufficient information to establish a reason for making the recommended change. The Department is reluctant to alter its rules without conducting a well informed and thorough examination of the requested change.

COMMENT: Descriptions of waters classified as FW1 and PL in Tables 1 and 2 of the proposal have been checked against Pinelands Area boundaries, and to a certain extent, boundaries of State lands, as indicated on United States Geological Survey quads within the Pinelands Commission office. The following corrections to descriptions should be made:

1. Batsto River (Browns Mill)—Substitute Indian Mills instead of Browns Mill.

2. Davenport Brook—Change to Davenport Branch.

3. Gibson Creek (Gibson Landing)—Change "Entire length, except segment described below" to "from source to Route 50"; changes in Marmora segment should be revised as necessary in light of the Gibson Landing revision.

4. Mullica River (2nd Wharton)—Our maps indicate an area of privately owned land along this stream between the Wharton boundary and Green Bank State Forest, which would presumably change the classification in this particular area from FW1 to PL.

5. Mullica River (3rd Wharton)—Change to "Gun Branch from its headwaters to confluence with Sleeper Branch."

6. Dove's Mill Branch (Van Hiseville)—Entire length, except the segments described separately below; add a new segment description, "From Route 528 to confluence with the Toms River—PL."

7. Jade Run—Add, "Route 206 to Lebanan State Forest—PL."

8. Wharton State Forest—Change Gun Branch description from "Downstream to U.S. Route 206" to "Downstream to its confluence with the Sleeper Branch."

RESPONSE: The suggested changes in segment descriptions will have to be carefully evaluated. The Department will conduct this evaluation after adoption of the proposed rule and may meet with the commenter to look at the maps discussed in the comment. Any changes resulting from this evaluation will be made by amendments of the standards, be initiated as soon as the correct map references have been verified.

COMMENT: The Economic Impact Statement accompanying the proposed revisions to the Surface Water Quality Standards should be expanded to include the "social cost" due to regulation of nonpoint sources, if nonpoint sources are encompassed by the standards and surrounding regulations.

RESPONSE: Nonpoint source pollution is indeed subject to the surface water quality standards. However, the Department's nonpoint source control program is still at an early stage of development and it is therefore extremely difficult to assess this program's economic impact with a great deal of precision. Nonpoint source controls will generally be tailored to individual sites to the implementation of various "Best Management Practices" that have been proven to reduce nonpoint source pollution. The Department does not expect that the changes to the Standards will result in significantly greater nonpoint source control requirements and consequent social costs.

COMMENT: The intention of this proposal is to keep or bring the streams into compliance with the water quality standards—a charge that cannot be accomplished without addressing nonpoint source contamination.

RESPONSE: The Department agrees with the commenter. To address the issue, the Department has prepared a separate draft document entitled "The Nonpoint Source Assessment and Management Program." This document was prepared in accordance with guidance developed by the USEPA in response to the requirements set forth in Section 319 of the

Federal Clean Water Act (33 U.S.C. §1251 et seq. (1987)). When approved, the State will be eligible for funding to implement nonpoint source control programs with grants made available through Section 319 of the Federal Clean Water Act.

COMMENT: The Department should amend the Surface Water Quality Standards to specifically state the means used to determine the actual natural water quality of a waterbody and how contributions from nonpoint sources will be reflected in the determination. Without some regulatory guidance in determination of natural water quality, what is meant by "towards natural water quality" is arbitrary and open to differing interpretations by individuals within the Department.

RESPONSE: The natural water quality of a waterbody and contributions from nonpoint sources are defined through site-specific evaluations for applicable regulatory programs, or basin-wide Water Quality Management Studies using technical procedures established by USEPA and the Department. The Department is developing procedures and intends to include these procedures in the Surface Water Quality Standards, N.J.A.C. 7:9-4 when they are finalized.

COMMENT: While protection of outstanding national resource waters is a worthy goal, the Department, in proposing to allow only changes toward "natural water quality", should redefine "natural water quality" to remove any language that allows varied determinations of what is "natural water quality". For example, the term "artificial origin" is used but not defined in the Surface Water Quality Standards. This leads to an ambiguity in determination of natural water quality because it is left up to the individual to speculate if a water stream entering a waterbody is natural or artificial.

RESPONSE: While the Department has proposed modification of the antidegradation policy for Outstanding National Resource Waters which incorporates the term "natural water quality", the Department is not proposing the addition of this term to the Surface Water Quality Standards. Instead, the Department is continuing the use of the term "Natural Water Quality" which has been in the Surface Water Quality Standards since 1981. The commenter is concerned about ambiguities that might arise through the use of this term. However, the commenter provides no examples of problems that have arisen during the last seven years. The Department is not aware of any significant problems arising due to any ambiguity inherent in its use of either the term "natural water quality" or the Department's implementation of the portions of the Surface Water Quality Standards containing this term.

COMMENT: The establishment of a 200 ug/l effluent limitation for chlorine produced oxidants is arbitrary. The Department should abandon arbitrary effluent concentration limitations such as this and adopt the more technically-valid approach of assessing the impact of an effluent on the receiving stream.

RESPONSE: No change was proposed to the 200 ug/l effluent limitation which was adopted in 1985 to deal with chlorinated waters from power plants. In the case of power plant discharges (including those to interstate waters), due to the large volumes of cooling water involved and the periodic nature of the chlorination, the Federal Best Available Technology guidelines incorporate an effluent limit of 200 ug/l Chlorine Produced Oxidants (47 Fed. Reg. 52306 (1982)) which will continue to be utilized. The rationale for the change from Total Residual Chlorine ("TRC") to Chlorine Produced Oxidants ("CPO") has been set forth in a subsequent response. A more stringent limit will be imposed during the permit process if it is determined that the Best Available Technology ("BAT") limit fails to protect aquatic life. It is the Department's Policy to evaluate the Chlorine Produced Oxidants effluent limitation on a case-by-case basis.

COMMENT A: The value proposed in N.J.A.C. 7:9-4.14(c) for chlorine produced oxidants is the same as those recommended in the USEPA Gold Book, but they are given on a different time basis. The chronic values 11 ug/l for fresh water and 7.9 ug/l for salt water are applied on a four day average basis and the acute values of 19 ug/l for fresh water and 13 ug/l for salt water are applied on a one hour average basis. The intent of the Department is to use the USEPA recommended values. In that case, the time periods should be the same as the USEPA criteria.

COMMENT B: The proposed 24-hour average criteria for chlorine produced oxidants "less than 11 ug/l" and "less than 19 ug/l at any time" are overly restrictive.

RESPONSE: National ambient water quality criteria for chlorine were presented in the "Ambient Aquatic Life Water Quality Criteria For Chlorine" (EPA 440/5-84-030). Freshwater aquatic organisms and their uses should not be affected unacceptably if the four-day average concentration of Chlorine Produced Oxidants (CPO) does not exceed 11 ug/l more than once every three years on the average and if the one-hour average concentrations does not exceed 19 ug/l more than once every three years on the average.

The recommended exceedance frequency of three years is the USEPA's best scientific judgment of the average amount of time it will take an unstressed system to recover from a pollution event in which exposure to chlorine exceeds the criterion. The resilience of ecosystems and their ability to recover differ greatly, however, and site-specific criteria may be established if adequate justification is provided.

In consideration of the monitoring requirements to be implemented, the Department adopted a more reasonable, realistic and less restrictive 24-hour average criteria as opposed to the four-day average.

COMMENT: New Jersey should develop numerical standards for nutrients.

RESPONSE: Numerical standards for surface water dissolved nutrients such as nitrates and phosphates have been adopted for freshwaters and can be found at N.J.A.C. 7:9-4.14. For saline waters, the general policy (see N.J.A.C. 7:9-4-5(a)2 and 5) is to meet the criteria for the protection of the waterbody's designated use. When additional technical information becomes available in the future, the Department will adopt new numerical criteria, if necessary.

COMMENT A: The use of the "chlorine produced oxidants" terminology has been recommended only for marine water criteria. For fresh water criteria, the EPA "Gold Book" (Quality Criteria for Water—1986, EPA 440/5-86-001) still refers to total residual chlorine. The Department should do likewise.

COMMENT B: It is not clear why the "total residual chlorine" criterion was replaced with the "chlorine produced oxidants" criterion. Please explain the rationale for this change and the expected result.

RESPONSE: This is thoroughly discussed on page 62 of the Basis and Background Document (June 6, 1988) that was issued in support of the proposed revisions. This discussion is set forth below in its entirely:

The Department is proposing the replacement of the criteria for "Total Residual Chlorine" with criteria for "Chlorine-Produced Oxidants". The USEPA document "Ambient Water Quality Criteria for Chlorine—1984" contains national ambient water quality criteria for both fresh and saline waters. In fresh waters the criteria are listed as total residual chlorine while in saline waters the criteria are listed as chlorine-produced oxidants. However, as stated in the USEPA criteria document, "the freshwater and saltwater data herein will be expressed as total residual chlorine (TRC) and chlorine-produced oxidants (CPO), respectively, although both terms are intended to refer to the sum of free and combined chlorine and bromine as measured by the methods for "total residual chlorine" (USEPA, 1983a)." This indicates that if a discharge to fresh water happens to have bromides in their discharge the proper term to use for the substance(s) regulated as "total residual chlorine" is actually "chlorine-produced oxidants". If the Department were to utilize both terms as contained in the USEPA ambient criteria Document, a discharger with an effluent that contained bromides could argue that the Department must give an allowance for any hypobromous acid, hypobromous ion and bromamines present in the effluent in order to determine compliance with the "total residual chlorine" criteria. The Department has concluded that it is simpler to regulate both fresh and salt waters using the term "chlorine produced oxidants". This will insure that any toxicity present due to bromides in a chlorinated effluent is clearly subject to regulation.

COMMENT: Please indicate the specific sections of N.J.A.C. 7:18 that cover the appropriate methods to be used to measure for "chlorine produced oxidants".

RESPONSE: The specific section of N.J.A.C. 7:18 that covers the appropriate methods to be used to measure for "chlorine produced oxidants" is N.J.A.C. 7:18-4.5(b).

COMMENT: The Department should provide an explanation of any economic impact the proposed change to enterococci may have on municipal treatment facilities and public health departments.

RESPONSE: Based on USEPA's promulgated regulations, in most cases the risk currently being accepted at swimming beaches will continue to be accepted. Since currently accepted levels of protection will continue, adoption of the proposed criteria should not generate a widespread need for improved treatment nor a general increase in cost of treatment (51 Fed. Reg. 8012 (1986)). The additional cost for materials alone, that is, the medium, is negligible. For the Escherichia Coli ("E. coli") method, there is no difference. For the enterococci method, the cost of the medium is approximately 50 percent more. The actual time spent assaying each sample is somewhat longer for the new methods because of the need to physically transfer the membrane, but even this part of the procedure

does not significantly increase the time needed to complete the test. (51 Fed. Reg. 8012 (1986)).

COMMENT: What is the anticipated time frame for the change from fecal coliform to enterococci as the ambient surface water quality criterion for bacteria?

RESPONSE: The Department anticipates that the changeover will take place over a period of several years. The purpose of having a period of time during which both the new and old bacterial indicators are being measured is primarily to develop a data base that will allow for trend evaluations using both old and new data, where feasible. The USEPA studies indicate that there is not a uniform pattern of correlation or lack of correlation between fecal coliforms and enterococci. Where dual testing shows that a correlation exists it will be possible to use the historic bacterial data by means of a correlation factor in determining trends. Where no correlation exists the Department will make trend analyses using fecal coliforms up to the point that they are dropped, and will use enterococci data from the point that enterococci testing occurs regularly.

COMMENT: When the Department refers to the testing for enterococci, does it really mean the fecal Streptococcus group?

RESPONSE: As discussed in "Standard Methods For The Examination of Water and Wastewater" (APHA, 16th Edition, Page 903), the term "enterococcus group" refers to the following bacteria: Streptococcus faecalis, Streptococcus faecalis subspecies liquifaciens, Streptococcus faecalis subspecies zymogenes, and Streptococcus faecium.

COMMENT: If the Department wants to use enterococci as an indicator of pollution, why not, when it imposes that requirement, eliminate the testing for fecal coliforms? Sufficient data apparently exists that substantiates the relationship between the two groups of bacteria and simultaneous testing for both should not be required.

RESPONSE: The Department's decision to begin switching over to enterococci was based on the USEPA document "Ambient Water Quality Criteria for Bacteria—1986" (EPA440/5-84-002, January 1986). As discussed in that document, there was a significant correlation between the levels of enterococci and the incidence of gastrointestinal disease. At the same time there was essentially no correlation (Pearson Correlation Coefficient = -0.01 and -0.08 for marine and freshwaters respectivley) between the levels of fecal coliforms and the incidence of gastrointestinal disease. With gastrointestial disease as a common factor, the USEPA studies indicate that no general relationship between the fecal coliform and enterococcus groups has been shown to exist. Accordingly, simultaneous testing for both groups is essential.

COMMENT: It is the commenter's understanding that although the term "total residual chlorine" (TRC) is being replaced with "chlorine produced oxidants" the same test will be used to measure "chlorine produced oxidants" (CPO) as had been used to measure for "total residual chlorine". Additionally, it is the commenter's understanding that separate tests for the individual components comprising "chlorine produced oxidants" will not be required. What is the difference between TRC and CPO?

RESPONSE: The commenter is correct in his understanding that the same test will be used to measure "chlorine produced oxidants" as had previously been used to measure "total residual chlorine" and that separate tests for the individual components comprising "chlorine produced oxidants" will not routinely be required. However, there may be unforeseen circumstances in which such determinations would be needed for a specific discharger. The difference between TRC and CPO is primarily one of semantics, although, on a very technical level it could be argued that hypobromous acid, hypobromous ion and bromamines would not be covered by a TRC regulation. At the same time, they would clearly be covered by a CPO regulation.

COMMENT: What is the basis for the establishment of 35/100 ml as the criteria for Enterococci in SC waters? The 16th edition of Standard Methods indicates that when the ratio of fecal coliform to enterococci is greater than 4.1 to 1 the pollution observed is from human sources. Currently, the limit for fecal coliforms is 200/100 ml. Applying the ratio from Standard Methods, the corresponding Enterococci limit would be 49/100 ml.

RESPONSE: As discussed in an earlier response, there is no demonstrated correlation between fecal coliforms and either the incidence of gastrointestinal disease or enterococci. While a fecal coliform to fecal streptococcus ratio may be useful in determining whether bacterial contamination is from human or other sources, it must be noted that such ratios must be looked at with care. It is only under certain circumstances that instream bacterial contamination can be differentiated using this ratio (that is relatively fresh contamination). The bases for the establishment of the 35/100 ml criterion are the epidemiological studies performed by EPA, as cited in the basis and background document supporting the proposed amendments.

COMMENT: The Department is proposing to revise the surface water quality standard for "Chlorine produced oxidants", which are in ug/l. The commenter's NJPDES permit has its limits for "total residual chlorine" as 2 mg/l. How are these two values related and how does one tie the one to the other?

RESPONSE: The Department establishes ambient water quality criteria and then calculates what acceptable discharge levels would be. (This calculated acceptable discharge level factors in the available dilution of the receiving waters.) The calculated acceptable discharge level is then put into a permit as a discharge limitation. It is not unusual for a discharge limitation to be significantly higher than the ambient criterion for the same substance.

COMMENT: The use of chronic bioassay is identified in N.J.A.C. 7:9-4.5. The rationale for the use of chronic bioassay was not provided in any of the proposed documents. This information should be provided.

RESPONSE: The rationale for the use of chronic bioassays is provided in some of the following documents: USEPA's National Policy statement entitled "Policy for the Development Water Quality-Based Permit Limitations for Toxic Pollutant", (March 9, 1984 citation Federal Register). This policy statement encourages the use of biological monitoring to determine effluent toxicity.

The Surface Water Quality Standards provide narrative criteria for toxic and hazardous substances which prohibit ambient concentrations which affect humans or are detrimental to natural aquatic biota. N.J.A.C. 7:9-4.14(c)13iii specifically prohibits "toxic substances . . . in concentrations that cause . . . chronic toxicity to aquatic biota." The Surface Water Quality Standards also contain methodologies for developing water quality based whole effluent toxicity limitations for point source discharges based on acute and/or chronic bioassays (N.J.A.C. 7:9-4.6). No change has been made to these provisions of the rules. The rationale behind the Department's use of chronic bioassays was discussed in the "Response to Public Comments on the Surface Water Quality Standards and Wastewater Discharge Requirements" (April 29, 1985).

COMMENT: The need for the use of chronic toxicity limitations should be provided. Where the make-up of the influent and effluent of the facility is known, the chemical specific permit conditions adequately limit the effluent quality.

RESPONSE: Chemical analyses only measure parameters specified in advance. Many toxic substances may be overlooked when performing chemical analyses because they are not known or expected to be present in the effluent. A large percentage of organic chemicals cannot be identified and quantified by routine analytical methods. Chronic toxicity testing is necessary to assess overall toxicity since effluents are often a complex mixture of pollutants. Please note that there is no change in current rules regarding the requirements for chronic toxicity testing. This issue was addressed in the "Response to Public Comments on the Surface Water Quality Standards and Wastewater Discharge Requirements" (April 29, 1985).

COMMENT: Application of bioassay testing should be limited and consistent with USEPA guidance to select waste streams and furthermore limited to only those which are outfalls.

RESPONSE: The application of bioassay testing within New Jersey is fully consistent with USEPA guidelines. When process waste streams mix with non-contact cooling waters before discharge, they must be monitored before "dilution". Furthermore, where a problem arises or is anticipated because more than one complex waste stream combines before discharge, internal monitoring points for toxicity may be designated (see N.J.A.C. 7:14A-3.14(i)).

COMMENT: There is considerable concern about the use of bioassay testing as a permit limit without further analysis of the variability and consistency of this test methodology.

RESPONSE: The Department's experience with the whole effluent toxicity approach has demonstrated its utility and reproducibility. Additionally, this approach has received increased national attention, since the issuance of a national policy on water quality based toxic control and development of support documents by the USEPA. The results of round robin laboratory studies required by New Jersey's laboratory certification rules, (see N.J.A.C. 7:18), indicate that the reproducibility of bioassay toxicity tests appears to be as good as, if not better than commonly accepted chemical analytical methods. The round robin studies included the participation of industrial, governmental and commercial laboratories (Grothe and Kimerle 1985, Rue Fava, and Grothe 1988

COMMENT: One commenter indicated that the shift to chronic testing could only be supported if the Department utilized short-term standardized tests, such as: the seven day larval survival and growth tests on fathead and sheepshead minnows; the seven day survival, growth and reproduction test, on mysids and daphnids; and/or appropriate (generally four day) chronic algal tests.

RESPONSE: Until chronic toxicity testing is added to the bioassay subchapter of the laboratory certification rules, N.J.A.C. 7:18-6, the Department will be using standardized short-term tests such as those listed above, conducted under specific guidelines issued by the Department. Short term test references include EPA/600/4-87/028 and EPA/600/4-85/014 for marine and freshwater organisms, respectively.

COMMENT: The Department should either delay promulgation of the portions of the proposed rules dealing with chronic limits until test procedures are incorporated into N.J.A.C. 7:18 or specify in the final rule that only USEPA or ASTM approved short-term chronic tests will be used to determine compliance.

RESPONSE: Based on the authority of N.J.A.C. 7:9-4.5(c)5 and N.J.A.C. 7:14A-2.9(a), the Department is not required to wait for the promulgation of chronic testing procedures under N.J.A.C. 7:18. Furthermore many states within the National Pollutant Discharge Elimination System (NPDES) program require acute and chronic testing without a laboratory certification program of any kind. As a result of the 1987 amendments to the Clean Water Act, which require accelerated toxics controls, and since the Department does not anticipate the promulgation of chronic testing procedures under N.J.A.C. 7:18 in the near future, the Department has no option but to utilize interim guidelines. As stated above, the guidelines will incorporate short term methods such as those published by the USEPA and ASTM.

COMMENT: As the Department increases the use of chronic bioassays in NJPDES permits, will the chronic bioassay supplant or supplement the acute bioassay testing requirements?

RESPONSE: Chronic limitations may eventually replace some acute limitations for some discharges. This is because the acute equation found at N.J.A.C. 7:9-4.5(c) incorporated an application factor to protect against chronic as well as acute toxicity. The chronic limit will be the more appropriate limit and will replace the surrogate acute limitation from the acute equation. The testing requirements for chronic and acute bioassay will be evaluated on a case by case basis to balance the requirements so as not to cause an undue burden to the permittee. Please note however that all discharges must still meet the minimum State standard for effluents of an LC50 of 50 percent in accordance with N.J.A.C. 7:9-5.7.

COMMENT: The Department has not modified its laboratory rules in N.J.A.C. 7:18 to provide for a chronic test, despite the fact that N.J.A.C. 7:9-4 was revised in 1985 in part to allow for chronic testing. Until N.J.A.C. 7:18 is amended, no one in the regulated community has any assurance as to the kinds of tests which are going to be imposed, and accordingly no meaningful opportunity to comment intelligently on the desirability of the change.

RESPONSE: The public will be able to comment on the laboratory rules, N.J.A.C. 7:18, when they are amended to include the chronic procedures. In the interim, the test procedures will be included in each draft permit, which will allow individual permittees and the public to comment on the procedures during the public comment period of the draft permit.

COMMENT: Why doesn't the Department require whole effluent acute and chronic toxicity testing with more than one test organism (that is, a fish and an invertebrate), as indicated in the USEPA guidance documents, in order to determine the species that is most sensitive to particular effluent?

RESPONSE: In the evaluation of the acute toxicity testing program, the Department has had to take into account a number of factors. The Department has attempted to balance the amount of data needed to determine the acute toxicity of a particular effluent with the cost involved in such a determination. Furthermore, since the program originated, the Department has been and will continue to be concerned about the amount of quality laboratory capacity available for this testing because of the large number of facilities involved. For these reasons, the Department initially required acute toxicity testing with the one test organism, approved under the laboratory certification rules, that it judged to be the most sensitive. The Department has consistently required acute testing with a single species over the permit cycle of five years, with a few exceptions due to test species problems. The acute program began in New Jersey several years before USEPA issued any guidance.

With regard to chronic testing, permittees will be required, initially, to test with two species until the most sensitive species is determined through testing. The Department expects to select the test organisms from among a fish, an invertebrate and an aquatic plant. The chronic tests will include survival, growth and reproductive endpoints. Although the Department anticipates laboratory capacity problems initially, the Department plans to proceed with a two test species chronic requirement because it is consistent with both USEPA guidance and the intent of the 1987 Clean Water Act Amendments.

COMMENT: Chronic testing requirements need to make allowance for unusual conditions such as problems with the use of receiving water as dilution water for testing.

RESPONSE: The use of the receiving water as the dilution water source for chronic toxicity testing is outside the scope of the Surface Water Quality Standards. This issue however will be considered for each permittee as interim chronic testing procedures and permit requirements are written for each permittee. With regard to acute toxicity testing, any interested party should comment on relevant issues during the comment period on revisions of N.J.A.C. 7:18, the laboratory certification rules which are expected to be proposed in the near future.

COMMENT: The classification, or change in classification, of a water segment is based on existing water quality. In order to comment on the proposed classification changes, the Department must furnish or identify the water quality data used in determining that these classification changes should be made.

RESPONSE: Measurements of existing water quality were not the primary basis which the Department used in determining that classification changes should be made. Most of the classification changes were based on fish population data collected by the Bureau of Freshwater Fisheries, rather than on water quality data. Certain segments of the Lake Kampfe tributary of the Pequannock River were reclassified as FW2 Nontrout because of visual observations by that Bureau of unfavorable physical conditions for trout (dry stream bed and stagnant ponds), coupled with a water temperature measurement of 25°C on August 19, 1987. Other reasons for classification changes included development in the watershed (Van Campens Brook) and correction of a typographical error (Smith Creek). As indicated in a previous response, Brushwood Pond was reclassified pursuant to N.J.A.C. 7:9-4.15(b)5iii.

COMMENT: What is the Department's rationale and procedure for designation or reclassifying a water as trout production water?

RESPONSE: The trout production classifications and designations in the Surface Water Quality Standards are part of the Department's program to implement the fish protection, natural resources conservation, and environmental protection policies stated in the Water Pollution Control Act, the Water Quality Planning Act, and the Department's general enabling statute (see N.J.S.A. 58:10A-2, N.J.S.A. 58:11A-2 and N.J.S.A. 13:1D-9). Trout are ecologically and recreationally important fish species in New Jersey, and waters that can be used by trout for spawning or nursery purposes should be protected. The Surface Water Quality Standards contribute to such protection by classifying such waters as FW2 Trout Production (FW2-TP) waters, establishing special water quality criteria for such waters to protect the trout production use (for example, temperature, dissolved oxygen), and designating such waters as Category I waters under the Department's antidegradation policy. For some trout production waters, the decision to preserve waters for posterity in their natural condition takes precedence, and the waters are classified as FW1 waters instead, with a "(tp)" designation indicating trout production. The exceptional status accorded to FW2-TP waters in the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-7 is evidence that the Legislature supports the Department's long-established program of according special status to trout production waters in the Surface Water Quality Standards.

The process of identifying New Jersey's trout production waters began in 1968. Over a five year span, personnel in what is now the Department's Bureau of Freshwater Fisheries collected data on numerous New Jersey streams. Many streams are listed as FW2-TP waters on the basis of data collected in that initial five-year period. Additional streams are listed as FW2-TP waters on the basis of data subsequently collected by that Bureau. Some of these streams are tributaries that were not sampled in the initial five-year program. Others are streams that were not found to support trout production when first sampled, but did support trout production when resampled. The Bureau of Freshwater Fisheries continues to sample previously unsampled tributaries and resample previously sampled streams on its own volition, or, at its discretion, in response to requests by the Division of Water Resources or the public. The Bureau

of Freshwater Fisheries forwards its recommendations to the Division of Water Resources, which administers the Surface Water Quality Standards program.

In the definitions section of the Surface Water Quality Standards, N.J.A.C. 7:9-4.4, "trout production waters" are defined as "waters designated in this chapter for use by trout for spawning or nursery purposes during their first summer." In making recommendations concerning classification as trout production waters, the Bureau of Freshwater Fisheries considers trout production waters to be waters that are used by trout for spawning or nursery purposes during their first summer or which have high potential for such pending the correction of short term environmental alterations. The basic nature of the Bureaud of Freshwater Fisheries sampling program has remained unchanged since 1968. Electrofishing in summer months is the primary method of sampling, but in some instances a visual check, excessive turbidity, high temperatures, or extremely low pH values have been causes of sampling site rejection. A 600 foot stretch of stream is considered the standard electrofishing sampling area, but this length is often shortened when trout production is found or when conditions such as an abundance of warmwater species or physical conditions indicate that trout would not be found. The data collected at sampling sites is projected to cover larger sections of the stream on the basis of similar stream conditions. Streams that are surveyed and found to have naturally reproduced trout in their first year of life (young-of-the-year) are considered to be trout production waters.

Some tributaries are listed in the Surface Water Quality Standards in order to establish their Category I designation, but have not been sampled by the Bureau of Freshwater Fisheries. If the tributary flows into a stream classified as FW2-TP, or into a lake or pond contiguous to a stream classified as FW2-Tp, the tributary is also classified as FW2-TP in order to protect trout production that may occur in the tributary, and to protect downstream FW2-TP waters where applicable. On the same principle, unlisted streams that flow into FW2-TP streams or contiguous lakes or ponds are also classified as FW2-TP, pursuant to N.J.A.C. 7:9-4.15(b)5i and iv. These tributary classifications may subsequently be confirmed or changed on the basis of direct examination of the tributary.

Since 1981, individual trout production waters have been listed in the text of the Surface Water Quality Standards. Like other components of the Department's rules, the classification of waters as FW2-TP is subject to the procedural requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Rules for Agency Rulemaking, N.J.A.C. 1:30. The Department must follow those requirements whenever the Department proposes to retain existing classifications of FW2-TP waters, classify additional waters as FW2-TP, or change the classification of waters presently classified as FW2-TP. In addition, classification of waters as FW2-TP are subject to the Clean Water Act requirement that the Surface Water Quality Standards be reviewed at public hearings at least every three years. The public may formally comment on the existing or recommended FW2-TP classification of any waterbody during the Department's triennial reviews of the Surface Water Quality Standards. Moreover, the FW2-TP classification of waterbodies can be established or changed through reclassification proceedings under N.J.A.C. 7:9-4.10 or 11.

COMMENT: A portion of the Oakland tributary of the Ramapo River bisects the property of '87 Riverbend Associates. Designation of the portion of the tributary which flows through '87 Riverbend's property as "trout production" is illogical and is not supported by a sufficient factual basis to warrant the scientific conclusion necessary to justify this proposal. The portion of the tributary on '87 Riverbend's property flows through a course over a steep slope. Such a slope is entirely inconsistent with "trout production" areas. Moreover, several waterfalls occur in this reach of the tributary, a fact also inconsistent with "trout production". This very short stretch of water opens onto the Ramapo River, which is designated "nontrout" and is not connected to any other body of water which could support trout, because of the aforementioned steep slopes and waterfalls.

Since the support documents have only been recently made available to the commenter's clients, it is impossible at this point to submit a more detailed comment. When these documents have been reviewed, a more detailed analysis will be presented. Should the detailed analysis be delayed beyond the September 2, 1988 deadline, an extension of the comment period is requested to permit amplification of the comments herein. Nevertheless, it is the commenter's position that designation of the tributary below the elevation of 500 feet above sea level (where the steep slope area commences) is wholly inappropriate. The commenter requests the Department to modify its proposed rule to acknowledge this fact. Alternatively, if any portion of the tributary can legitimately be classified as "trout production", then that classification should be precisely defined in light of the physical characteristics of the tributary's course.

RESPONSE: It should first be noted that although the Department extended the comment period until October 14, 1988, the "more detailed analysis" promised in the above comment was not submitted to the Department. The comment which was submitted and summarized above lacks basic supporting documentation. For example, the comment included no map or other specific description of the boundaries of '87 Riverbend's property, or of the location of those boundaries relative to the 500 foot elevation mentioned in the comment. Nor did the comment quantitatively define the term "steep slope", or identify what topographic map or other information source served as the basis for its identification of the 500 foot elevation as the place "where the steep slope area commences". The Department's examination of the United States Geological Survey 7.5' topographic map of the Ramsey quadrangle showed no major change in the gradient of the Oakland tributary at the 500 foot elevation. The comment did not include any fish population survey of the tributary, but merely asserted that physical characteristics of the tributary preclude trout production. The comment presented no documentation that the commenter has any scientific qualifications to evaluate the physical suitability of streams for trout production.

The Department's classification of the Oakland tributary as FW2 Trout production is based on a fish population survey of the tributary conducted by the Bureau of Freshwater Fisheries on July 1, 1986. Electrofishing of a 400 foot stretch of the tributary revealed the presence of 14 young-of-the-year brook trout and five older brook trout. A stream which is surveyed and found to have naturally reproduced trout in their first year of life (young-of-the-year) is properly classified as FW2 Trout Production. The electrofished stretch of this tributary was located in an area where the comment asserted that trout production could not occur; the portion of the tributary below the elevation of 500 feet above mean sea level as mapped on the above-mentioned topographic map of the Ramsey quadrangle, and near the Ramapo River. The comment provided no specific discussion of this survey data, or any explanation of the obvious conflict between the survey data and the commenter's assertions.

The physical characteristics of the Oakland tributary—moderate to steep gradient, mixture of pools and riffles, rocky substrate, sample streamside vegetation—typify headwater trout production streams found in New Jersey. Contrary to the assertions made by the commenter, steep gradients are quite indicative of trout production streams. Steep gradients tend to prevent sediment accumulation that would smother the trout redds, and the turbulence associated with steep gradients tends to increase the stream's dissolved oxygen concentration. It is not unusual to find populations of native brook trout in headwaters upstream from waterfalls that would prevent upstream movement of trout into those headwaters. The trout production capabilities of the Oakland tributary are not an exception in the Ramapo River drainage. Three other Ramapo River tributaries (Bear Swamp Brook, Havemeyer Brook and Stag Brook) which also flow down from the Ramapo Mountains and which have physical characteristics similar to that of the Oakland tributary, support reproducing brook trout populations and are classified in the Surface Water Quality Standards as FW2 Trout Production.

The commenter's reliance on the FW2 Nontrout classification of the Ramapo River is also misplaced. In some cases, adult trout, capable of reproducing, may reside in downstream waters and use a trout production tributary for spawning purposes. In other cases, however, adult trout may permanently reside in a trout producing stream. A trout production classification is therefore not contingent upon the existence of trout production or trout maintenance water downstream. Moreover, although the Ramapo River is classified as FW2 Nontrout, the Ramapo River does contain trout during certain seasons of the year as the result of the Department's trout stocking program, and, possibly, production from tributaries such as the Oakland tributary. The Department's stocking program provides angling opportunities in numerous trout production trout maintenance, and nontrout streams Statewide, and is not related to the classifications in the Surface Water Quality Standards. The Ramapo River has been stocked annually for many decades (see, for example, the 1988-1989 Fish Code at N.J.A.C. 7:25-6.2(d)), and in recent years has been stocked with thousands of brook, brown, and rainbow trout greater than six inches in length. Some of the stocked trout may survive throughout the year in the Ramapo River, or its tributaries (in isolated areas) and successfully spawn in the Ramapo River or any of its tributaries. Therefore, the young-of-the-year trout found in the tributaries are the result of natural reproduction.

For the reasons expressed above, no change was made to the proposed FW2 Trout Production classification of the Oakland tributary of the Ramapo River.

COMMENT: The Rockaway River, from the headwaters to the Jersey City reservoir at Boonton, should be reclassified as FW2 Trout Maintenance, Category 1. The reasons supporting this recommendation include the presence of trout as revealed by fish population surveys conducted in recent summers by the Department and the great Swamp Research Institute; water quality conditions that are suitable for trout maintenance or that can be made suitable; the river's intimate connection with a designated sole source aquifer and its ground water system; the river's importance as a direct source of drinking water; the presence along the river or its tributaries of Federal, State, county or municipal parks, fish and wildlife lands, or other special holdings; the river's present and potential aesthetic and recreational significance; and the effect that FW2 Trout Maintenance, Category 1 classification would have in promoting the restoration and maintenance of water quality in accordance with State policy expressed in N.J.A.C. 7:9-4.5(a)1.

RESPONSE: Under the Clean Water Act and the Administrative Procedure Act, the Department cannot adopt a reclassification of this magnitude without providing public notice of the proposed reclassification and opportunity for a public hearing. The Department will consider this reclassification request under a separate proceeding covering only the reclassification request. Noting that the petition for reclassification to the restrictive use of "trout maintenance" was endorsed by the governing bodies of several municipalities, the Department has decided to treat the comment as a petition under N.J.A.C. 7:9-4.11, "Procedures for reclassifying specific segments for more restrictive uses". Pursuant to that section, the Department shall issue public notice to all interested parties, including affected municipalities and dischargers, and shall hold at least one public hearing.

COMMENT: The Wallkill River is classified as FW2 Trout Maintenance between Sparta Glen Brook and the Route 23 bridge. Based on the available water quality information, this classification is not appropriate. On August 5, 1988, the Department published a wasteload allocation for the Sussex County Municipal Utilities Authority's discharge to this section of the Wallkill River. The Department used a critical stream temperature of 25°C as the expected summer discharge condition.

Due to the physical needs of the species, trout fisheries cannot be adequately maintained where ambient water temperature exceeds 20°C. An exhaustive list of references can be provided should the Department request a listing. Above 20°C trout are adversely affected by termperature, which significantly impairs growth and reproduction and causes increasing mortality rates. On this basis, the Department must reassess the classification of this section of the Wallkill River because temperature limits its use for trout maintenance based on the Department's own studies.

RESPONSE: The commenter has not demonstrated to the satisfication of the Department that trout maintenance is not an existing use of this segment of the Wallkill River. The comment did not include any fish population survey of the Wallkill River, and did not discuss the technical basis for the FW2 Trout Maintenance classification which was the documented presence of trout and trout-associated fish species in the Wallkill River during summertime. The limited stream temperature data referred to in the comment merely indicates that the trout maintenance use is occasionally impaired to some extent by high summer water temperatures in late morning and afternoon. The data do not demonstrate that these occasional episodes of high water temperature effectively prevent the trout maintenance use, particularly in a stream like the Wallkill River that is annually stocked with trout.

The FW2 Trout Maintenance classification of the Wallkill River between Sparta Glen Brook and the Route 23 bridge was based on fish population surveys at three locations conducted in August 1968 and August 1970 by personnel in what is now the Department's Bureau of Freshwater Fisheries. The most downstream of the three locations was a short distance below the outlet of Franklin Pond in Franklin Borough. Each electrofishing survey examined a 600 foot stretch of the Wallkill River. On the basis of similar stream conditions, the fish population data collected at the three locations was projected to cover the Wallkill River between Sparta, Glen Brook and Route 23.

The Department acknowledges that temperatures higher than 20°C have been measured at certain times and locations in this segment of the Wallkill River. The comment cites a "wasteload allocation" published by the Department on August 5, 1988; the comment is referring to water quality based effluent limitations, May 1 through November 30, for ammonia nitrogen, alkalinity, and pH contained in a draft NJPDES permit issued by the Department on that date. The Department did use a critical Wallkill River temperature of 25°C in developing these effluent limitations. This does not mean, however, that 25°C is a typical or common Wallkill River temperature. In supporting documentation for the draft NJPDES permit, the Department stated that the upper 95 percent confidence interval for all available August data, that is, the United States Geological Survey (USGS) sampling station and stream data collected by the permittee, was used to determine the receiving stream temperature. The 25°C value is therefore representative of the upper end of the range of measured August temperature.

According to this limited temperature data, late morning and early afternoon Wallkill River temperatures in midsummer, as measured just downstream from Franklin Pond, are commonly about 22°C, and the Department acknowledges that trout are placed under stress when temperatures exceed 20°C at any time of day. However, many trout can survive the stress caused by temporary exposure to such temperatures. A trout maintenance use can persist in a stream, albeit in impaired form, even if growth rates and other factors are adversely affected to some extent by high daytime water temperatures. The comment mentioned the adverse effects of high water temperature on trout reproduction; these effects are irrelevant to the FW2 Trout Maintenance classification, which does not seek to protect trout reproduction.

The Department will conduct a new fish population survey of the Wallkill River downstream from the outlet of Franklin Pond in the summer of 1989. Pending the results of that survey and the completion of any reclassification procedure initiated on the basis of those results, the Wallkill River between the outlet of Franklin Pond and the Route 23 bridge will retain its proposed FW2 Trout Maintenance classification. The Department has not changed the proposed FW2 Trout Maintenance classification of the Wallkill River between Sparta, Glen Brook and Franklin Pond, and is not presently contemplating any change to that classification.

COMMENT: Why has nothing been done relative to the criteria for aquatic protection?

RESPONSE: For this proposal the Department focused on human health-based criteria due to resource and time constraints. The Department has hired additional staff with expertise in aquatic toxicology subsequent to the proposal. In the next review of the rules, additional aquatic life-based criteria will be proposed.

COMMENT: The criteria should apply to all waters which are drinking water sources or tributaries of them not just FW2 waters.

RESPONSE: The criteria in N.J.A.C. 7:9-4.14(c) apply to all FW2 waters listed in the table. For FW1 waters, the natural background takes precedence and, for Pineland water, where a discharge is currently permitted, the criteria in N.J.A.C. 7:9-4.14(c) apply, where there is no current discharge the natural background takes precedence.

COMMENT: The river to which the commenter's plant was required to discharge has pH averaging 5.2 and natural background level for lead at five ppb, the newly proposed Federal MCL for lead. The water can never be used as an acceptable source of drinking water supply yet water quality criteria for FW2 water apply.

RESPONSE: According to the Surface Water Quality Standards, N.J.A.C. 7:9-4.5(c), "The natural water quality shall be used in place of the promulgated Water Quality Criteria of N.J.A.C. 7:9-4.14 . . ." This implies that these waters will still be classified as FW2 and would have to be treated as necessary for use as a drinking water supply. Therefore, the comment is not correct. Waters whose background levels are above adopted criteria are generally susceptible to treatment, and are potentially usuable for drinking water, unless the stream has been reclassified as per N.J.A.C. 7:9-4.10.

COMMENT A: In view of the new EPA data on the health effects of lead, the Department should lower the Water Quality Criteria level for lead in streams which are potential drinking water sources to 10 ppb.

COMMENT B: The criterion of lead should be below 50 ppm, the proposed level.

RESPONSE: The lowering of the MCL for lead from 50 ppb was proposed by USEPA after the Department had proposed the Standards revision. The Department plans to propose a revised surface water quality criterion for lead after evaluation of the new health effects information which was the basis for the USEPA proposal.

COMMENT: The basis for the criteria in the proposal for the heavy metals is identified as the New Jersey Drinking Water Quality Institute's recommendations. This is incorrect.

RESPONSE: The note should have indicated that the heavy metals criteria were based upon United States Public Health Service recommendations for drinking water which were subsequently adopted as USEPA's

Maximum Contaminant Levels. In the final adoption notice, the note identifying the basis for the criteria has been modified.

The following comment was received concerning the July 18, 1988 surface water quality standards proposal:

COMMENT: "It appears that the Department is not proposing to change a number of criteria such as the criteria for phosphorus which are not technically valid as adopted in 1985. In January 1985 the commenter commented on the problems with the proposed standards. Since the Department has not corrected the technical problems with these standards, it is appropriate to resubmit the January 1985 comments as part of the comments on the State's standards. Enclosed is a set of these comments. The Department needs to consider all of the problems associated with their water quality standards, not just those listed in the June 6, 1988 document which was distributed for review at this time."

RESPONSE: Because the above commenter referenced specific comments he submitted during the 1985 comment period in the above comment, those 1985 comments and the Department's responses have been included with the comments received during the last comment period. Where the Department's position has changed with regard to a 1985 comment, the Department's response has been updated.

COMMENT: Fecal coliforms are not reliable indicators for potential human health hazards associated with contact recreation.

RESPONSE: The Department has proposed as part of its July 18, 1988 proposal, inclusion of criteria for enterococci in the Surface Water Quality Standards. Enterococci are more reliable indicators of potential health hazards associated with contact recreation according to studies conducted by the United States Environmental Protection Agency.

COMMENT: The proposed dissolved oxygen limits for FW2-TP and FW2-TM waters are desirable, but not necessary for maintenance of high quality trout production or maintenance waters. Dissolved oxygen can fall somewhat below the proposed limits of seven and six mg/l, respectively, without significantly adversely affecting the trout fisheries of the waters. The proposed limits should not be mandatory limits, but rather desirable goals. This section should be reworded to incorporate the approach that was proposed by the USEPA in February 1984 for establishing dissolved oxygen standards for aquatic life.

RESPONSE: The Department's review of the USEPA criteria document for Dissolved Oxygen (April 1986) indicates that, depending on a number of factors (time of year, life stage of organisms being protected, criterion, time period, etc.), the existing criteria for dissolved oxygen are appropriate in some cases, may be too stringent in some cases and may not be stringent enough in some cases. However, in order to adopt dissolved oxygen criteria which are more appropriate, the Department will have to identify the waters and organisms/life stages requiring different dissolved oxygen criteria. Until that is done the Department decided to retain the existing dissolved oxygen criteria.

It would also be inappropriate to change the criteria to "desirable goals". The Department's experience indicates that goals are unenforceable and that sources of pollutants cannot be controlled based upon adoption of goals.

The approach referred to in the comment appears to be the procedure discussed by the USEPA in the EPA announcement of the availability of a "draft revised version", dated July 5, 1983 of its "Guidelines for Deriving Numerical National Water Quality Criteria for Protection of Aquatic Life and Its Uses" (49 FR 4551, 2/7/84). As part of the discussion of the procedure, the USEPA indicated that "the Guidelines might also be useful for deriving criteria for temperature, dissolved oxygen, suspended solids, pH, etc. if the kinds of data on which the Guidelines are based are available." The final USEPA criteria document for dissolved oxygen (April 1986) did not use the procedure discussed in the Guidelines because the available data base was not suitable for use with the procedure. Accordingly, it would be inappropriate to incorporate the procedure in the guidelines into the State's dissolved oxygen criteria.

COMMENT: Those who drafted the criteria for dissolved oxygen did not take into account the large amount of information available indicating that there are a number of highly desirable warm water game fish which are as sensitive as trout to low dissolved oxygen. The proposed standards should be revised to reflect this situation.

RESPONSE: The Department was aware of the information indicating that there are highly desirable game fish which are as sensitive to low dissolved oxygen as trout are. However, in adopting dissolved oxygen criteria, the Department does not believe that it must adopt criteria which protect these "warm water game fish that are as sensitive as trout to low dissolved oxygen levels" across the board. The existing "warm water fisheries" dissolved oxygen criteria are appropriate for general application in New Jersey. When waters containing highly desirable game fish that are sensitive to low dissolved oxygen levels are identified the Department will consider adoption of more stringent dissolved oxygen criteria for those waters.

COMMENT: Where there is interest in establishing a warm water fishery, the four mg/l minimum mandatory dissolved oxygen limit for tidal portions of FW2-NT tributaries to the Delaware River between Rancocas Creek and Big Timber Creek inclusive and for SE2 waters, and the five mg/l minimum mandatory dissolved oxygen limit for SC waters, are overly stringent if the purpose of these limits is the maintenance of a highly desirable recreational fishery. If the dissolved oxygen falls below four mg/l for short periods, just before sunrise due to aquatic plant respiration, this does not necessarily indicate that there will be a significant adverse effect on a recreational fishery, trout or non-trout.

RESPONSE: The purpose of the dissolved oxygen criteria is not "the maintenance of a highly desirable recreational fishery", but the protection of the designated use. For the waters in question the relevant designated use is "maintenance, migration and propagation of the natural and established biota." Review of the USEPA criteria document for dissolved oxygen (April 1986) indicates that the existing freshwater dissolved oxygen criteria are not too stringent.

The USEPA has not published dissolved oxygen criteria applicable to saline waters. In the 1973 "Blue Book" the National Academy of Sciences discussed dissolved oxygen levels necessary to protect the aquatic biota in saline waters. The Department considers its 4.0 mg/l and 5.0 mg/l values for SE2 and SC waters, respectively, to be consistent with the "Blue Book" statement that "the limited laboratory data and field observations on marine organisms suggest that easily observed effects, which are in many cases deleterious, occur with dissolved oxygen concentrations of four to five mg/l as daily minimum values for periods of several days" (Section III, pg. 270). The comment submitted on this issue does not suggest any specific values as more appropriate than the existing criteria, nor does the comment identify any specific studies that support the assertion that the criteria are too stringent.

COMMENT: Supersaturation should not be dealt with as proposed. It has been well established that certain dissolved gas supersaturation conditions can be highly adverse to fish populations. This should be reflected in the Standards. Rather than trying to use a numeric average for dissolved oxygen, what should be done is to use a hazard assessment approach in which dissolved oxygen concentrations below some prescribed value for that system is indicative of potential water quality problems. Those potentially responsible for the depressed dissolved oxygen condition should be required to conduct studies to determine whether this condition is having a significant adverse effect on beneficial uses of the waters.

RESPONSE: The Department's method of dealing with supersaturation is appropriate as contained within the Surface Water Quality Standards. It is well recognized that supersaturation can be harmful to fish populations. However, supersaturation of ambient waters is generally the result of excessive amounts of aquatic vegetation (vascular, algal, etc.) in the water. Nothing in the Surface Water Quality Standards sets an upper ceiling on dissolved oxygen levels. Additionally, the Standards do not attempt to prevent supersaturation of the waters by establishing minimum dissolved oxygen levels.

As stated in the comment, the commenter appears to have mixed his concern with the adverse impacts of supersaturation and his interest in having the Department adopt a hazard assessment approach to regulating dissolved oxygen levels. The Federal government has rejected the approach suggested by the commenter by adopting requirements for the states to adopt specific numeric criteria for parameters, including dissolved oxygen, which could adversely impact the designated uses. Accordingly, the Department has decided that it would not be appropriate to replace the numeric criteria for dissolved oxygen in the Standards with a hazard assessment procedure.

COMMENT: The total phosphorus criteria (0.5 or 0.1 mg/l) are not technically appropriate or valid. The Department apparently is not aware of the vast information base that has been developed during the past 10 years which can readily be used to establish phosphorus criteria on a site specific basis to achieve the desired acceptable eutrophication related water quality in a given waterbody.

RESPONSE: The total phosphorus criteria are the most appropriate general values for use as water quality criteria. The Department recognizes, however, that in some cases these criteria may be more, or less stringent than necessary to protect the designated uses. For that reason the proposal includes, in N.J.A.C. 7:9-4.5(g), a nutrient policy which provides for the development of site-specific criteria when scientifically

justified. To clarify the relationship between the criteria in the tables and the nutrient policy, a reference to the nutrient policy has been added to the phosphorus criteria in the tables.

The numerical criteria for phosphorus are carried over from the 1981 Surface Water Quality Standards. The original basis for their adoption was the discussion of phosphorus found in "Quality Criteria for water" (EPA 1976). While drafting the 1985 Surface Water Quality Standards, the Department decided that the existing criteria, along with the new nutrient policy and effluent standard, offered a more flexible approach to phosphorus control. Retaining the existing phosphorus criteria puts the Department in a better position to fulfill its regulatory responsibilities and will act as a driving force behind the development of site-specific criteria.

COMMENT: The concept of a "limiting nutrient", in the sense it is used with the 0.1 mg/l phosphorus criteria is not applicable to streams.

RESPONSE: Although the concept of a "limiting nutrient" may not be readily applicable to large, rapidly flowing streams, the concept is a useful one for many New Jersey streams which may best be described as "flowing lakes". This is especially true during summer low flow conditions. For this reason, no change was made to the rules.

COMMENT: What is the justification for the difference in the allowable non-filterable suspended solids for trout and non-trout waters? There is no justification based on aquatic life, for non-filterable residue criteria, for concentrations less than those in the ug/l define level.

RESPONSE: These criteria were carried over unchanged from the 1981 Surface Water Quality Standards. As discussed in the basis and background document (1984), portions of the basis and background and response documents from the 1981 Standards "are incorporated into this document as the basis and background for those portions of the Surface Water Quality Standards which are not proposed for change".

COMMENT: There is no justification for the filterable residue criteria for FW2 waters, except possibly where the water is used for drinking. Even then, it has been found that people can consume water containing substantially higher concentrations of filterable residue without experiencing significant adverse effects.

RESPONSE: As indicated in the basis and background document (1984), justification for the "133 percent of background" value is available in a literature survey that is available for review (Effects of Total Dissolved Solids (TDS) on Freshwater Biota; Bureau of Systems Analysis and Wasteload Allocation; September 1984). As the criteria state, increases above 133 percent of background may be granted where the discharger demonstrates, to the satisfaction of the Department, that the proposed increase will not adversely affect the aquatic biota.

In all FW2 waters the designated uses include public potable water supply after such treatment as required by law or regulation. To protect the public welfare, the Department's Secondary Drinking Water Regulations include a recommended upper limit of 500 mg/l for total dissolved solids. Failure of the water supply to meet the prescribed level may constitute grounds for unacceptability of the water supply, if dissolved solids would render the water unduly corrosive, unpalatable, or aesthetically objectionable (see N.J.A.C. 7:10-7.2). The "Red Book" (EPA 1976) notes that the 1962 Public Health Service Drinking Water Standards "recommended a maximum dissolved solids concentrations of 500 mg/l unless more suitable supplies were unavailable". The "Blue Book" (National Academy of Sciences 1973) states that "although waters of higher concentrations are not generally desirable, it is recognized that a considerable number of supplies with dissolved solids in excess of the 500 mg/l limit are used without any obvious ill effects". The concentration of dissolved solids in New Jersey's FW2 waters is generally below 500 mg/l. If these values were allowed to increase to levels above 500 mg/l and undesirable conditions (not necessarily "obvious ill effects") did develop, remedial action could well be impractical because of the expense of removing dissolved solids from wastewater effluents and water supplies. Loss of water supplies because of undesirable conditions resulting from excessive dissolved solids would aggravate New Jersey's water supply problems.

COMMENT: The language in N.J.A.C. 7:9-4.14(c)13iii dealing with bioaccumulation implies the ability to measure the point at which the tissue levels of a substance exert a negative physiological effect on an organism. A well recognized limitation in environmental toxiciology today is the inability to quantify this "trigger" point.

RESPONSE: No change was made to the rules. The Department is aware of the limitations of environmental toxicology in this area. The general language in N.J.A.C. 7:9-4.14(c)13iii indicates that the Department's objective is to control bioaccumulative substances. Specific numerical restrictions exist for only a few substances. These restrictions are based upon chemical-specific section 304(a) criteria that have been developed with bioaccumulation taken into account.

COMMENT: It should be made clear in the rules that the criterion in N.J.A.C. 7:9-4.14(c)13iii is applicable outside the designated mixing zones for discharges.

RESPONSE: The rules were changed. N.J.A.C. 7:9-4.5(c)4i was reworded to state that, "Water quality within a mixing zone may be allowed to fall below applicable water quality criteria provided the existing and designated uses outside the mixing zone are not adversely impacted".

COMMENT: In N.J.A.C. 7:9-4.14(c)13iii, rather than focusing on the concentrations of toxics, the language should be formulated in a hazard assessment framework, which focuses on the potential impacts on the designated beneficial uses of the water that may result from the presence of certain toxicants in the chemical forms, concentrations, and exposure duration expected.

RESPONSE: No change was made to the rules because the existing language serves the same purpose.

COMMENT: In N.J.A.C. 7:9-4.14(c)13iv and v, the use of the 0.05 and 0.01 application factors for nonpersistent and persistent toxic substances, respectively, is overly protective.

RESPONSE: No change was made to the rules. These application factors were recommended in the "Blue Book" (National Academy of Services 1973). They are intended to take into account several factors, including acute/chronic ratio, interspecies differences, and a margin of safety. If their use is demonstrated to be overly protective in a particular instance, alternative application factors can be developed in accordance with N.J.A.C. 7:9-4.5(f)4.

COMMENT: The criterion for total residual chlorine should be the same as that proposed by the USEPA in the February 7, 1984, Federal Register.

RESPONSE: The Department proposed criteria for chlorine produced oxidants which are consistent with the final section 304(a) criteria published by the USEPA. These final criteria supersede those proposed in the Federal Register cited above.

Comments Concerning Proposed Toxics Criteria, N.J.A.C. 7:9-4.14(c)

COMMENT A: The basis and background document was incomplete in supplying all the information necessary to evaluate the criteria proposed in N.J.A.C. 7:9-4.14(c).

COMMENT B: Given the avowed purpose of the New Jersey Pollutant Discharge Elimination System, the Department's relaxation of its ambient surface water criteria should have received significantly more discussion and justification than was provided in the documents presented for public review.

COMMENT C: The statement is made that the USEPA water quality criteria represent minimum acceptable best scientific information to be used in development of a water quality based effluent limitation for point source discharges. This statement is not technically correct.

COMMENT D: If water quality standards for contaminants in drinking water are to have any credibility, an acceptable level of risk must be established and then all contaminants, whether trihalomethanes formed from the chlorination of humics in surface water supplies, radon derived from decay of uranium in granitic rocks associated with groundwater supplies, or industrial solvents, etc. should meet that risk level, regardless of the source of the contaminants.

COMMENT E: A risk of one in a million is too stringent. It would be far more appropriate and generally acceptable to the public that a risk level of one additional cancer in 100,000 people over 70 years were adopted.

COMMENT F: By the very definition of practical quantitation levels (PQLS), a percentage of qualified laboratories will yield a percent variability. To apply numerical values developed on these bases and supply them to regulatory programs for application in permit writing is inappropriate.

COMMENT G: The issue of sampling and analytical variability must be accounted for in all direct applications of drinking water quality standards. In developing the Maximum Contaminant Level (MCL) recommendations for drinking water, the Drinking Water Quality Institute performed a study among a small, select group of laboratories, and found that both accuracy and precision vary by up to 40 percent at these locations. This error rate was, in fact, a conservative estimate as it was not based on "double blind testing" in a "random sample" of state-certified laboratories, which would provide a more accurate rate of variability. USEPA program QA—308 results are somewhat more representative and were conducted at significantly higher concentrations than the standards. Because of this significant error rate, it is inappropriate to

apply the Department's proposed criteria to the regulation of ambient surface water quality.

COMMENT H: The Department's proposed criteria values should be changed to reflect currently achievable method detection limits and technical aspects of sampling and analytical variability. The Department's proposed criteria should be set at a more reasonable level than the current proposal. The criteria should definitely be above the detection level and the best technically attainable limit seems to be five times the detection level.

COMMENT I: Section 505 of the Clean Water Act (CWA) entitles a citizen to sue a discharger with any number of violations. The development of MCLs and PQLs resulting from the Safe Driniking Water Act should clearly not be utilized as a basis for pass/fail criteria in regulatory programs.

COMMENT J: Practical quantitation levels (PQLs) are important considerations in the regulation of public water supplies that are required to perform regular monitoring for low levels of organic substances. Of the 14 new surface water criteria based on MCLs, six are based on PQLs that are two to 24 times higher than the "health-based level". Since surface water criteria are used to back-calculate to the point of discharge, and not for routine compliance monitoring, it is not clear how this constraint is relevant to the setting of surface water standards.

COMMENT K: The New Jersey proposal fails to account for fish consumption and skin absorption.

COMMENT L: A recalculation of the water quality standards, based on the methodology described in the June, 1988 Basis and Background Document, and accounting for skin absorption clearly is necessary.

COMMENT M: Since fish and shellfish consumption as well as swimming can be key means of human exposure to toxics present in marine waters, it is critical that human-health based water quality standards applicable to marine waters factor in such exposure routes. New Jersey's proposed MCLs alone are singularly inappropriate for this role.

COMMENT N: For some of the toxics New Jersey proposes to regulate via adoption of its MCLs, bioconcentration factors (BCFs) can be very significant. For example, the dichlorinated benzenes have a BCF of 55.6.

COMMENT O: Are the factors used in calculation of MCLs the same as those required under section 304(a) guidance?

COMMENT P: USEPA's 1986 National Human Adipose Tissue Survey has frequently detected chlorinated benzenes in human fat tissue; thus, to ignore fish consumption in establishing water quality standards is to ignore a highly significant exposure route for these pollultants. It would appear that New Jersey has not properly factored in exposure to these toxic pollutants from sources other than drinking water.

COMMENT Q: The literature reviews that helped to shape the drinking water MCLs did not consider ecologic effects such as toxicity to aquatic microorganisms, larvae, or fish, bioaccumulation and food web effects, or threats to endangered species. These would need to be considered when developing surface water quality standards.

COMMENT R: When the Division of Science and Research conducted its evaluation of scientific information, did it look at scientific information specific to surface water quality criteria? Did the Division of Science and Research evaluate the scientific information they reviewed in the context of developing surface water quality criteria?

COMMENT S: Did the Department realize when it decided to propose the maximum contaminant level recommended by the Drinking Water Quality Institute as ambient surface water quality standards that it was proposing an increase in the amount of toxic substances allowed in regulated discharges? If the Department realized that the proposal would allow increased amounts of toxic substances in regulated discharges, why wasn't this mentioned in the basis and background document for the proposed surface water quality criteria?

COMMENT T: It appears that in eight of 16 water quality criteria proposed, a laboratory quantitation-based limit rather than a health-based limit has been selected. This seems to represent a dramatic change from previous Departmental policy in that the easing of discharge limitations in comparison to the current standards established in Appendix F to the NJPDES regulations will allow a significant increase in allowable concentrations.

COMMENT U: Why did the Department calculate ambient criteria pursuant to section 304(a) of the Federal Clean Water Act if it intended to propose maximum contaminant levels recommended by the New Jersey Drinking Water Quality Institute?

COMMENT V: State MCLs should not be used as ambient water quality standards. New Jersey's proposed MCLs were quite conservatively derived and are generally acceptable. But New Jersey's MCLs were developed to protect against drinking water exposured to hazardous contaminants. In addition, they do not factor in fish consumption or skin absorption.

COMMENT W: Why does the Department believe that the analytically-based criteria are appropriate for use as ambient surface water quality criteria?

COMMENT X: What is the legal basis for proposing ambient surface water quality criteria that were not develped in accordance with section 304(a) guidance?

COMMENT Y: The Department should reconsider the use of drinking water MCLs as surface water quality standards. Such standards must be based on risk assesments performed in accordance with the specific statutory mandate and in recognition of all relevant exposure and toxicologic conditions.

COMMENT Z: There is no regulatory basis in either law or science justifying the use of MCLs for water quality criteria. The commente believes that the suggested level could be very harmful to the chemica industry without any benefit to the public or the environment.

COMMENT AA: Under the 1987 amendments to the Clean Water Act economics should not be considered in the determination of standard for toxic pollutants. MCLs, however, are heavily weighted toward economic considerations. How does the Department reconcile the use o economically weighted MCLs as standards when the Clean Water Ac does not allow consideration of economics in the determination of standards for toxics?

COMMENT BB: Why weren't health-based criteria proposed instead of analytically-based criteria?

COMMENT CC: The Department should adopt standards which consider only factors based on human health effects and aquatic protection criteria.

COMMENT DD: Why does the Department believe that the maximun contaminant levels developed for finished drinking water are appropriate for use as ambient surface water quality criteria?

COMMENT EE: There is a major conceptual and legal error in the Department's approach, which renders some substances more stringen than is necessary to protect human health, and is very significantly under protective in others. The Department calculates the level which would be protective of human health. It then considers "MCL's" proposed by the New Jersey Drinking Water Quality Institute, and in nearly all cases proposes to use those figures rather than the health-based levels. No basi is given for the recommended MCLs. A scientific basis is a necessar requirement for legal regulation. The commenter's understanding of th chemistry suggests that they were constructed in a manner similar to tha used by the Federal Safe Drinking Water Act, that is, a non-enforceabl goal is set, and then an MCL is set as close to the goal as technicall feasible. MCLs are thus a kind of technology-based limit. While tha methodology may be appropriate for drinking water suppliers, it is inap propriate for water quality criteria, which are supposed to be based solel on the levels necessary to protect public health and aquatic organisms.

COMMENT FF: To include the 14 chemicals which reflect the maximum contaminant levels as recommended by the Drinking Water Qualit Institute is inappropriate. The Clean Water Act's goal of attaining fishable and swimmable waterway is not directly tied to the waterway uses as a drinking water supply.

COMMENT GG: Why does the Department believe that the MCL recommended by the Drinking Water Quality Institute are more ap propriate for adoption as ambient surface water quality criteria than th criteria developed in accordance with section 304(a) guidance?

COMMENT HH: What evaluations or data did the Department utiliz in deciding that practical quantitation levels developed for finished drinking water could be used for surface waters?

COMMENT II: Why has the Department limited itself to practica quantitation levels for carbon tetrachloride, 1,2-dichloroethane, 1, dichloroethylene, and tetrachloroethylene, but not for chlordane or poly chlorinated-biphenyls?

COMMENT JJ: The Department's calculations show the propose MCL-based levels for carbon tetrachloride, chlordane, 1,2 dichloroethane, 1,1-dichloroethylene, PCB's, tetrachloroethylene, an vinyl chloride to be underprotective. The degree of underprotection i some cases is severe. In the case of vinyl chloride, for example, (the on substance on the list which the International Agency for Research c Cancer (IARC) considers to have sufficient evidence of carcinogenici on both animals and humans), the allowed level is 133 times greater tha the health-based requirement. Put differently, the criteria proposed b the Department would allow the most exposed individual a cancer ris of substantially greater than 10^{-4}.

COMMENT KK: The Department must provide the sources of information used by the Department in its review of toxic pollutants likely to interfere with designated uses of waterways. Did the Department review federal and New Jersey Right to Know data, and Form 2C applications for NJPDES permits?

COMMENT LL: The Department's proposed criteria for carcinogens, other than for chlordane and polychlorinated-biphenyls, represent the less stringent of the criteria developed per Section 304(a) guidance and the proposed MCLs. At the same time, for non-carcinogens, the Department's proposed criteria represent the more stringent of the criteria developed per Section 304(a) guidance and the proposed MCLs. Why did the Department use the more stringent criteria for non-carcinogens and the less stringent criteria for carcinogens?

COMMENT MM: For chlordane and polychlorinated-biphenyls the Department has proposed more stringent aquatic protection criteria. Does this mean that the Department is more concerned with the protection of fish than with the protection of human health?

COMMENT NN: Why weren't the analytically-based criteria used for chlordane and polychlorinated-biphenyls, as was done for other chemicals?

COMMENT OO: Why does the Department believe the proposed criteria for chlordane and polychlorinated-biphenyls are acceptable for use as ambient surface water quality criteria when they are well below the drinking water practical quantitation levels and are not enforceable? Were these standards re-evaluated or simply carried over?

COMMENT PP: Polychlorinated-biphenyls were more stringent than the State-recommended Maximum Contaminant Levels (MCL) developed in 1987. Were the standards for chlordane and polychlorinated-biphenyls re-evaluated in 1987 or was the stricter standard simply accepted?

COMMENT QQ: The MCLs being proposed as ambient surface water quality criteria for the 14 toxic chemicals were developed based on an assumed consumption of two liters of untreated river water per day. What is the basis for this assumption?

COMMENT RR: Depending on the nature of the wastewater or the receiving stream, it may be necessary to dilute the sample prior to analysis to protect the analytical instruments from contamination and to prevent saturation of the mass spectrometer. The resulting method detection levels for the diluted samples will be correspondingly higher. If the method detection limit is higher than the regulatory limit, it becomes impossible to determine whether or not the sample was in compliance.

COMMENT SS: Eight of the 14 proposed criteria are below the currently achievable method detection limits for EPA's series 624 and 625 analytical methods. How can the Department set ambient surface water quality criteria at levels that are below detection and which result in a situation where it is not possible to determine compliance with the in-stream criteria, or to adequately monitor and enforce the criteria?

COMMENT TT: New Jersey's proposed MCLs were quite conservatively derived and generally are acceptable with one notable exception, the New Jersey MCL of two ug/l for vinyl chloride is less stringent than EPA's MCL of one ug/l for that contaminant.

COMMENT UU: The principal and supporting exposure studies for benzene and 1,1,1-trichloroethane were based on inhalation of vapors. The validity of extrapolating the observed effects and accompanying slope factors to those resulting from ingestion is questionable. If the translation is valid, it should be fully explained in the basis and background document.

COMMENT VV: The Department must fully explain the effect, on both discharge limitations and water quality, of using MCLs to determine permit limits.

COMMENT WW: The Surface Water Quality Standards proposal documents do not discuss the impact of the Standards revisions on existing permit limits. In particular, the Department needs to estimate the number of permit limits for toxic pollutants that will be relaxed as a result of the Standard revisions.

COMMENT XX: The Department has set up a situation where the permit limit set for chemicals where the Department has not adoped its own criteria will be based on what appears to be more stringent USEPA ambient criteria whereas, permit limits set for chemicals where the Department has adopted surface water quality criteria are based upon what appears to be generally less stringent criteria. What is the rationale behind this approach?

COMMENT YY: What is the reasoning for allowing discharges at drinking water levels? Wouldn't this impose additional burdens on drinking water facilities to improve their treatment? This would be especially true where there were several discharges upstream of a drinking water facility. All discharges should be evaluated based upon upstream water quality.

COMMENT ZZ: In areas not classified as Category One, water discharges should be based upon the best available technology. The commenter questions the reasoning for discharging at drinking water levels especially if several discharges are upstream of a drinking water treatment facility. It appears that this would bring an additional burden on the drinking water facility to improve its treatment.

COMMENT AAA: The Department should seriously reflect upon the problems inherent in applying drinking water standards (MCLs) to media which may not serve as drinking water sources. Consideration of use, upgradient contamination, site-by-site evaluations, and other restrictions that are embodied in the Ground Water Quality Standards and Management Plan should be embodied in the Surface Water Quality Standards as well. These and other limitations demonstrate why drinking water standards should not be directly used as surface water standards in all cases.

COMMENT BBB: The draft (201) Facilities Plans for the Passaic River Basin recognized nonpoint sources as a major and continuing source of pollution of the Passaic River even when all facilities are on line. An increase in waste load allocation would permit additional development in an area where nonpoint sources already stress the system.

COMMENT CCC: Adoption of MCLs as the criteria would allow a considerable increase in wasteload allocation from the sewage treatment plants in the Upper Passaic River which is used for potable water supplies.

COMMENT DDD: Adoption of the MCLs as ambient surface water quality criteria is inappropriate. The Clean Water Act's goal of attaining fishable and swimmable waterways is not directly tied to the waterway's use as a drinking water supply. Furthermore, the waterway's use as a drinking water supply may be precluded due to salinity or other considerations, therefore, the across-the-board application of the criteria appears inappropriate.

COMMENT EEE: It is unclear whether the New Jersey proposal covers coastal and estuarine waters as well as fresh waters. Standards to protect both aquatic life and human health for saline waters need to be established.

COMMENT FFF: EPA's section 304(a) acute and chronic toxicity criteria for protection of marine aquatic life frequently differ from its freshwater criteria. This suggests that New Jersey must have clear and convincing scientific evidence to support adopting blanket chronic and acute criteria for pollutants of concern to both marine and freshwater organisms or must develop separate criteria as needed.

COMMENT GGG: The Department should allow for different levels for drinking water and non-drinking water sources and use those levels as Water Quality Criteria accordingly.

COMMENT HHH: The Department should set separate water quality criteria for FW-2 waters depending on whether or not there is drinking water exposure.

COMMENT III: By assuming that there is both drinking water exposures and exposure from the consumption of aquatic organisms in every case the Department is breaking with both the practice of N.J.A.C. 7:14A, Appendix F and USEPA recommendations which allow for either or both factors to be used.

COMMENT JJJ: The State should have criteria for all of the metals and organic chemicals for which USEPA or the State has promulgated a drinking water maximum contaminant level. These should be set at a level no higher than the MCLs.

COMMENT KKK: How many pollutants did the Department review in its determination of pollutants that could reasonably be expected to be interfering with the designated uses? How many pollutants did the Department determine to be interfering with designated uses? The Department must give the public a detailed explanation of the procedures and results of the Department's determination of those toxic pollutants that could reasonably be expected to interfere with designated uses of surface waters.

COMMENT LLL: The establishment of criteria on a "less than" basis is confusing and inconsistent with all other criteria values listed for toxic substances in the proposed N.J.A.C. 7:9-4.14(c). The USEPA Gold Book lists these same values as acceptable criterion levels, not as "less than" values. The State should be consistent with USEPA.

COMMENT MMM: New Jersey must adopt numerical standards for a broader range of toxic pollutants. Despite clear statutory and regulatory instructions to adopt numerical water quality standards for all Clean Water Act section 307(a) toxics known or reasonably expected to interfere with designated uses—and to do so during the course of this triennial review—New Jersey has opted to propose new numerical standards only

for those 307(a) toxics for which it has adopted MCLs under the New Jersey Safe Drinking Water Act Amendments. This action does not satify the clear requirements of the Clean Water Act.

COMMENT NNN: New Jersey's unexplained decision not to adopt numerical standards for all Clean Water Act section 307(a) toxics known or reasonably anticipated to be present in State waters can have significant ramifications for water quality. It will have a negative effect on the State's ability to issue water quality based permits and to adopt effective nonpoint source controls.

COMMENT OOO: New Jersey, like New York, will find it terribly difficult to conduct wasteload allocations and then establish water quality based permit limits in areas like the New York Harbor Complex unless the necessary numerical criteria for toxics are in place.

COMMENT PPP: The list of chemicals for which drinking water MCLs were developed, and will be developed, is based in part on the occurrence of volatile substances in drinking water supplies, primarily in ground water. As a result, the State's proposed list of MCL's is probably not reflective of the substances most likely to occur in surface water conditions due to discharges. Other discharged substances, that may pose a threat to health and the environment, should be given higher priority for the development of surface water standards.

COMMENT QQQ: Economics should be considered in the development of ambient surface water quality criteria.

COMMENT RRR: Technology-based limitations should be acknowledged within the surface water quality standards. The Drinking Water Quality Institute specifically states that such concerns need to be taken into consideration in the developing of the criteria. Also, the NJPDES regulations account for technology-based limitations. The surface water quality standards are used for calculating NJPDES permit levels. However, these standards are also used in other regulatory programs. These other programs do not formally account for policies utilized in the NJPDES program, such as water quality-based effluent limitations, mixing zones, technology-based limitations, best professional judgment, etc. These are considerations that must be incorporated in the surface water quality standards themselves.

COMMENT SSS: In the Regulatory Flexibility Statement, the Department states, "The treatment that would be expected to be used for the five chemicals identified above is advanced wastewater treatment using activated carbon." 20 N.J.R. 1598 (July 18, 1988) Adsorption of toxic organic compounds onto activated carbon has been widely touted as the ultimate wastewater treatment process. For certain compounds, it can be an effective although costly treatment alternative but it is not equally effective for all organic compounds. Tests run at Chambers Works in the late 1970's compared removal of priority pollutants through conventional activated sludge treatment, the PACT™ process (activated sludge with powered activated carbon addition), and conventional activated sludge followed by granular carbon columns.

Degree of Treatment Achieved by Teritary Carbon Units

The study showed that treatment of a complex wastewater by activated sludge followed by two granular carbon columns in series produced marginally improved effluent quality compared to conventional activated sludge and PACT™ for these compounds. The study showed that on a percentage basis, the removals indicate good treatment.

The study also considered the influent wastewater concentrations which would be possible with the experimental removal rates, a dilution factor of 10, and the proposed surface water quality criteria. The possible calculated influent concentrations are fairly low (with the exception of 1, 2-dichlorobenzene) and represent the upper limit which could enter the wastewater treatment facility. For industrial as well as municipal facilities which receive industrial wastewaters, discharge to small streams, and have even modest concentrations of organics in the influent, it could be difficult to achieve the proposed surface water quality criteria even with tertiary treatment with granular carbon columns.

Adsorption Characteristics

The study further determined that for eight of the compounds proposed for regulations, carbon columns showed "bleed through" (incomplete adsorption permitting passage of the compound into the effluent) from the beginning of the study. Bleed through indicates that carbon adsorption is not a guaranteed method of consistently removing specific organic compounds to low levels.

A chromatographic effect (at breakthrough, the effluent concentrations are markedly greater than the influent concentrations) was another phenomena that was observed for six compounds during the study. This indicates that if granular carbon is used for tertiary treatment, extra capacity must be kept ready to immediately switch the wastewater flow from a spent carbon bed to a fresh one, increasing the cost and complexity of the process.

COMMENT TTT: The Regulatory Flexibility Statement in the Department's proposal states that advanced wastewater treatment using activated carbon would be expected to be used with certain chemicals. Tertiary treatment with activated carbon is an expensive alternative. The June, 1988 Basis and Background document estimates the capital cost at $2.19 per (assumed daily) gallon of wastewater treated while annual operating and maintenance costs are estimated at $0.79 per (assumed daily) gallon of wastewater treated. Activated carbon is not a panacea because it must be regenerated or disposed of, further adding to New Jersey's solid waste problems. If the activated carbon has been used to remove toxic organic constituents from wastewater, it may be classified as a hazardous waste, through the Toxic Characteristic Leasing Procedure, which would require special handling and disposal procedures. The additional volume of potentially hazardous solid wastes would place a further burden on New Jersey's limited waste management resources. It is not clear if these factors have been included in the operating and maintenance cost estimate of $0.79 per daily gallon.

COMMENT UUU: In the Regulatory Flexibility Statement, the Department states "The data currently available to the Department do not allow the Department to estimate the number of small businesses whose effluents contain the five chemicals, identified above, in concentrations that are of concern." Yet, only two paragraphs later, the following contradictory statement is made:

"In developing this rule, the Department has balanced the need to protect the environment against the economic impact of the proposed rule and has determined that to minimize the impact of the rule would endanger the environment, public health and public safety and therefore, no exemption from coverage is provide."

The overall estimated cost of complying with the proposed rules is not addressed in the background document because there is no estimate of the number of affected private or municipal facilities, the degree of additional treatment which would be required, or the volume of additional flow which would have to be treated. As a result, there is no indication whether the overall cost is $5 million or $500 million.

COMMENT VVV: In proposing the new water quality standards, the Department has not included any funding mechanism for construction of new municipal tertiary treatment facilities which may be required for Publicly Owned Treatment Works ("POTWs") discharges to FW, SE or SC stream classifications. Based on the Department's capital cost factor, the cost to construct the recommended activated carbon polishing systems will be significant especially for the larger facilities.

COMMENT WWW: Some of the supporting data on which the Department's criteria calculations rest are incorrect, or do not reflect the latest scientific studies, particularly on pharmacokinetics.

COMMENT XXX: The proposed surface water quality standards should be further adjusted in those cases where there is a considerable distance between the discharge point and the first point of exposure, since photoysis, volatilization and/or further biodegradation may have taken place. The half life of several of the listed chemicals in surface water is quite short.

COMMENT YYY: In the interest of minimizing confusion the criteria decided upon by the Department should be placed in Appendix F of N.J.A.C. 7:14A rather than as proposed in N.J.A.C. 7:9.

COMMENT ZZZ: The proposed rules use standards based upon the New Jersey Drinking Water Quality Institute's maximum contaminant levels. At the present time no rules exist defining these levels and one would wonder what happens if the institute recommends different levels than those proposed in the document.

COMMENT AAAA: The Department has no basis for regulating Group C possible human carcinogens which are not currently regulated by USEPA, and the regulation of which was rejected in recent litigation in the U.S. Court of Appeals for the D.C. Circuit.

COMMENT BBBB: By proposing more stringent criteria for 14 chemicals and making the chronic limitations more stringent, the Department will be forcing additional funds to be spent on increased treatment to meet these limits for point sources. However, nonpoint sources will not be addressed despite the fact that they may have a more significant effect on stream quality. There is only so much money available (whether from public or private sources) to deal with pollution. The commenters are concerned that this action may be diverting scarce resources to less environmentally productive uses by setting overly stringent stream quality standards.

RESPONSES: The Department is not adopting the additional toxics criteria proposed for inclusion in N.J.A.C. 7:9-4.14(c). A large number of comments sharply critical of these proposed criteria was received during the public comment period. These criticisms fall into two categories. The first category of critical comments dealt with the proposal of criteria that incorporated economic and technological factors. The second category of critical comments dealt with the proposal of criteria that was based on considerations relevant to finished drinking water in public water supplies. Because of these comments, the Department is reevaluating this issue and will repropose appropriate criteria at a later date. Until this reevaluation is completed, for chemicals for which the Department has not adopted criteria, the Department will use the best available scientific information in the development of chemical specific water quality based effluent limitations in accordance with N.J.A.C. 7:9-4.6(c)4iii and the Department's past practices. The USEPA methodology for development of section 304(a) criteria will be used in the development of water quality based effluent limitations and will be based on human health effects and protection of the aquatic biota. During this interim period, the best available scientific information to be used in development of water quality based effluent limitations will be the most recent values published by the USEPA pursuant to Section 304(a) of the Federal Clean Water Act, with the following modifications to reflect updated scientific information: for those compounds for which New Jersey has developed updated human toxicity factors pursuant to N.J.S.A. 58:12A-12 et seq., those factors will be used; for those compounds in the USEPA's Integrated Risk Information System (IRIS), other than those addressed pursuant to N.J.S.A. 58:12A-12 et seq., human toxicity factors in the IRIS database will generally be used; and for aquatic biota protection, for those compounds in the USEPA Aquatic Information Retrieval (AQUIRE) database, aquatic toxicity information in the AQUIRE database will generally be used. Where water quality based effluent limitations must be calculated for chemicals for which the USEPA has not published section 304(a) criteria, the Department will calculate the limitations using the best available scientific information. For this process, preference will generally be given to human toxicity factors provided in the data sources described earlier, and to aquatic information provided in AQUIRE. The Department does not necessarily intend to use this interim procedure as a model for its final methodolgy for developing ambient surface water quality criteria.

Full text of the adoption follows (additions indicated in boldface with asterisks ***thus*** deletions indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 4. SURFACE WATER QUALITY STANDARDS

7:9-4.4 Definitions

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

. . .

"Category one waters" means those waters designated in the tables in N.J.A.C. 7:9-4.15(c) through (h), for purposes of implementing the antidegradation policies in this subchapter, for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resource(s). These waters may include, but are not limited to:

1. Waters originating wholly within Federal, Interstate, State, County, or Municipal parks, forests, fish and wildlife lands, and other special holding***s*** that have not been designated as FW1 in this subchapter;

2. Waters classified in this subchapter as FW2 Trout Production waters and their tributaries;

3. Surface waters classified in this subchapter as FW2 Trout Maintenance or FW2 Nontrout that are upstream of waters classified in this subchapter as FW2 Trout Production;

4. Shellfish waters of exceptional resource value; or

5. Other waters and their tributaries that flow through, or border, Federal, State, County or Municipal parks, forests, fish and wildlife lands, and other special holdings.

. . .

"Chlorine produced oxidants" means the sum of free and combined chlorine and bromine as measured by the methods approved under N.J.A.C. 7:18. In fresh waters the oxidants measured are comprised predominantly of hypochlorous acid (HOCl), hypochlorite ion (OCl*-*), monochloramine and dichloramine. In saline waters the oxidants measured are comprised predominately of the oxidants listed for fresh waters plus hypobromous acid (HOBr *-*), hypobromous ion (OBr) and bromamines.

. . .

"FW1" means those fresh waters that originate in and are wholly within Federal or State parks, forests, fish and wildlife lands, and other special holdings, that are to be maintained in their natural state of quality (set aside for posterity) and not subjected to any man-made wastewater discharges, as designated in N.J.A.C. 7:9-4.15(h) Table 6.

. . .

"Outstanding National Resource Waters" means high quality waters that constitute an outstanding national resource (for example, waters of National/State Parks and Wildlife Refuges and waters of exceptional recreational or ecological significance) as designated in N.J.A.C. 7:9-4.15(i).

. . .

"Surface Water Quality Standards" means the New Jersey rules which set forth a designated use or uses for the waters of the State, use classifications, water quality criteria for the State's waters based upon such uses, and the Department's policies concerning these uses, classifications and criteria.

. . .

7:9-4.5 Statements of policy

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

(d) Antidegradation policies are as follows:

1.-5. (No change.)

6. These antidegradation policies shall be applied as follows:

i. The quality of Nondegradation waters shall be maintained in their natural state (set aside for posterity) and shall not be subject to any manmade wastewater discharges. The Department shall not approve any activity which, alone or in combination with any other activities, might cause changes, other than toward natural water quality, in the existing surface water quality characteristics.

ii. For Pinelands waters, the Department shall not approve any activity which, alone or in combination with any other activities, might cause changes, other than toward natural water quality, in the existing surface water quality characteristics. This policy shall apply as follows:

(1)-(3) (No change.)

iii.-iv. (No change.)

7.-9. (No change.)

(e) (No change.)

(f) Bioassay and biomonitoring policies are as follows:

1.-2. (No change.)

3. The Department, in order to further characterize the toxicity of a discharge, may allow or require the use of other procedures including, but not limited to:

Renumber ii.-iv. as i.-iii. (No change in text.)

4.-5. (No change.)

(g) (No change.)

7:9-4.6 Establishment of water quality based effluent limitations

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

(c) The Department may develop water quality based effluent limitations for a single point source discharger in response to an application for a DAC or NJPDES permit. The procedure to be followed by the Department in developing such effluent limitations shall be as follows:

1.-3. (No change.)

4. The Department will utilize the following methodologies in the development of chemical specific water quality based effluent limitations for point source discharges:

i.-ii. (No change.)

iii. The Department shall utilize the parameter specific criteria contained in N.J.A.C. 7:9-4.14 in the development of chemical speci-

fic water quality based effluent limitations for point source discharges. Whenever parameter specific criteria have not been adopted, the Department will utilize the best available scientific information in the development of chemical specific water quality based effluent limitations for point source discharges. Ambient criteria published by the United States Environmental Protection Agency pursuant to section 304(a) of the Federal Clean Water Act represent the minimum acceptable best scientific information to be used in the development of water quality based effluent limitations for point source discharges.

5. The following methodologies may be utilized by the Department in developing water quality based whole effluent toxicity limitations for point source discharges.

i.-ii. (No change.)

iii. When utilizing chronic bioassays as the measure of whole effluent toxicity, the following effluent toxicity limitation formula may be utilized:

$$Lc = I*[(1000)]* \frac{*(100)}{60*}$$

Where: Lc = Toxicity limitation expressed as a chronic NOEC in percent effluent.

I = Critical instream waste concentration, determined in accordance with the method of (c)5ii above.

iv. If the calculated limit, L_C, is greater than 100 percent effluent, the draft limit shall be 100.

6. Water quality based effluent limits for chlorine produced oxidants based on the criteria in N.J.A.C. 7:9-4.14(c)14 are not applicable where:

i.-ii. (No change.)

iii. The maximum concentration of chlorine produced oxidants in the effluents of such discharges shall not exceed 200 ug/l.

7:9-4.14 Surface water quality criteria

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

(c) Surface Water Quality Criteria for FW2, SE and SC Waters:

SURFACE WATER QUALITY CRITERIA FOR FW2, SE AND SC WATERS
(Expressed as maximum concentrations unless otherwise noted)

Substance	Criteria	Classifications
1. Bacterial quality (Counts/100 ml)	i. (No change.)	(No change.)
	ii. Fecal ***Coliforms:*** *[Coliforms:]*	
	(1) (No change.)	(No change.)
	(2) Fecal coliform levels shall not exceed a geometric average of 200/100 ml nor should more than 10 percent of the total samples taken during any 30-day period exceed 400/100 ml.	FW2, SE1, and SC 1500 feet to 3 miles from the shoreline.
	Renumber (4) through (6) as (3) through (5) (No change in text.)	
	iii. Enterococci:	
	(1) Enterococci levels shall not exceed a geometric mean of 33/100 ml, nor shall any single sample exceed 61/100 ml.	FW2
	(2) Enterococci levels shall not exceed a geometric mean of 35/100 ml, nor shall any single sample exceed 104/100 ml.	SE1 and SC
	iv. Samples shall be obtained at sufficient frequencies and at locations during periods which will permit valid interpretation of laboratory analyses. As a guideline and for the purpose of these regulations, a minimum of five samples as equally spaced over a 30-day period, as feasible, should be collected; however, the number of samples, frequencies and locations will be determined by the Department or other appropriate agency in any particular case.	All Classifications

2.-13. (No change.)

14. Toxic Substances (ug/l):

NOTE: Criteria followed by an (a) represent aquatic protection based criteria.
Criteria followed by an (h) represent criteria based upon *[New Jersey Drinking Water Quality Institute recommended Maximum Contaminant Levels]* ***human health information****.
Criteria followed by an (a*) or (h*) represent criteria developed after review of both *[recommended Maximum Containment Levels]* ***human health information**** and aquatic protection data. The basis for the criterion adopted *[(recommended Maximum Contaminant Levels]* ***human health**** or aquatic protection) is indicated by the letter preceding the.

i.	Aldrin/Dieldrin	(1)	0.0019(a)	All Classifications
ii.	Ammonia, un-ionized (24 hr. average)	(1)	20(a)	FW2-TP, FW2-TM
		(2)	50(a)	FW2-NT
		(3)	0.1 of acute definitive LC50 or EC50(a)	All SE, SC
iii.	Arsenic, Total	(1)	50(h)	FW2
iv.	Barium, Total	(1)	1000(h)	FW2
*[v.	Benzene	(1)	1(h)	FW2]*
*[vi.]**v.*	Benzidine	(1)	0.1*[(h)]**(h*)*	All Classifications
*[vii.]**vi.*	Cadmium, Total	(1)	10(h)	FW2
*[viii.	Carbon Tetrachloride	(1)	2(h)	FW2]*
*[ix.]**vii.*	Chlordane	(1)	*[0.0043(a*)]**0.0043(a)*	FW2
		(2)	0.0040(a)	All SE, SC
*[x.]**viii.*	Chlorine Produced Oxidants (COP)	(1)	24 hour average less than 11.0. Less than 19 at any time. (a)	FW2
		(2)	24 hour average less than 7.5. Less than 13 at any time.(a)	All SE, SC
*[xi.	Chlorobenzene	(1)	4(h)	FW2]*
*[xii.]**ix.*	Chromium, Total	(1)	50(h)	FW2
*[xiii.]**x.*	DDT and Metabolites	(1)	0.0010(a)	All Classifications
*[xiv.	1,2-Dichlorobenzene	(1)	600(h)	FW2
xv.	1,3-Dichlorobenzene	(1)	600(h)	FW2
xvi.	1,2-Dichloroethane	(1)	2(h)	FW2
xvii.	1,1-Dichloroethylene	(1)	2(h)	FW2
xviii.	trans-1, 2-Dichloroethylene	(1)	10(h)	FW2]*
*[xix.]**xi.*	Endosulfan	(1)	0.056(a)	FW2
		(2)	0.0087(a)	All SE, SC
*[xx.]**xii.*	Endrin	(1)	0.0023(a)	All Classifications
*[xxi.]**xiii.*	Heptachlor	(1)	0.0038(a)	FW2
		(2)	0.0036(a)	All SE, SC
*[xxii.]**xiv.*	Lead, Total	(1)	50(h)	FW2
*[xxiii.]**xv.*	Lindane	(1)	0.080(a)	FW2
		(2)	0.004(a)	All SE, SC
*[xxiv.]**xvi.*	Mercury, Total	(1)	2(h)	FW2
*[xxv.	Methylene Chloride	(1)	2(h)	FW2]*
*[xxvi.]**xvii.*	Polychlorinated Biphenyls (PCB's)	(1)	0.014*[(a*)]**(a)*	FW2
		(2)	0.030(a)	All SE, SC
*[xxvii.]**xviii.*	Selenium, Total	(1)	10(h)	FW2
*[xxviii.]**xix.*	Silver, Total	(1)	50(h)	FW2
*[xxix.	Tetrachloroethylene	(1)	1(h)	FW2]*
*[xxx.]**xx.*	Toxaphene	(1)	0.013(a)	FW2
		(2)	0.005(a)	All SE, SC
*[xxxi.	1,2,4-Trichlorobenzene	(1)	8(h)	FW2
xxxii.	1,1,1-Trichloroethane	(1)	26(h)	FW2
xxxiii.	Trichloroethylene	(1)	1(h)	FW2
xxxiv.	Vinyl Chloride	(1)	2(h)	FW2]*

15. (No change.)

(d) (No change.)

7:9-4.15 Surface water classifications for the waters of the State of New Jersey

(a) This section contains the surface water classifications for the waters of the State of New Jersey. Surface water classifications are presented in tabular form. Subsections (c) through (g) contain surface water classifications by major drainage basin. Subsection (h) lists FWI waters by tract within basins and subsection (i) identifies the outstanding national resource waters of the State.

(b) The following are instructions for the use of Tables 1 through 5 found in N.J.A.C. 7:9-4.15(c) through (g) respectively:

1. The surface water classification tables give the surface water classifications for waters of the State. Surface waters of the State and their classification are listed in the Table covering the major drainage basin in which they are located. The major drainage basins are:

i. The Atlantic Coastal drainage basin which contains the surface waters listed in Table 1 in (c) below;

ii. The Delaware River which drainage basin contains the surface waters listed in Table 2 in (d) below;

iii. The Passaic River, Hudson River and New York Harbor Complex drainage basin which contains the surface waters listed in Table 3 in (e) below;

iv. The Raritan River and Raritan Bay drainage basin which contains the surface waters listed in Table 4 in (f) below; and

v. The Wallkill River drainage basin which contains the surface waters listed in Table 5 in (g) below.

2. Within each basin the waters are listed alphabetically and segment descriptions begin at the headwaters and proceed downstream.

3. To find a stream:

i. Determine which major drainage basin the stream is in;

ii. Look for the name of the stream in the appropriate Table and find the classification;

iii. For unnamed or unlisted streams, find the stream or other waterbody that the stream of interest flows into and look for the classification of that stream or waterbody. The classification of the stream of interest may then be determined by referring to (b)5 below. If the second stream or waterbody is also unlisted, repeat the process until a listed stream or waterbody is found. Use (b)5iv below to classify streams entering unlisted lakes.

4. To find a lake or other non-stream waterbody:

i. Determine which major drainage basin the waterbody is in;

ii. Look for the waterbody name in the appropriate Table;

iii. If the waterbody is not listed, use (b)5ii, 5iii, 5vi, and 5vii below to determine the appropriate classification.

5. To find unnamed waterways or waterbodies or named waterways or waterbodies which do not appear in the listing, use the following instructions:

i. Unnamed or unlisted freshwater streams that flow into streams classified as FW2-TP, FW2-TM, or FW2-NT take the classification

of the classified stream they enter, unless the unlisted stream is a PL water which is covered in (b)5vii below. If the stream could be a C1 water, see (b)5vi below.

ii. All freshwater lakes, ponds and reservoirs that are five or more acres in surface area, that are not located entirely within the Pinelands Area boundaries (see (b)5vii below) and that are not specifically listed as FW2-TM are classified as FW2-NT. This includes lakes, ponds and reservoirs on segments of streams which are classified as FW2-TM or FW2-TP such as Saxton Lake on the Musconetcong River. If the waterbody could be ***a*** C1 water, also check (b)5vi below.

iii. All freshwater lakes, ponds and reservoirs, that are less than five acres in surface area, upstream of and contiguous with FW2-TP or FW2-TM streams, and which are not located entirely within the Pinelands Area boundaries (see (b)5vii below) are classified as FW2-TM. All other freshwater lakes, ponds and reservoirs that are not otherwise classified in this subsection or the following Tables are classified as FW2-NT. If the waterbody could be a C1 water, also check (b)5vi below.

iv. Unnamed or unlisted streams that enter FW2 lakes, ponds and reservoirs take the classification of either the listed tributary stream flowing into the lake with the highest classification or the listed tributary stream leaving the lake with the highest classification, whichever has the highest classification, or, if there are no listed tributary or outlet streams to the lake, the first listed stream downstream of the lake. If the stream is located within the boundaries of the Pinelands Area, see (b)5vii below; if it could be a C1 water, also see (b)5vi below.

v. Unnamed or unlisted saline waterways and waterbodies are classified as SE1 in the Atlantic Coastal Basin. Unnamed or unlisted saline waterways which enter SE2 or SE3 waters in the Passaic, Hackensack and New York Harbor Complex basin are classified as SE2 unless otherwise classified within Table 3 in (e) below. Freshwater portions of unnamed or unlisted streams entering SE1, SE2, or SE3 waters are classified as FW2-NT. This only applies to waters that are not PL waters (see ***[(c)]****(b)**5vii below). If the waterbody or waterway could be a C1 water, also see ***[(c)]****(b)** 5vi below.

vi. If the waterway or waterbody of interest flows through or is entirely located within State parks, forests or fish and game lands, Federal wildlife refuges, other special holdings, or is a State shellfish water as defined in N.J.A.C. 7:9-4, the Department's maps should be checked to determine if the waterbody of interest is mapped as a C1 water. If the waterway or waterbody does not appear on the United States Geological Survey quadrangle that the Department used as a base map in its designation of the C1 waters, the Department will determine on a case-by-case basis whether the waterway or waterbody should be designated as C1.

vii. All waterways or waterbodies, or portions of waterways or waterbodies, that are located within the boundaries of the Pinelands Area established at N.J.S.A. 13:18A-11a are classified as PL unless they are listed as FW1 waters in Table 6 in (h) below. A tributary entering a PL stream is classified as PL only for those portions of the tributary that are within the Pinelands Area. Lakes are classified as PL only if they are located entirely within the Pinelands Area.

6. The following 10 classifications are used for the sole purpose of identifying the water quality classification of the waters listed in the Tables in (c) through (h) below:

i. "FW1" means freshwaters wholly within Federal or State lands or special holdings that are preserved for posterity and are not subject to manmade wastewater discharges.

ii. "FW2-TP" means FW2 Trout Production.

iii. "FW2-TM" means FW2 Trout Maintenance.

iv. "FW2-NT" means FW2 Non Trout.

v. "PL" means Pinelands Waters.

vi. "SE1" means saline estuarine waters whose designated uses are listed in N.J.A.C. 7:9-4.12(d).

vii. "SE2" means saline estuarine waters whose designated uses are listed in N.J.A.C. 7:9-4.12(e).

viii. "SE3" means saline estuarine waters whose designated uses are listed in N.J.A.C. 7:9-4.12(f).

ix. "SC" means the general surface water classification applied to saline coastal waters.

x. FW2-NT/SE1 (or a similar designation that combines two classifications) means a waterway in which there may be a salt water/fresh water interface. The exact point of demarcation between the fresh and saline waters must be determined by salinity measurements and is that point where the salinity reaches 3.5 parts per thousand at mean high tide. The stream is classified as FW2-NT in the fresh portions (salinity less than or equal to 3.5 parts per thousand at mean high tide) and SE1 in the saline portions.

7. The following water quality designations are used in Tables 1 through 5 in (c) through (g), respectively, below:

i. "(C1)" means Category 1 waters;

ii. "(tp)" indicates trout production in waters which are classified as FW1. This is for information only and does not affect the water quality criteria for those waters;

iii. "(tm)" indicates trout maintenance in waters which are classified as PL or FW1. For FW1 waters this is for information only and does not affect the water quality criteria for those waters.

(c) The surface water classifications in Table 1 are for waters of the Atlantic Coastal Basin*[;]**:*

TABLE 1

WATER BODY	CLASSIFICATION
ABRAMS CREEK	
[(Marmoral)]*(Marmora)** —Entire length, except portion outside the boundaries of the MacNamara Wildlife Management Area	FW2-NT/SE1(C1)
(Griscom)—Portions of the Creek and tributaries outside of the MacNamara Wildlife Management Area	FW2-NT/SE1
ABSECON BAY (Absecon)—All waters within Absecon Wildlife Management Area	SE1(C1)
ABSECON CREEK (Absecon)—Entire length	FW2-NT/SE1
ARNOLD POND (Barnegat)	FW2-NT/SE1(C1)
ATLANTIC OCEAN	
(Offshore)—Waters from the shoreline out to the three mile limit, except areas described below	SC
(Beach Haven)—Waters of the Atlantic Ocean out to the State's three mile limit from Beach Haven Inlet to Cape May Point, excluding the following waters:	SC(C1)
1. (Atlantic City)—All of the Ocean waters inshore of a line that begins at the center of Convention Hall, Atlantic City bearing approximately 153 degrees T (True North) and extends 2.0 nautical miles to a point with coordinates of latitude 39 degrees 19.4 minutes N., longitude 74 degrees 25.1 minutes W., from this point, approximately 2 nautical miles offshore, the line runs parallel to the shoreline in a southwesterly direction for approximately 2.1 nautical miles to a point with coordinates of latitude 39 degrees 18.4 minutes N., longitude 74 degrees 27.5 minutes W., then bearing approximately 333 degrees T	

(reciprocal 153 degrees T) for approximately 1.9 nautical miles to the outermost tip of the Ventnor City Fishing Pier located at the Boardwalk and South Cambridge Ave., City of Ventnor, then along that pier to the shore and terminating.

2. (Ocean City)—All of the ocean waters inshore of a line which begins at the City of Ocean City's Beach Patrol, First Aid and Rest Room building located on the beach at 34th Street, with coordinates of latitude 39 degrees 15.0 minutes N., longitude 74 degrees 36.6 minutes W., and bears approximately 126 degrees T (True North) for approximately 1.5 nautical miles from the shoreline to a point with coordinates of latitude 39 degrees 14.1 minutes N., longitude 74 degrees 35.0 minutes W., then bears approximately 216 degrees T along the shoreline in a southwesterly direction 1.5 nautical miles off-shore, for approximately 2.3 nautical miles to a point with coordinates of latitude 39 degrees 12.3 minutes N., longitude 74 degrees 36.7 minutes W., then bears approximately 306 degrees T for approximately 1.4 nautical miles to the outermost tip of Anglers Fishing Club's Pier, 5825 Central Ave., Ocean City, then along that pier to the shoreline.
3. Seven mile beach outfall exclusion
4. Wildwood outfall exclusion

TRIBUTARIES, ATLANTIC OCEAN
(New Jersey Coast)—All those streams or segments of streams that flow directly into the Atlantic Ocean or into back bays of the Ocean which are not included elsewhere in this list, are not within the boundaries of the Pinelands Protection or Preservation Areas and are not mapped as C1 waters by the Department FW2-NT/SE1
(Pinelands)—All streams or segments of streams which flow directly into the Atlantic Ocean or into back bays of the Ocean, are within the boundaries of the Pinelands Protection and Preservation Areas and are not classified as FW1 in this Table PL
(New Jersey Coast)—All streams or segments of streams which flow directly into the Atlantic Ocean or into back bays of the Ocean, are mapped as C1 waters by the Department are not trout maintenance waters, and are not classified as FW1 in this Table FW2-NT/SE1(C1)
BABCOCK CREEK
(Marmora)—Entire length FW2-NT/SE1(C1)
BALLANGER CREEK
(New Gretna)—Source to Pollys Ditch FW2-NT/SE1
(New Gretna)—Pollys Ditch to Bay SE1(C1)
BANKS CREEK (Marmora)—Entire length SE1(C1)
BARNEGAT BAY
(Barnegat National Wildlife Refuge)—All waters within the boundaries of the Barnegat National Wildlife Refuge SE1(C1)
(Barnegat Light)—All other waters of the bay SE1(C1)
(Island Beach State Park)—All freshwater ponds within the boundaries of Island Beach State Park FW1
(Island Beach State Park)—All waters in the Park, not classified as FW1 above FW2-NT/SE1/SC(C1)
BARNEGAT BAY TRIBUTARIES—See ATLANTIC OCEAN, TRIBUTARIES
BASS RIVER
(Oswego Lake)—Source to Pineland Protection and Preservation Area boundary at the Garden State Parkway, except those branches described separately below PL
(New Gretna)—Pineland Protection and Preservation Area boundary to the boundary of shellfish waters FW2-NT/SE1
(New Gretna)—Boundary of shellfish waters to Mullica River SE1(C1)
(Bass River State Forest)—Tommy's Branch from its headwaters to the Bass River Recreation Area service road FW1
(Bass River State Forest)—Falkenburg Branch of Lake Absegami from its headwaters to the Lake FW1
BATSTO RIVER
(Browns Mills)—Entire length, except waters described separately below PL
(Wharton)—Brooks and tributaries to the Batsto River between and immediately to the west of Tylertown and Crowleytown, from their head-waters to the head of tide at mean high water FW1
(Wharton)—The easterly branches of the Batsto River from Batsto Village upstream to the confluence with Skits Branch FW1
BEACH THOROFARE
(Margate)—Entire length SE1(C1)
BEAR SWAMP BROOK
(Squankum)—Entire length, except segment described below FW2-NT
(Allaire)—Segment within the boundaries of Allaire State Park FW2-NT(C1)

BIG ELDER CREEK	
(Sea Isle City)—Segment within the boundaries of Marmora Wildlife Management Area	SE1(C1)
(Sea Isle City)—Segment outside the boundaries of Marmora Wildlife Management Area	SE1
BIG GRAVELING CREEK (Great Bay)—Entire length	SE1(C1)
BIG GREAVES CREEK	
(MacNamara)—Segment of the Creek outside the boundaries of MacNamara Wildlife Management Area	SE1
(MacNamara)—Creek and tributaries within the boundaries of MacNamara Wildlife Management Area	SE1(C1)
BIG THOROFARE	
(Tuckerton)—Source to boundary of Great Bay Blvd. Wildlife Management Area	SE1
(Tuckerton)—Segment within the boundaries of Great Bay Blvd. Wildlife Management Area	SE1(C1)
BLUEFISH BROTHERS (Stone Harbor)—Entire length	SE1(C1)
BLUEFISH CREEK (Stone Harbor)—Entire length	SE1(C1)
BOG BRANCH CREEK	
(Middletown)—Entire length	SE1(C1)
BRIGANTINE (Brigantine National Wildlife Refuge)—All waters within the boundaries of the Brigantine National Wildlife Refuge	FW2-NT/SE1(C1)
BRISBANE LAKE	
(Allenwood)—The lake and its tributaries within the boundaries of Allaire State Park, except Mill Run, which is listed separately, and the tributary described separately below	FW2-NT(C1)
(Allaire State Park)—The easterly tributary to Mill Run upstream of Brisbane Lake, located entirely within the Allaire State Park boundaries	FW1
(Mill Run)—Mill Run from its source to Brisbane Lake	FW2-NT(C1)
(Mill Run)—Mill Run from the outlet of Brisbane Lake to the Manasquan River	FW2-NT*(C1)*
BROAD CREEK (New Gretna)—Entire length	SE1(C1)
BROAD THOROFARE	
(Longport)—South of Rt. 152	SE1
(Longport)—North of Rt. 152	SE1(C1)
BROTHERS CREEK	
(Burleigh)—Entire length	SE1(C1)
CABBAGE THOROFARE (Great Bay)—Entire length	SE1(C1)
CEDAR BRIDGE BRANCH	
(Lakewood)—Entire length	FW2-NT
CEDAR CREEK	
(Manahawkin)—Source to boundaries of the Manahawkin Wildlife Management Area	FW2-NT/SE1
(Manahawkin)—Creek and tributaries within the boundaries of the Manahawkin Wildlife Management Area	FW2-NT/SE1(C1)
CEDAR CREEK	
(Cedar Crest)—Source to the boundaries of the Pinelands Protection and Preservation Area at the Garden State Parkway, except branches described separately below	PL
(Berkeley)—Garden State Parkway to Barnegat Bay	FW2-NT/SE1
(Greenwood Forest)—Webbs Mill Branch and tributaries located entirely within the boundaries of Greenwood Forest Tract	FW1
(Greenwood Forest)—Chamberlain's Branch and five tributaries which originate in and are located entirely within the boundaries of the Greenwood Forest Tract upstream of the blueberry farm exception	FW1
(Greenwood Forest)—Other tributaries to Chamberlain's Branch, located within the boundaries of the Greenwood Forest Tract	FW1
CEDAR HAMMOCKS CREEK	
(English Creek Landing)—Entire length	SE1(C1)
CEDAR RUN	
(Stafford)—Source to the boundaries of the Pinelands Protection and Preservation Area at the Garden State Parkway	PL
(Cedar Run)—Garden State Parkway to the boundaries of the Barnegat National Wildlife Refuge	FW2-NT/SE1
(Barnegat)—National Wildlife Refuge boundaries to Barnegat Bay	FW2-NT/SE1(C1)
CEDAR SWAMP CREEK	
(Cedar Spring)—Entire length, except segment described separately below	FW2-NT/SE1
(Marmora)—Creek and tributaries within the boundaries of the MacNamara Wildlife Management Area	FW2-NT/SE1(C1)
CHAMBERLAIN BRANCH—See CEDAR CREEK	
CHANNEL CREEK (Barnegat Bay)—Entire length	SE1(C1)
CHARLEY CREEK	
(Marmora)—Entire length	FW2-NT/SE1(C1)
COLLINS TIDE PONDS (Barnegat)	FW2-NT/SE1(C1)
COMMANDO CREEK	
(Marmora)—Entire length	SE1(C1)
CRANBERRY BROOK	
(Monmouth)—Entire length	FW2-NT/SE1
DAVENPORT BROOK	
(Berkeley)—Source to the boundaries of the Pinelands Protection and Preservation Area at the Penn Central railroad tracks	PL
(Toms River)—Railroad tracks to confluence with Wrangel Brook	FW2-NT
DEEP CREEK (Herbertsville)—Entire length	FW2-NT

DEEP RUN (Wharton)—Run and tributaries from their sources to Springer's Brook	FW1
DICKS BROOK (Larrabee's Crossing)—Entire length	FW2-NT
DINNER POINT CREEK (Staffordsville)—Entire length	SE1(C1)
DOCK THOROFARE (Northfield)—Entire length	SE1(C1)
DOVE MILL BRANCH—See TOMS RIVER	
EDWARD CREEK (Sea Isle City)—Source to the boundary of Marmora Wildlife Management area	SE1
(Sea Isle City)—Boundary of Marmora Wildlife Management Area to Horn Creek	SE1(C1)
FALKENBURG BRANCH—See BASS RIVER	
FLAT CREEK (Marmora)—Entire length	FW2-NT/SE1(C1)
FLATTERAS CREEK (Beach Haven Heights)—Entire length	SE1(C1)
FORKED RIVER (Lacey)—River and branches from their sources to the boundaries of the Pinelands Protection and Preservation Area at the Garden State Parkway	PL
(Forked River)—Garden State Parkway to Barnegat Bay	FW2-NT/SE1
FORTESCUE (Fortescue)—All waters within the Fortescue Wildlife Management Area	FW2-NT/SE1(C1)
GIBSON CREEK (Gibson Landing)—Entire length, except segment described below	PL
(Marmora)—Segment and tributaries within the MacNamara Wildlife Management area	FW2-NT/SE1(C1)
GO THROUGH CREEK (Burleigh)—Entire length, except segment described below	SE1
(Burleigh)—Segment within the boundaries of the Marmora Wildlife Management Area	SE1(C1)
GOING THROUGH CREEK (English Creek Landing)	SE1(C1)
GREAT BAY (Brigantine)—All waters of the Bay and all natural waterways which are tributary to the Bay and all waters, including both natural and manmade channels and ponds within the boundaries of the Brigantine National Wildlife Refuge and the Great Bay Wildlife Management Area	FW2-NT/SE1(C1)
GREAT EGG HARBOR RIVER (Berlin)—Source to confluence with Tinker Branch	FW2-NT
(Berlin)—Tinker Branch, the River from its confluence with Tinker Branch, and all tributaries within the Pinelands Protection and Preservation Area, downstream to the boundary at the Rt. 40 bridge in Mays Landing	PL
(Winslow)—All tributaries or segments of tributaries outside of the boundaries of the Pinelands Protection and Preservation Area, downstream to Rt. 40 at Mays Landing	FW2-NT
(Mays Landing)—Rt. 40 bridge to Great Bay Harbor, except those tributaries described separately below	FW2-NT/SE1
(Mays Landing)—All tributaries or segments of tributaries within the boundaries of the Pinelands Protection and Preservation areas	PL
(Egg Harbor)—Tributaries and all other waters within the MacNamara Wildlife Management Area, except tributary described below	FW2-NT/SE1(C1)
(Tuckahoe)—Tributary adjacent to and north of Hawkin's Creek from its origin to the point where the influence of impoundment occurs	FW1
GREAT SOUND (Avalon)—All waters within Great Sound State Park	SE1(C1)
GREAT THOROFARE (Ventnor)—West of Rt. 40	SE1(C1)
(Ventnor)—East of Rt. 40	SE1
GRISCOM CREEK (Gibson Landing)—Entire Length	FW2-NT/SE1(C1)
GUNNING RIVER (Barnegat)—Entire length, except segment described below	FW2-NT/SE1
(Barnegat)—Stream and tributaries within the boundaries of Barnegat National Wildlife Refuge	FW2-NT/SE1(C1)
HALFWAY CREEK (Middletown)—Source to the boundary of the MacNamara Wildlife Management Area	FW2-NT/SE1
(MacNamara)—Creek and tributaries within the boundaries of the MacNamara Wildlife Management Area	SE1(C1)
HARRY POND (Barnegat)	FW2-NT/SE1(C1)
HATFIELD CREEK (Beach Haven Heights)—Entire length	SE1(C1)
HAWKINS CREEK (Tuckahoe)—Source to the point where impoundment influences flow	FW1
(Tuckahoe)—Downstream of the influence of impoundment	SE1(C1)
HAY STACK BROOK (Howell)—Entire length	FW2-NT
HIGHS BEACH (Highs Beach)—All waters within the Wildlife Management Area south of Highs Beach	FW2-NT/SE1(C1)
HOSPITALITY CREEK (Longport)—Entire length	SE1(C1)
JACOVY CREEK (Stone Harbor)—Entire length	SE1(C1)
JAKES BRANCH (Berkeley)—Source to the boundaries of the Pinelands Protection and Preservation Area at the Garden State Parkway	PL
(Beachwood)—Garden State Parkway to Toms River	FW2-NT/SE1

JAY CREEK SE1(C1)
JIMMIES CREEK
(Stone Harbor)—Source to the boundary of Great Bay Wildlife Management Area SE1(C1)
(Stone Harbor)—Segments of the Creek outside the boundaries of Great Bay Wildlife Management Area SE1
JOSH CREEK (Stone Harbor)—Entire length SE1(C1)
JUDIES CREEK
(Great Bay)—Source to widening of creek SE1
(Great Bay)—Widening of creek to mouth SE1(C1)
JUMPING BROOK
(Neptune)—Entire length FW2-NT/SE1
KNOLL POND (Barnegat) FW2-NT/SE1(C1)
LAKES BAY (Ventnor) SE1(C1)
LAKES CHANNEL
(Ventnor)—Entire length SE1(C1)
LITTLE GREAVES CREEK
(MacNamara)—Entire length SE1(C1)
LITTLE SCOTCH BONNET
(Stone Harbor)—Entire length, except segment described below SE1
(Stone Harbor)—Segment within the boundaries of Marmora Wildlife Management Area SE1(C1)
LITTLE THOROFARE
(Tuckerton)—Entire length SE1(C1)
LONG POINT CREEK
(Marmora)—Entire length FW2-NT/SE1(C1)
LONG SWAMP BROOK
(Squankum)—Entire length, except segment within the boundaries of Allaire State Park FW2-NT
(Allaire)—Segment within the boundaries of Allaire State Park FW2-NT(C1)
LOWER LONG REACH (Stone Harbor)—Entire length SE1(C1)
LUDLAM CREEK
(Marmora)—Entire length SE1(C1)
MAIN MARSH CREEK
(Brigantine)—Entire length SE1(C1)
MANAHAWKIN CREEK
(Manahawkin)—Source to the boundaries of Manahawkin Wildlife Management Area FW2-NT/SE1
(Manahawkin)—Within the boundaries of the Wildlife Management Area FW2-NT/SE1(C1)
MANASQUAN RIVER
MAIN STEM
(Freehold)—Source to Rt. 9 bridge, except tributaries described separately under Tributaries, below FW2-NT
(Farmingdale)—Rt. 9 bridge to the "Narrows" in the vicinity of the Meadows Marina, except tributaries described separately under Tributaries, below FW2-TM
(Meadows Marina)—The "Narrows" to surf waters SE1
TRIBUTARIES, MANASQUAN RIVER (See also BRISBANE LAKE)
(Adelphia)—Entire length FW2-NT
(Allaire)—Those portions of the first and second southerly tributaries west of Hospital Rd. which are located entirely within the boundaries of Allaire State Park FW1(TM)
(Brick)—Tributaries within the boundaries of Allaire State Park and Manasquan River Wildlife Management Area, except those designated FW1, above FW2-TM(C1)
(Freehold)—Tributaries within the boundaries of Turkey Swamp Wildlife Management Area FW2-NT(C1)
MARMORA WILDLIFE MANAGEMENT AREA
(Strathmere)—All waters within the boundaries of Marmora Wildlife Management Area FW2-NT/SE1(C1)
MARSH BOG BROOK
(Farmingdale)—Source to Yellow Brook Rd. FW2-NT
(Allaire)—Allaire State Park boundary at Yellow Brook Rd. to Manasquan River FW2-NT(C1)
MASONS CREEK
(Marmora)—Entire length SE1(C1)
MCNEALS BRANCH—See TUCKAHOE RIVER
METEDECONK RIVER
SOUTH BRANCH
(Lakewood)—Entire length, except segment described below FW2-NT
(Turkey Swamp)—Tributaries within the boundaries of Turkey Swamp Wildlife Management Area FW2-NT(C1)
NORTH BRANCH METEDECONK RIVER
(Freehold)—Source to Aldrich Rd., except segment described below FW2-NT
(Turkey Swamp)—River and tributaries within the boundaries of Turkey Swamp Wildlife Management Area FW2-NT(C1)
(Lakewood)—Aldrich Rd. to Lanes Mills FW2-TM
(Brick)—Lanes Mills to confluence with Metedeconk River, South Branch FW2-NT
MAIN STEM METEDECONK RIVER
(Brick)—Confluence of North and South branches to Barnegat Bay FW2-NT/SE1
MIDDLE RIVER
(Tuckahoe)—Entire length, except the segment described below FW2-NT/SE1
(Middletown)—Segment within the boundaries of MacNamara Wildlife Management Area FW2-NT/SE1(C1)
MILE THOROFARE—Entire length SE1(C1)
MILL RUN (Allaire)—See BRISBANE LAKE
MINGAMAHONE BROOK
(Farmingdale)—Entire length, except segment described below FW2-TM
(Allaire)—Brook and tributaries within the boundaries of Allaire State Park FW2-TM(C1)
MIRY RUN (MacNamara)—Entire length FW2-NT/SE1(C1)
MOTT CREEK (Brigantine)—Entire length SE1(C1)

MUD CREEK (MacNamara)—Entire length SE1(C1)
MUDDY FORD BROOK (Larrabee's Crossing)—Entire length FW2-TM
MULBERRY THOROFARE (Northfield)—Entire length SE1(C1)
MULLICA RIVER
(Berlin)—Source to Pinelands Protection and Preservation Area boundaries at the Garden State Parkway, except branches and tributaries described below PL
(Wharton)—Skit Branch and tributaries from their headwaters to the confluence with Robert's Branch FW1
(Wharton)—Stream in the southeasterly corner of the Wharton Tract located between Ridge Rd. and Seaf Weeks Rd., downstream to the boundaries of the Wharton Tract FW1
(Wharton)—Gun Branch from its headwaters to US Rt. 206 FW1
(New Gretna)—River and tributaries from the Pinelands Protection and Preservation Area boundary to Great Bay SE1(C1)
NARROWS CREEK (Middletown)—Entire length SE1(C1)
NORTH CHANNEL POND (Stone Harbor) FW2-NT/SE1(C1)
OLDMAN CREEK (Stone Harbor)—Entire length SE1(C1)
OTTER CREEK (Middletown)—Entire length SE1(C1)
OYSTER CREEK
(Brookville)—Source to the boundaries of the Pinelands Protection and Preservation Area at the Garden State Parkway PL
(Forked River)—Garden State Parkway to Barnegat Bay FW2-NT/SE1
OYSTER CREEK (Great Bay)—Entire length SE1(C1)
RING ISLAND CREEK (Stone Harbor)—Entire length SE1(C1)
RISLEY CHANNEL (Margate)—Entire length SE1(C1)
ROUNDABOUT CREEK (New Gretna)—Entire length SE1(C1)
SALT CREEK (Stone Harbor)—Entire length SE1(C1)
SCULL BAY (Linwood) SE1(C1)
SEDGE CREEK—Entire length SE1(C1)
SHARK CREEK (Stone Harbor)—Entire length SE1(C1)
SHARK RIVER
(Colts Neck)—Source to Rt. 33 FW2-NT
(Neptune)—Rt. 33 to Brighton Ave. bridge, Glendola FW2-TM/SE1
(Glendola)—Brighton Ave. bridge to Atlantic Ocean FW2-NT/SE1
SHELL THOROFARE (Wildwood Gables)—Entire length SE1(C1)
SHELTER ISLAND BAY (Margate) SE1(C1)
SHELTER ISLAND WATERS (Margate)—Entire length SE1(C1)
SKIT BRANCH—See MULLICA RIVER
SOD THOROFARE (Linwood)—Entire length SE1(C1)
SOUTHEAST CREEK (Stone Harbor)—Entire length SE1(C1)
SQUANKUM BROOK
(Squankum)—Entire length, except segment described below FW2-NT
(Allaire)—Segment within Allaire State Park FW2-NT(C1)
STEELMAN BAY (Somers Point) SE1(C1)
SWAN POND (Marmora) FW2-NT/SE1(C1)
SWAN POND RACE (Marmora)—Entire length FW2-NT/SE1(C1)
TAUGH CREEK
(Whitesboro)—Entire length, except segment described below SE1(C1)
(Whitesboro)—Portions outside the boundaries of SE1
TIMBER SWAMP BROOK (Oak Glen)—Entire length FW2-NT
TINKER BRANCH—See GREAT EGG HARBOR RIVER
TITMOUSE BROOK (Howell)—Entire length FW2-TM
TOMMYS BRANCH—See BASS RIVER
TOMS RIVER
MAIN STEM
(Holmeson)—Source to Rt. 528 bridge, Cassville except those tributaries described separately under Tributaries below FW2-NT
(Van Hiseville)—Rt. 528 bridge to Rt. 547 bridge in Whitesville, except tributaries described separately, under Tributaries below PL*[(TM)]**(tm)*
(Whitesville)—Rt. 547 bridge to Pinelands Protection and Preservation Area boundaries at the NJ Central Railroad tracks, except tributaries described separately, under Tributaries below PL*[(TM)]**(tm)*
(Manchester)—NJ Central Railroad tracks to Rt. 571 Bridge, except tributaries described separately, under Tributaries below FW2-TM
(Toms River)—Rt. 571 Bridge to Barnegat Bay, except tributaries described separately, under Tributaries, below FW2-NT/SE1
TRIBUTARIES, TOMS RIVER
(Holmeson)—Tributaries within the boundaries of the Pinelands Protection and Preservation Area PL
(Van Hiseville)—All tributaries outside the boundaries of the Pinelands Protection and Preservation Area which enter the River between the Rt. 528 bridge, Cassville and the Rt. 547 bridge, Whitesville, except Dove's Mill Branch described separately below FW2-TM
(Toms River)—All tributaries within the boundaries of the Pinelands Protection and Preservation Area PL
(Archer's Corners)—All tributaries outside the boundaries of the Pinelands Protection and Preservation Area and within the boundaries of Collier's Mills Wildlife Management Area FW2-NT(C1)

DOVE'S MILL BRANCH	
(Van Hiseville)—Entire length, except the segment described separately below	FW2-NT
(Holmansville)—Stream and tributaries within Butterfly Bogs Wildlife Management area	FW2-NT(C1)
TUCKAHOE LAKE (Tuckahoe)	FW2-NT(C1)
TUCKAHOE RIVER	
(Milmay)—Source to Pinelands Protection and Preservation Area boundary at Rt. 49	PL
(Head of River)—McNeals Branch and the River within the boundaries of the Peaselee Wildlife Management Area, except tributaries within the boundaries of the Pinelands Protection and Preservation Area, described separately below	FW2-NT/SE1(C1)
(Head of River)—Tributaries within the Pinelands Protection and Preservation Area boundaries	PL
(Tuckahoe)—Edge of Fish and Wildlife Management area at confluence with Warners Mill Stream to Great Egg Harbor except segment described separately below	FW2-NT/SE1(C1)
(Tuckahoe)—River, tributaries and all other waters within boundaries of the MacNamara Wildlife Management Area	FW2-NT/SE1(C1)
TULPEHOCKEN CREEK	
(Wharton)—Creek and tributaries from their origin to the confluence with Featherbed Brook	FW1
(Wharton)—The westerly tributaries and those natural ponds within the lands bounded by Hawkins Rd., Hampton Gate Rd., and Sandy Ridge Rd.	FW1
TURTLE GROUND CREEK (Jeffers Landing)—Entire length	SE1(C1)
TURTLE GUT (Ventnor)—Entire length	SE1(C1)
WADING RIVER	
(Chatsworth)—Entire length, except tributaries described separately below	PL
(Greenwood Forest)—Westerly tributary to Howardsville Cranberry Bog Reservoir and other tributaries located entirely within the boundaries of the Greenwood Forest Tract	FW1
WARNERS MILL STREAM	
(Head of River)—Source to Pinelands Protection and Preservation Area boundary at Aetna Dr.	PL
(Head of River)—Aetna Dr. to boundary of the Peaselee Wildlife Management Area	FW2-NT/SE1
(Head of River)—Within the boundaries of the Peaslee Wildlife Management Area to the Tuckahoe River	FW2-NT/SE1(C1)
WEBBS MILL BRANCH—See CEDAR CREEK	
WIGWAM CREEK	
(Great Bay)—Source to Rt. 9	FW2-NT/SE1
(Great Bay)—Rt. 9 to Mott Creek	SE1(C1)
WINTER CREEK (New Gretna)—Entire length	SE1(C1)
WHIRLPOOL CHANNEL (Margate)—Entire length	SE1(C1)
WORLDS END CREEK (New Gretna)—Entire length	SE1(C1)
WRANGLE BROOK	
(Keswick Grove)—Entire length, except segment described below	FW2-NT/SE1
(Whiting)—Brook and tributaries within Whiting Wildlife Managment Area	FW2-NT(C1)
WRANGLE CREEK (Forked River)—Entire length and all waters within Forked River Game Farm	FW2-NT/SE1(C1)
WRECK POND BROOK (Wall)—Entire length	FW2-NT

(d) The surface water classifications in Table 2 are for waters of the Delaware River Basin*[;]**:*

TABLE 2

WATER BODY	CLASSIFICATION
ALEXAUKEN CREEK (Lambertville)—Entire length	FW2-TM
ALLAMUCHY CREEK (Allamuchy)—Entire length	FW2-NT(C1)
ALLAMUCHY POND (Allamuchy)	FW2-NT(C1)
ALLAMUCHY POND TRIBUTARIES (Allamuchy)—All tributaries that are located entirely within the boundaries of Allamuchy State Park and that flow into Allamuchy Pond	FW1
ALLOWAY CREEK (Alloways)—Entire length	FW2-NT/SE1
ALMS HOUSE BROOK (Hampton)—Source to, but not including, County Farm Pond	FW2-TM
(Frankford)—County Farm Pond to Paulins Kill	FW2-NT
ANDOVER JUNCTION BROOK (Andover)—Entire length	FW2-TM
ASSISCUNK CREEK (Burlington)—Entire length	FW2-NT
ASSUNPINK CREEK (Washington)—Source to boundary of Van Ness Park, except segments described separately below	FW2-NT
(Roosevelt)—Creek and those tributaries within the boundaries of the Assunpink Wildlife Management Area	FW2-NT(C1)
(Quaker Bridge)—Boundary of Van Ness Park to Quaker Bridge Rd.	FW2-NT(C1)
(Quaker Bridge)—Quaker Bridge Rd. to Park boundary	FW2-TM(C1)
(Lawrence)—Van Ness Park boundary to, but not including, Whitehead Mill Pond	FW2-TM
(Trenton)—Whitehead Mill Pond to Delaware River	FW2-NT
BALDRIDGE CREEK (Salem Creek)—Entire length, except segments described below	FW2-NT/SE1(C1)
(Salem Creek)—Segments outside the boundaries of the Supawna National Wildlife Refuge	FW2-NT/SE1

BARKERS MILL BROOK (Independence)—Entire length	FW2-TM
BAY PONDS (Egg Island)	FW2-NT/SE1(C1)
BEADONS CREEK (Fortescue)—Entire length	SE1(C1)
BEAR BROOK (Johnsonburg)—Entire length	FW2-TP(C1)
BEAR CREEK (Johnsonburg)—Entire length	FW2-TM
BEATTY'S BROOK (Penwell)—Entire length	FW2-TP(C1)
BEAVER BROOK (Hope)—Entire length	FW2-NT
BEAVERDAM BRANCH (Glassboro)—Source to boundary of the Glassboro Wildlife Management Area	FW2-NT
(Glassboro)—Within the boundaries of Glassboro Wildlife Management Area	FW2-NT(C1)
BEERS CREEK (Shaytown)—Entire length	FW2-TP(C1)
BIG FLAT BROOK (Montague)—Sawmill Lake to confluence with Parker Brook, except segments described directly below and those described under the listing for Flat Brook, below	FW2-NT(C1)
(Stokes State Forest)—Two tributaries to Big Flat Brook which originate along Struble Road in Stokes State Forest to their confluences with Big Flat Brook on Fish and Game properties boundaries	FW1
(Sandyston)—Confluence with Parker Brook, through the Blewitt Tract, to the confluence with Little Flat Brook, except tributaries described under the listing for Flat Brook, below	FW2-TP(C1)
BIG TIMBER CREEK (Westville)—Entire length	FW2-NT
BLACKBIRD GUT (Newport)—Entire length	SE1(C1)
BLACKS CREEK (Bordentown)—Entire length	FW2-NT
BLAIR CREEK (Hardwick)—Source to Bass Lake	FW2-NT
(Hardwick Center)—Bass Lake outlet to Paulins Kill	FW2-TM
BOILER DITCH (Egg Island)—Entire length	FW2-NT/SE1(C1)
BRASS CASTLE CREEK (Brass Castle)—Entire length	FW2-TP(C1)
BROOKALOO SWAMP (Hope)—Entire length	FW2-TM
BUCKHORN CREEK (Hutchinson)—Entire length	FW2-TP(C1)
BUCKS DITCH (Mad Horse Creek)—Entire length	SE1(C1)
BUCKSHUTEM CREEK (Centre Grove)—Entire length, except segments described separately below	FW2-NT
(Millville)—Creek and tributaries within the boundaries of Millville Wildlife Management Area, except those tributaries described separately below	FW2-NT(C1)
(Millville)—Joshua and Pine Branches to their confluence with Buckshutem Creek	FW1
CAT GUT (Mad Horse Creek)—Entire length	SE1(C1)
CEDAR BRANCH (Manumuskin River)—Source to Manumuskin River	FW1
CEDAR BRANCH (Frames Corner)—Entire length, except segment described below	FW2-NT/SE1
(Bevans)—That portion of the Branch and all tributaries within the boundaries of Bevans Wildlife Management Area	FW2-NT/SE1(C1)
CEDAR BRANCH (Millville)—See NANTUXENT CREEK	
CEDAR CREEK (Dividing Creek Station)—Entire length, except portions described separately below	FW2-NT
(Millville)—Those tributaries to Cedar Creek that originate in and are located entirely within the boundaries of the Millville Fish and Game Tract	FW1
CEDARVILLE POND (Cedarville)	FW2-NT(C1)
CHERRY TREE CREEK (Mad Horse Creek)—Entire length	SE1(C1)
CLARKS POND (Bridgeton)	FW2-NT(C1)
CLEARVIEW CREEK (Hampton)—Source to Alms House Brook	FW2-NT
CLINT MILLPOND	FW2-NT(C1)
CLOVE (MILL) BROOK (Montague)—Lake Marcia outlet to State line, except tributaries described below	FW2-TP(C1)
(High Point State Park)—The second and third northerly tributaries to Clove Brook, the tributaries to Steeny Kill Lake, and those tributaries downstream of Steeny Kill Lake that originate in High Point State Park downstream to their confluence with Clove Brook or to the High Point State Park Boundaries	FW1 (tp)
(High Point State Park)—Those northerly tributaries to Mill Brook that are located due west of Steeny Kill Lake, within the boundaries of High Point State Park	FW1 (tp)
COHANSEY RIVER (Bridgeton)—Entire length	FW2-NT/SE1
COOPER BRANCH—See RANCOCAS CREEK	
COOPER CREEK (Camden)—Entire length	FW2-NT
COPPERMINE BROOK (Pahaquarry)—Entire length	FW1
COURTENY PONDS (Egg Island)	FW2-NT/SE1(C1)
CRANBERRY LAKE (Byram)	FW2-TM(C1)
CRANBERRY LAKE OUTLET STREAM (Byram)—Entire length within Cranberry Lake State Park	FW2-NT(C1)
(Byram)—Stream outside of Cranberry Lake State Park	FW2-NT
CRISS BROOK (Stokes State Forest)—Entire length	FW1
CROSSWICKS CREEK (Bordentown)—Entire length	FW2-NT

CROW CREEK (S. Dennis)—Entire length FW2-NT/SE1(C1)
CULVER'S CREEK (Frankford)—Entire length FW2-TM
CULVER'S LAKE (Frankford) FW2-TM
DEER PARK BRANCH—See RANCOCAS CREEK
DEER PARK POND
(Allamuchy)—Pond and tributaries to the pond within Allamuchy State Park, except those tributaries classified as FW1, below FW2-NT(C1)
(Allamuchy)—All tributaries to the Pond and to its outlet stream that are located entirely within the boundaries of Allamuchy State Park FW1
(Allamuchy)—Deer Park Pond outlet stream downstream to Musconetcong River FW2-TM(C1)
DELAWANNA CREEK
(Delaware)—Entire length FW2-TM
DELAWARE AND RARITAN CANAL (Lambertville)—Entire length FW2-NT
DELAWARE RIVER
MAIN STEM (Interstate Waters—Classifications from Delaware River Basin Commission (DRBC))
(State Line)—That portion of DRBC's Zone 1C from the New York-New Jersy state line to the proposed axis of the Tocks Island Dam at River Mile 217.0 Zone 1C
(Tocks Island)—Proposed axis of Tocks Island Dam at River Mile 217.0 to the mouth of the Lehigh River at Easton, Pennsylvania, at River Mile 183.66 Zone 1D
(Easton, Pa.)—Mouth of the Lehigh River at River Mile 183.66, to the head of tide at the Trenton-Morrisville Toll Bridge, Trenton at River Mile 133.4 Zone 1E
(Trenton)—Head of tide at the Trenton-Morrisville Bridge, Trenton, River Mile 133.4 to below the mouth of Pennypack Creek, Pennsylvania at River Mile 108.4 Zone 2
(Philadelphia)—River Mile 108.4 to below the mouth of Big Timber Creek, New Jersey, at River Mile 95.0 Zone 3
(Gloucester)—River Mile 95.0 to the Pennsylvania-Delaware state line at River Mile 78.8 Zone 4
(Marcus Hook)—Pennsylvania-Delaware state line at River Mile 78.8 to Liston Pt., Delaware at River Mile 48.2 Zone 5
(Liston Point)—Delaware Bay from Liston Point, Delaware at River Mile 48.2 to River Mile 0.0 at the intersection of the centerline of the navigation channel and a line between Cape May Light and the tip of Cape Henlopen, Delaware Zone 6(C1)
TRIBUTARIES, DELAWARE RIVER
(Holland)—Entire length FW2-TP(C1)
(Port Jervis)—Unnamed or unlisted direct tributaries that are north of Big Timber Creek, are outside of the Pinelands Protection and Preservation Areas, and are not mapped as C1 waters by the Department FW2-NT
(Titusville)—Unnamed tributaries through Washington Crossing State Park FW2-NT(C1)
(Brooklawn)—Unnamed or unlisted direct tributaries, south of Big Timber Creek and north of Oldman's Creek, that are outside of the Pinelands Protection and Preservation Areas and are not mapped as C1 waters by the Department FW2-NT/SE2
(Penns Grove)—Unnamed or unlisted direct tributaries, south of and including Oldmans Creek, that are outside of the Pinelands Protection and Preservation Areas and are not mapped as C1 waters by the Department FW2-NT/SE1
(Pinelands)—All streams or segments of streams which flow directly into the Delaware River, are within the boundaries of the Pinelands Area and are not classified as FW1 waters in this Table PL
DENNIS CREEK
(South Dennis)—Entire length, except segments described below FW2-NT/SE1
(Woodbine)—All tributaries within the boundaries of the Pinelands Protection and Preservation Areas PL
(Dennis Creek)—Segment of the Creek, all tributaries, and all other surface waters within the boundaries of the Dennis Creek Wildlife Management Area FW2-NT/SE1(C1)
DEVILS GUT
(Mad Horse Creek)—Entire length, except tributaries described below SE1(C1)
(Mad Horse Creek)—Tributaries outside the Mad Horse Creek Wildlife Management Area SE1
DIVIDING CREEK
(Dividing Creek)—Entire length, except those segments described below FW2-NT/SE1
(Millville)—Those segments of tributaries that are located entirely within the boundaries of the Millville Fish and Game Tract, north of Whitehead Station FW1
DIVISION CREEK (Dix)—Entire length SE1(C1)
DOCTORS CREEK
(Red Creek)—Entire length, except segment described below FW2-NT
(Imlaystown)—Segment within Imlaystown Lake Wildlife Management Area FW2-NT(C1)
DONKEY'S CORNER BROOK
(Delaware Water Gap)—Entire length FW1
DRUMBO CREEK
(Dix)—Entire length except segment described below FW2-NT/SE1

(Dix)—Segment within the boundaries of Dix Wildlife Management Area FW2-NT/SE1(C1)
DRY BROOK (Branchville)—Entire length FW2-NT
DUCK POND (Swartswood) FW2-NT(C1)
DUNNFIELD CREEK
(Del. Water Gap)—Source to Rt. I-80 FW1
(Del. Water Gap)—Rt. I-80 to Delaware River, except tributaries described below FW2-TP(C1)
(Worthington)—Sunfish Pond, its outlet stream to the Delaware River and all unnamed waters that are located entirely within the boundaries of the Worthington Tract FW1
EAST CREEK
(Lake Nummi)—Source to boundaries of the Pinelands Protection and Preservation Area except those portions described separately below PL
(Belleplain)—All tributaries to Lake Nummi from their origins to the Lake FW1
(Belleplain)—A stream and tributary that originate just south of East Creek Mill Rd., 1.2+ miles north-northeast of Eldora and are located entirely within the boundaries of Belleplain State Forest FW1
(Eldora)—Boundary of the Pinelands Protection and Preservation Area to Delaware Bay except segment described separately below FW2-NT/SE1
(Dennis Creek)—Segment within the boundaries of the Dennis Creek Wildlife Management Area FW2-NT/SE1(C1)
ELDER GUT (Egg Island)—Entire length FW2-NT/SE1(C1)
FIDDLERS CREEK
(Titusville)—Entire length FW2-NT
FISHING CREEK (Egg Island)—Entire length FW2-NT/SE1(C1)
FISHING CREEK
(Canton)—Source to Mad Horse Creek Wildlife Management Area and all tributaries outside of the boundaries of Mad Horse Creek Wildlife Management Area SE1
(Mad Horse Creek)—Creek and tributaries within the boundaries of Mad Horse Creek Wildlife Management Area SE1(C1)
FLAT BROOK
(Blewitt)—Confluence of Big Flat Brook and Little Flat Brook to the boundary of the Blewitt Tract, except segments described below FW2-TP(C1)
(Flatbrookville)—Blewitt Tract boundary to Delaware River, except segments described below FW2-TM
(Walpack)—Segment of the Brook within Walpack Wildlife Management Area FW2-TM(C1)
(High Point)—All surface waters of the Flat Brook drainage area within the boundaries of High Point State Park and Stokes State Forest, except the following waters: (FW1)
1. Saw Mill Pond and Big Flat Brook downstream;
2. Mashipacong Pond and its outlet stream (Parker Brook) to the confluence with Big Flat Brook;
3. Lake Wapalanne and its outlet stream to the confluence with Big Flat Brook;
4. Lake Ocquittunk and waters connecting it with Big Flat Brook;
5. Stony Lake and its outlet stream (Stony Brook) to the confluence with Big Flat Brook;
6. Kittatinny Lake, that portion of its inlet stream outside the Stokes State Forest boundaries, and its outlet stream, including the Shotwell Camping Area tributary, to the confluence with Big Flat Brook;
7. Deer Lake and its outlet stream to Lake Ashroe;
8. Lake Ashroe, portions of its tributaries outside the Stokes State Forest boundaries, and its outlet stream to the confluence with Big Flat Brook;
9. Lake Shawanni and its outlet stream to its confluence with Big Flat Brook;
10. Crigger Brook and tributary to its confluence with Big Flat Brook

(Del. Water Gap)—All tributaries to Flat Brook that flow from the Kittatinny Ridge and are located entirely within the proposed boundaries of the Delaware Water Gap National Recreation Area FW1
FORKED BROOK (Stokes State Forest)—Entire length FW2-TP(C1)
FURNACE BROOK
(Oxford)—Source to railroad bridge at Oxford FW2-TP(C1)
(Oxford)—Railroad bridge to Pequest River FW2-NT
FURNACE LAKE (Oxford) FW2-TM
GARDNERS LAKE (Andover) FW2-TM
GOOSE POND (Mad Horse Creek) SE1(C1)
GOSHEN CREEK
(Woodbine)—Entire length except segment described below SE1
(Dennis Creek)—Segment and all tributaries within the Dennis Creek Wildlife Management Area SE1(C1)
GRAVELLY RUN
(Millville)—Downstream to the Millville Fish and Game Tract boundaries FW1
HAINESVILLE POND (Hainesville) FW2-NT(C1)
HAKIHOKAKE CREEK
(Milford)—Entire length, except section known as Little York Creek FW2-TM
HANCES BROOK
(Rockport)—Entire length FW2-TP(C1)

HARIHOKAKE CREEK	
(Alexandria)—Source to Rt. 519 bridge	FW2-NT
(Frenchtown)—Rt. 519 bridge to Delaware River	FW2-TM
HARRISONVILLE LAKE (Harrisonville)	FW2-NT(C1)
HATCHERY BROOK (Hackettstown)—Entire length	FW2-TM
HONEY RUN (Hope)—Entire length	FW2-TM
HOPATCONG, LAKE (Hopatcong)	FW2-TM
ILLIF, LAKE (Andover)	FW2-TM
IMLAYSTOWN LAKE (Imlaystown)	FW2-NT(C1)
INDEPENDENCE CREEK	
(Alphano)—Source to Alphano Rd.	FW2-TP(C1)
(Alphano)—Alphano Rd. to Pequest River	FW2-NT
INDIAN DITCH (Egg Island)—Entire length	FW2-NT/SE1(C1)
ISLAND DITCH (Egg Island)—Entire length	FW2-NT/SE1(C1)
JACKSONBURG CREEK (Blairstown)—Entire length	FW2-TM
JACOBS CREEK (Hopewell)—Entire length	FW2-NT
JADE RUN (Lebanon State Forest)	FW1
JOSHUA BRANCH—See BUCKSHUTEM CREEK	
KING POND (Egg Island)	SE1(C1)
KITTATINNY LAKE (Sandyston)	FW2-NT(C1)
KITTATINNY LAKE TRIBUTARY (Sandyston)—Entire length	FW2-TP(C1)
KYMER BROOK (Andover)—Entire length	FW2-NT
LAHAWAY CREEK	
(Prospertown)—Entire length, except tributaries described separately below	FW2-NT
(Colliers Mills)—All tributaries which originate in the Colliers Mills Tract north-northeast of Archers Corners, from their sources to Lahaway Creek	FW1
LAKE—See listing under Name	
LITTLE EASE RUN	
(Glassboro)—Entire length, except portion described separately below	FW2-NT
(Glassboro)—Run and tributaries within the Glassboro Wildlife Management Area, except tributary described separately below	FW2-NT(C1)
(Glassboro)—That tributary to the Branch of Little East Run which joins the Branch just south of Stangor Ave.	FW1
(Glassboro)—The first and second easterly tributaries to Little East Run north of Academy Ave.	FW1
LITTLE FLAT BROOK	
(Layton)—Source to, but not including, Hainesville Pond, except tributaries described below or under the listing for Flat Brook above	FW2-TM(C1)
(Bevans)—Tributary which originates north of Bevans—Layton Rd. down-stream to the first pond adjacent to the Fish and Game headquarters building	FW1
(Hainesville)—Hainesville Pond to Rt. 206 bridge, except tributaries described under the listing for Flat Brook, above	FW2-NT(C1)
(Hainesville)—Rt. 206 bridge to confluence with Big Flat Brook, except tributaries described under listing for Flat Brook, above	FW2-TM(C1)
LITTLE SHABACUNK CREEK (Lawrence)—Entire length	FW2-NT
LITTLE SWARTSWOOD LAKE (Swartswood)	FW2-NT(C1)
LITTLE YORK CREEK (Little York)—Entire length	FW2-TP(C1)
LOCKATONG CREEK	
(Kingwood)—Source to Idell Bridge	FW2-NT
(Raven Rock)—Idell Bridge to Delaware River	FW2-TM
LOGAN POND (Repaupo)	FW2-NT(C1)
LOMISONS GLEN BROOK (Lomisons Glen)—Entire length	FW2-TP(C1)
LONG POND (Mad Horse Creek)	SE1(C1)
LONG TREE CREEK (Egg Island)—Entire length	SE1(C1)
LOPATCONG CREEK	
(Allens Mills)—Source to Decker Rd. bridge	FW2-TP(C1)
(Herkers Hollow)—Decker Rd. bridge to Rt. 22 bridge	FW2-TM
(Phillipsburg)—Rt. 22 bridge to Delaware River	FW2-NT
LOWER BROTHERS CREEK (Egg Island)—Entire length	SE1(C1)
LOWER DEEP CREEK (Mad Horse Creek)—Entire length	SE1(C1)
LUBBERS RUN (Byram)—Entire length	FW2-TM
MAD HORSE CREEK	
(Canton)—Source to the boundary of Mad Horse Creek Wildlife Management Area and all tributaries outside the boundaries of the Wildlife Management Area	FW2-NT/SE1
(Mad Horse Creek)—Creek and all waters within the Mad Horse Creek Wildlife Management Area	FW2-NT/SE1(C1)
MALAPATIS CREEK	
(Mad Horse Creek)—Entire length, except segment described below	SE1(C1)
(Mad Horse Creek)—Portions of the Creek beyond the boundaries of the Mad Horse Creek Wildlife Management Area	SE1
MANANTICO CREEK	
(Millville)—Entire length, except segment described below	FW2-NT
(Menantico)—Segment within the boundaries of the Menantico Ponds Wildlife Management Area	FW2-NT(C1)
MANTUA CREEK (Woodbury)—Entire length	FW2-NT/SE2
MARCIA LAKE (Montague)	FW2-TM(C1)
MASON CREEK	
(Springfield)—Entire length, except segment described below	FW2-NT
(Medford)—Segment within Medford Wildlife Management Area	FW2-NT(C1)
MASONS RUN	
(Pine Hill)—Source to Little Mill Rd.	FW2-TP(C1)
(Lindenwold)—Little Mill Rd. to confluence with Big Timber Creek	FW2-NT

MAURICE RIVER	
MAIN STEM	
(Willow's Grove)—Source to the boundary of the section of Union Lake Wildlife Management Area north of Vineland	FW2-NT
(Vineland)—Boundary of the Union Lake Wildlife Management Area to confluence with Blackwater Branch	FW2-NT(C1)
(Vineland)—Confluence with Blackwater Branch to Delaware Bay, except tributaries described under Tributaries below	FW2-NT/SE1
TRIBUTARIES, MAURICE RIVER	
(Willow's Grove)—Those portions of tributaries that are within the boundaries of the Pinelands Protection and Preservation Area	PL
(Vineland)—All tributaries within the boundaries of the Union Lake Wildlife Management Area and within the Wildlife Management Area that borders Delaware Bay	FW2-NT/SE1(C1)
MCCORMICK POND (Egg Island)	FW2-NT/SE1(C1)
MACDONALD BRANCH—See RANCOCAS CREEK	
MERRILL CREEK	
(Harmony)—Entire length	FW2-TP(C1)
MIDDLE BROTHERS CREEK (Egg Island)—Entire length	SE1(C1)
MIDDLE MARSH CREEK	
(Dix)—All fresh waters which originate in and are located entirely within the boundaries of the Dix Wildlife Management Area	FW1
MILE BRANCH—See NANTUXENT CREEK	
MILL BROOK (Montague)—See CLOVE BROOK	
MILL BROOK (Broadway)—Entire length	FW2-TP(C1)
MILL CREEK	
(Carmel)—Entire length, except segment described below	FW2-NT
(Union Lake)—Creek and tributaries within the boundaries of the Union Lake Wildlife Management Area	FW2-NT(C1)
MINE BROOK	
(Mt. Olive)—Source to, but not including, Upper Mine Brook Reservoir	FW2-TM
(Mt. Olive)—Upper Mine Brook Reservoir to Musconetcong River	FW2-NT
MIRY RUN (Mercerville)—Entire length	FW2-NT
MOORE CREEK (Hopewell)—Entire length	FW2-TM
MOUNT MISERY BROOK	
(Woodmansie)—Entire length, except segments described below	PL
SOUTH BRANCH, MOUNT MISERY BROOK	
(Lebanon State Forest)—All tributaries to the South Branch that are located entirely within the boundaries of Lebanon State Forest	FW1
(Pasadena)—The two easterly branches of the Branch which are located entirely within the boundaries of the Pasadena Fish and Game Tract	FW1
MOUNTAIN LAKE (Liberty)	FW2-TM
MOUNTAIN LAKE CREEK	
(Liberty)—Source to Mountain Lake	FW2-TM
(White)—Mountain Lake dam to Pequest River	FW2-NT
MUD POND (Johnsonburg)—Pond and its outlet stream to the Erie-Lackawanna Railroad trestle north of Johnsonburg	*FW1*
MUDDY CREEK	
(Mad Horse Creek)—Entire length, except segments described below	SE1(C1)
(Mad Horse Creek)—Segments outside of the boundaries of the Mad Horse Creek Wildlife Management Area	SE1
MUDDY RUN	
(Elmer)—Entire length, except segments described below	FW2-NT
(Elmer)—Portion of the Run within Greenwood Pond Wildlife Management Area	FW2-NT(C1)
(Centerton)—Portion of the Run within Parvin State Park	FW2-NT(C1)
MUDDY RUN	
(Pittsgrove)—Entire length, except segment described below	FW2-NT
(Vineland)—Segment within Union Lake Wildlife Management Area	FW2-NT(C1)
MUSCONETCONG RIVER	
(Hackettstown)—Lake Hopatcong dam to Delaware River, except tributaries described below	FW2-TM
TRIBUTARIES	
(Changewater)—Entire length	FW2-TP(C1)
(Deer Park Pond)—See DEER PARK POND	
(Franklin)—Entire length	FW2-TP(C1)
(Lebanon)—Entire length	FW2-TP(C1)
(Port Murray)—Entire length	FW2-TP(C1)
(S. of Schooley's Mtn. Brook)—Entire length	FW2-TP(C1)
MUSKEE CREEK	
(Port Elizabeth)—Source to boundary of Pinelands Protection and Preservation Area, except segments described separately, below	PL
(Peaselee)—The Middle Branch from its origin to the boundaries of the Peaselee Fish and Game Tract	FW1
(Peaselee)—Those portions of the tributaries to Slab Branch which are located entirely within the boundaries of the Peaselee Fish and Game Tract	FW1
(Bricksboro)—Pinelands Protection and Preservation Area boundaries to Maurice River	FW2-NT
NANCY GUT	
(Newport)—Source to the boundary of Nantuxent Creek Wildlife Management Area	SE1(C1)
(Newport)—Stream and all tributaries outside of the boundaries of the Nantuxent Creek Wildlife Management Area	SE1

NANTUXENT CREEK	
(Newport Landing)—Entire length, except segment described below	FW2-NT/SE1
(Newport Landing)—All waters within the boundaries of Nantuxent Creek Wildlife Management Area	FW2-NT/SE1(C1)
(Newport Landing)—Cedar and Mill Branches to Shaw's Mill Pond	FW1
NEW WAWAYANDA LAKE (Andover)	FW2-TM
NISHISAKAWICK CREEK (Frenchtown)—Entire length	FW2-NT
OLDMANS CREEK	
(Lincoln)—Entire length, except portion described below	FW2-NT/SE1
(Harrisonville)—Portion within Harrisonville Lake Wildlife Management Area	FW2-NT(C1)
ORANDAKEN CREEK	
(Fortescue)—Source to boundary of Egg Island Berrytown Wildlife Management Area	FW2-NT/SE1
(Egg Island)—Creek and tributaries within the boundaries of the Egg Island Berrytown Wildlife Management Area	FW2-NT/SE1(C1)
PARGEY CREEK	
(Gibbstown)—Entire length, except segment described below	FW2-NT/SE2
(Logans Pond)—Segment within the boundaries of Logans Pond Wildlife Management Area	FW2-NT/SE2(C1)
PARKER BROOK (Montague)—Entire length	FW2-TP(C1)
PARVIN LAKE (Parvin State Park)	FW2-NT(C1)
PATTYS FORK—See MAD HORSE CREEK	
PAULINA CREEK (Paulina)—Entire length	FW2-TM
PAULINS KILL	
EAST BRANCH	
(Andover)—Source to Limecrest quarry	FW2-NT(C1)
(Lafayette)—Limecrest quarry to confluence with Paulins Kill, West Branch, except tributary described below	FW2-TP(C1)
TRIBUTARY EAST BRANCH	
(Sussex Mills)—Entire length of tributary to the East Branch at Sussex Mills	FW2-NT(C1)
WEST BRANCH	
(Newton)—Entire length	FW2-NT
MAIN STEM	
(Blairstown)—Confluence of East and West branches to Rt. 15 bridge (bench mark 507)	FW2-TM
(Hampton)—Rt. 15 bridge to Paulins Kill Lake dam	FW2-NT
(Paulins Kill Lake)—Paulins Kill Lake dam to Delaware River, except tributaries described separately below	FW2-TM
TRIBUTARIES, MAIN STEM	
(Emmons Station)—Entire length	FW2-TP(C1)
(Stillwater Station)—Entire length	FW2-TP(C1)
PENNSAUKEN CREEK	
(Cinnaminson)—Entire length	FW2-NT
PEQUEST RIVER	
(Belvidere)—Source to Tranquility bridge except segments described below	FW2-TM
(Whittingham)—Northwesterly tributaries which are located within the boundaries of the Whittingham Tract from their origin to their confluence with the Pequest River	FW1 (tm)
(Whittingham)—Stream and tributaries within the Whittingham tract, except those classified as FW1, above	FW2-TM(C1)
(Vienna)—Tranquility bridge to Townsbury bridge	FW2-NT
(Townsbury)—Townsbury bridge to Delaware River, except segment described below	FW2-TM
(Pequest)—Segment and tributaries within the boundaries of the Pequest Wildlife Management Area	FW2-TM(C1)
PIERSONS DITCH (Egg Island)—Entire length	FW2-NT/SE1(C1)
PINE BRANCH—See BUCKSHUTEM CREEK	
PLUM BROOK (Sergeantsville)—Entire length	FW2-TM
POHATCONG CREEK	
MAIN STEM	
(Mansfield)—Source to Karrsville bridge	FW2-TP(C1)
(Pohatcong)—Karrsville bridge to Delaware River	FW2-TM
TRIBUTARIES	
(Greenwich)—Entire length	FW2-TP(C1)
(New Village)—Entire length	FW2-TP(C1)
(Willow Grove)—Entire length	FW2-TP(C1)
POND BROOK (Middleville)—Swartswood Lake outlet to Trout Brook	FW2-NT
POPHANDUSING BROOK (Belvidere)—Entire length	FW2-TM
RACCOON CREEK (Logan)—Entire length	FW2-NT/SE2
RANCOCAS CREEK	
NORTH BRANCH	
(North Hanover)—Source to boundary of the Pinelands Protection and Preservation Area at Pemberton	PL
(Pemberton)—Boundary of the Pinelands Protection and Preservation Area to the Delaware River, except tributaries described below	FW2-NT
(Pemberton)—Tributaries within the boundaries of the Pinelands Protection and Preservation Areas	PL
SOUTH BRANCH RANCOCAS CREEK	
(Southhampton)—Source to Pinelands Protection and Preservation Area boundaries at Rt. 206 bridge south of Vincentown	PL
(Vincentown)—Vincentown to Delaware River, except tributaries described separately below	FW2-NT

(Vincentown)—All tributaries within the Pinelands Protection and Preservation Areas	PL
COOPER BRANCH RANCOCAS CREEK	
(Woodmansie)—Entire length, except portions described separately below	PL
(Lebanon State Forest)—Branch and tributaries downstream to Pakim Pond, and tributaries to Cooper Branch located entirely within the Lebanon State Forest boundaries	FW1
DEER PARK BRANCH RANCOCAS CREEK	
(Buckingham)—Stream and tributaries near Buckingham to confluence with Pole Bridge Branch	FW1
MACDONALD BRANCH RANCOCAS CREEK	
(Woodmansie)—Entire length, except as described separately below	PL
(Lebanon State Forest)—Branch and tributaries located entirely within Lebanon State Forest	FW1
SHINNS BRANCH RANCOCAS CREEK	
(Lebanon State Forest)—Branch and tributaries located entirely within the boundaries of Lebanon State Forest, from their sources to the forest boundary	FW1
(Lebanon Lake Estates)—Forest boundary to lake	PL
ROARING DITCH	
(Heislerville)—Entire length, except segment described below	SE1
(Eldora)—Ditch and all tributaries within the Dennis Creek Wildlife Management Area boundaries	SE1(C1)
ROWANDS POND	
(Clementon)—Pond, inlet stream and outlet stream within Rowands Pond Wildlife Management Area	FW2-NT(C1)
RUNDLE BROOK (Del. Water Gap)—Source to Flatbrook Rd.	FW1
SALEM CREEK [River]	
(Salem)—Entire length	FW2-NT/SE1
SAMBO ISLAND BROOK (Del. Water Gap)—Entire length	FW1
SAMBO ISLAND POND (Del. Water Gap)	FW1
SANDYSTON CREEK	
(Sandyston)—Entire length	FW2-TP(C1)
SAVAGES RUN (East Creek)	
(Lake Nummi)—Entire length, except portions described separately below)	PL
(Belleplain)—Those two tributaries and portions thereof downstream of Lake Nummi that are located entirely within the boundaries of Belleplain State Forest	FW1
SAWMILL POND (High Point)	FW2-NT(C1)
SCHOOLEYS MTN. BROOK	
(Schooley's Mtn.)—Entire length	FW2-TP(C1)
SHABACUNK [SHABBECONG] CREEK (Ewing)—Entire length	FW2-NT
SHAWS MILL POND (Cedarville)	FW2-NT/SE1(C1)
SHAWANNI CREEK	
(Walpack)—Entire length	FW2-TP(C1)
SHAWANNI LAKE ***(Stokes State Forest)***	***FW2-NT(C1)***
SHIMERS BROOK	
(Millville)—Entire length, except those segments and tributaries designated FW1, below	FW2-TP(C1)
(High Point)—That segment of Shimers Brook and all tributaries within the boundaries of High Point State Park	FW1(tp)
SHINNS BRANCH—See RANCOCAS CREEK	
SHIPETAUKIN CREEK	
(Lawrenceville)—Entire length	FW2-NT
SHORE DITCH (Mad Horse Creek)—Entire length	SE1(C1)
SILVER LAKE (Hope)	FW2-TM
SILVER LAKE FORK—See MAD HORSE CREEK	
SLAB BRANCH—See MUSKEE CREEK	
SLUICE CREEK	
(South Dennis)—Entire length, except segment described below	FW2-NT/SE1
(Dennis Creek)—Segments of tributaries that are within the Dennis Creek and the Beaver Swamp Wildlife Management Areas	FW2-NT/SE1(C1)
SMITH FERRY BROOK (Del. Water Gap)—Entire length	FW1
SPARTA JUNCTION BROOK	
(Sparta Junction)—Entire length	FW2-TM(C1)
SPRING MILLS BROOK	
(Spring Mills)—Source to Rt. 519 bridge	FW2-TP(C1)
(Milford)—Rt. 519 bridge to confluence with Hakihokake Creek	FW2-TM
STEELE RUN	
(Washington Crossing State Park)—Source to Rt. 29	FW1
(Titusville)—Rt. 29 to the Delaware River	FW2-NT
STEENY KILL LAKE (High Point)	FW2-NT(C1)
STEEP RUN (Mauricetown)—Entire length	FW2-NT(C1)
STEPHENSBURG BROOK	
(Stephensburg)—Entire length	FW2-TP(C1)
STONY BROOK (Knowlton)—Entire length	FW2-NT
STONY BROOK (Stokes State Forest)	FW2-TP(C1)
STONY LAKE (Stokes State Forest)	FW2-TM(C1)
STOW CREEK	
(Stow Creek Landing)—Entire length, except tributaries described separately below	FW2-NT/SE1
(Mad Horse Creek)—Tributaries within the boundaries of the Mad Horse Creek Wildlife Management Area	FW2-NT/SE1(C1)
STRAIGHT CREEK	
(Berrytown)—Entire length	SE1(C1)
SWAN CREEK	
(Lambertville)—Entire length	FW2-NT
SWARTSWOOD CREEK	
(Swartswood)—Entire length	FW2-TM
SWARTSWOOD LAKE (Stillwater)	FW2-TM(C1)

TAR HILL BROOK	
(Lake Lenape)—Source to, but not including, Lake Lenape	FW2-TM
(Lake Lenape)—Lake Lenape to Andover Junction Brook	FW2-NT
THREE MOUTHS (Egg Island)	FW2-NT/SE1(C1)
THUNDERGUST BROOK	
(Deerfield)—Entire length, except segment described below	FW2-NT
(Deerfield)—That segment within the boundaries of Parvin State Park	FW2-NT(C1)
THUNDERGUST LAKE (Parvin State Park)	FW2-NT(C1)
TILLMAN BROOK	
(Walpack)—Entire length	FW2-TP(C1)
TROUT BROOK	
(Hackettstown)—Entire length	FW2-TM(C1)
TROUT BROOK	
(Tranquility)—Entire length	FW2-TP(C1)
TROUT BROOK (Hope)—Entire length	FW2-TM
TROUT BROOK	
(Allamuchy)—Entire length	FW2-NT
TROUT BROOK	
(Middleville)—Source to confluence with Pond Brook	FW2-TP(C1)
(Middleville)—Confluence with Pond Brook to Paulins Kill	FW2-NT
TURKEY HILL BROOK	
(Bethlehem)—Entire length	FW2-TM
TURNERS FORK—See MAD HORSE CREEK	*[FW2-TM]*
TUTTLES CORNER BROOK	
(Tuttles Corner)—Entire length	FW2-TP(C1)
UPPER BROTHERS CREEK (Egg Island)—Entire length	SE1(C1)
UPPER DEEP CREEK (Mad Horse Creek)—Entire length	SE1(C1)
VANCAMPENS BROOK	
(Millbrook)—Entire length	FW2-TP(C1)
WAPALANNE LAKE (Stokes State Forest)	FW2-NT(C1)
WELDON BROOK (Jefferson Township), from source to, but not including, Lake Shawnee	FW2-TM
WEST CREEK	
(Halberton)—Source to the boundary of the Pinelands Protection and Preservation Areas, except those portions described separately below	PL
(Belleplain)—The portion of the tributary that originates about 0.9 miles southeast of Hoffman's Mill and is located entirely within the boundaries of Belleplain State Forest	FW1
(Belleplain)—Those tributaries that originate about 0.5 miles upstream of Hoffman's Mill and are located entirely within the boundaries of Belleplain State Forest	FW1
(Belleplain)—Eastern branch of the easterly tributary to Pickle Factory Pond from its origin to its confluence with the western branch	FW1
(Delmont)—Boundary of the Pinelands Protection and Preservation Area to the boundary of the Fish and Game lands	FW2-NT/SE1(C1)
(Delmont)—Boundary of the Fish and Game lands to Delaware Bay	SE1
WEST PORTAL CREEK (West Portal)—Entire length	FW2-TP(C1)
WHITE BROOK (Montague)—Entire length	FW2-TP(C1)
WHITE LAKE (Hardwick)	FW2-TM
WICKECHEOKE CREEK	
(Locktown)—Source to confluence with Plum Brook	FW2-NT
(Stockton)—Confluence with Plum Brook to Delaware River	FW2-TM
WIDGEON PONDS (Egg Island)	FW2-NT/SE1(C1)
WILLS BROOK (Mt. Olive)—Entire length	FW2-TM
YARDS CREEK (Blairstown)—Entire length	FW2-TP(C1)

(e) The surface water classifications in Table 3 are for water of the Passaic, Hackensack and New York Harbor Comple Basin*[;]**:*

TABLE 3

WATER BODY	CLASSIFICATION
ARTHUR KILL	
(Perth Amboy)—The Kill and its saline New Jersey tributaries between the Outerbridge Crossing and a line connecting Ferry Pt., Perth Amboy to Wards Pt., Staten Island, New York	SE2
(Elizabeth)—From an east-west line connecting Elizabethport with Bergen Pt., Bayonne to the Outerbridge Crossing	SE3
(Woodbridge)—All freshwater tributaries	FW2-NT
BEAR SWAMP BROOK	
(Mahwah)—Entire length	FW2-TP(C1)
BEAR SWAMP LAKE (Ringwood)	FW2-NT(C1)
BEAVER BROOK	
(Meriden)—from Splitrock Reservoir Dam downstream to Meriden Road Bridge	FW2-TM
(Denville)—Meriden Road Bridge to Rockaway River	FW2-NT
BEECH BROOK	
(West Milford)—from State line downstream to Wanaque River	FW2-TM
BELCHER CREEK (W. Milford)—Entire length	FW2-NT
BERRYS CREEK (Secaucus)—Entire length	FW2-NT/SE2
BLACK BROOK	
(Meyersville)—Entire length, except segment described below	FW2-NT
(Great Swamp)—Segment and tributaries within the Great Swamp National Wildlife Refuge	FW2-NT(C1)
BLUE MINE BROOK	
(Wanaque)—Entire length, except segment described below	FW2-TM
(Norvin Green State Forest)—That portion of the stream and any tributaries within Norvin Green State Forest	FW2-TM(C1)
BRUSHWOOD POND (Ringwood)	FW2-TM(C1)
BUCKABEAR POND (Newfoundland)—Pond, its tributaries and connecting stream to Clinton Reservoir	FW2-NT(C1)
BURNT MEADOW BROOK	
(Stonetown)—Entire length	FW2-TP(C1)

CANISTEAR RESERVOIR (Vernon) FW2-TM
CANISTEAR RESERVOIR TRIBUTARY (Vernon)—The southern branch of the eastern tributary to the Reservoir FW1
CANOE BROOK (Chatham)—Entire length FW2-NT
CEDAR POND (Clinton)—Pond and all tributaries FW1
CHARLOTTEBURG RESERVOIR (Charlotteburg) FW2-TM
CHERRY RIDGE BROOK
(Vernon)—Entire length, except segments described below FW2-NT
(Canistear)—Brook and tributaries upstream of Canistear Reservoir located entirely within the boundaries of Wawayanda State Park and the Newark Watershed lands **FW1***
CLINTON BROOK *[FW1]*
(Mossmans Brook) (W. Milford)—Source to, but not including, Clinton Reservoir FW2-NT(C1)
(Newfoundland)—Clinton Reservoir dam to Pequannock River FW2-TP(C1)
CLINTON RESERVOIR (W. Milford) FW2-TM (C1)
CLOVE BROOK—See STAG BROOK
COOLEY BROOK
(W. Milford)—Entire length, except segments described below FW2-TP(C1)
(Hewitt)—Segments of the brook and all tributaries located entirely within Hewitt State Forest FW1(tp)
CORYS BROOK (Warren)—Entire length FW2-NT
CRESSKILL BROOK
(Alpine)—Source to Duck Pond Rd. bridge, Demarest FW2-TP(C1)
(Demarest)—Duck Pond Rd. bridge to Tenakill Brook FW2-NT
CUPSAW BROOK
(Skylands)—Source to Wanaque Reservoir, except segment described below FW2-NT
(Skylands)—That segment of Cupsaw Brook within the boundaries of Ringwood State Park FW2-NT(C1)
DEAD RIVER (Liberty Corners)—Entire length FW2-NT
DEN BROOK (Denville)—Entire length FW2-NT
DUCK POND (Ringwood) FW2-NT(C1)
ELIZABETH RIVER
(Elizabeth)—Source to Broad St. bridge, Elizabeth and all freshwater tributaries FW2-NT
(Elizabeth)—Broad St. bridge to mouth SE3
FOX BROOK (Mahwah)—Entire length FW2-NT
GLASMERE PONDS (Ringwood) FW2-NT(C1)
GOFFLE BROOK (Hawthorne)—Entire length FW2-NT
GRANNIS BROOK (Morris Plains)—Entire length FW2-NT
GREAT BROOK
(Chatham)—Entire length, except segment described below FW2-NT
(Great Swamp)—Segment within the boundaries of the Great Swamp National Wildlife Refuge FW2-NT(C1)
GREEN BROOK
(W. Milford)—Entire length, except those segments described below FW2-TP(C1)
(Hewitt)—Those segments located entirely within the Hewitt State Forest boundaries FW1(tp)
GREEN POND (Rockaway) FW2-TM
GREEN POND BROOK (Picatinny Arsenal)—Green Pond outlet to Rockaway River FW2-NT
GREENWOOD LAKE (W. Milford) FW2-TM
HACKENSACK RIVER
(Oradell)—Source to Oradell dam FW2-NT
(Oradell)—Main stem and saline tributaries from Oradell dam to the confluence with Overpeck Creek SE1
(Little Ferry)—Main stem and saline tributaries from Overpeck Creek to Route 1 and 9 crossing SE2
(Kearny Point)—Main stem downstream from Route 1 and 9 crossing SE3
TRIBUTARIES
(Oradell)—Tributaries joining the main stem between Oradell dam and the confluence with Overpeck Creek FW2-NT/SE1
(Little Ferry)—Tributaries joining the main stem downstream of Overpeck Creek FW2-NT/SE2
HANKS POND (Clinton)—Pond and all tributaries FW1
HARMONY BROOK
(Brookside)—Entire length FW2-TP(C1)
HARRISONS BROOK
(Bernards)—Entire length FW2-NT
HAVEMEYER BROOK
(Mahwah)—Entire length FW2-TP(C1)
HEWITT BROOK (W. Milford)—Entire length FW2-TP(C1)
HIBERNIA BROOK
(Hibernia)—Entire length, except tributary described separately below FW2-TM
(Rockaway)—Entire length of tributary at Rockaway FW2-TP(C1)
HIGH MOUNTAIN BROOK
(Ringwood)—Source to, but not including, Skyline Lake FW2-TP(C1)
HOHOKUS BROOK (Hohokus)—Entire length FW2-NT/SE2
HUDSON RIVER
(Rockleigh)—River and saline portions New Jersey tributaries from the New Jersey-New York boundary line in the north to its confluence with the Harlem River, New York SE1
(Englewood Cliffs)—River and saline portions of New Jersey tributaries from the confluence with the Harlem River, New York to a north-south line connecting Constable Hook (Bayonne) to St. George (Staten Island, New York) SE2
TRIBUTARIES
(Rockleigh)—Freshwater portions of tributaries to the Hudson River in New Jersey FW2-NT
INDIAN GROVE BROOK
(Somersetin)—Entire length FW2-TM
JACKSON BROOK
(Mine Hill)—Source to the boundary of Hurd Park, Dover FW2-TP(C1)
(Dover)—Hurd Park to Rockaway River FW2-NT

JENNINGS CREEK (W. Milford)—State line to Wanaque River FW2-TP(C1)
JERSEY CITY RESERVOIR (Boonton) FW2-TM
KANOUSE BROOK
(Newfoundland)—Entire length FW2-TP(C1)
KIKEOUT BROOK (Butler)—Entire length FW2-NT
KILL VAN KULL (Bayonne)—Westerly from a north-south line connecting Constable Hook (Bayonne) to St. George (Staten Island, New York) SE3
LAKE RICKONDA OUTLET STREAM
(Monks)—That segment of the outlet stream from Lake Rickonda within Ringwood State Park FW2-TM(C1)
LAKE STOCKHOLM BROOK
(Stockholm)—Entire length, except tributaries described separately below FW2-TP(C1)
(Stockholm)—Westerly tributary located entirely within the boundaries of the Newark Watershed FW1(tp)
(Stockholm)—Brook between Hamburg Turnpike and Williamsville-Stockholm Rd. to its confluence with Lake Stockholm Brook, north of Rt. 23 FW1(tp)
LITTLE POND BROOK
(Oakland)—Entire length FW2-TP(C1)
LOANTAKA BROOK
(Green Village)—Entire length, except segment described below FW2-NT
(Great Swamp)—Brook and all tributaries within the boundaries of Great Swamp National Wildlife Refuge FW2-NT(C1)
LUD-DAY BROOK
(Camp Garfield)—Source to confluence with a tributary from Camp Garfield FW1
MACOPIN RIVER
(Newfoundland)—Source to Echo Lake dam FW2-NT
(Newfoundland)—Echo Lake dam to Pequannock River FW2-TM
MEADOW BROOK (Wanaque)—Skyline Lake to Wanaque River FW2-NT
MILL BROOK
(Randolph)—Source to Rt. 10 bridge FW2-TP(C1)
(Randolph)—Rt. 10 bridge to Rockaway River FW2-NT
MORSES CREEK—Entire length FW2-NT/SE3
MOSSMAN'S BROOK—See CLINTON BROOK
MT. TABOR BROOK (Morris Plains)—Entire length FW2-NT
NEWARK BAY (Newark)—North of an east-west line connecting Elizabethport with Bergen Pt., Bayonne up to the mouths of the Passaic and Hackensack Rivers SE3
NOSENZO POND (Upper Macopin) FW2-NT(C1)
OAK RIDGE RESERVOIR (Oak Ridge) FW2-TM
OAK RIDGE RESERVOIR (Oak Ridge)—Northwestern tributary to Reservoir FW1(tm)
OVERPECK CREEK (Palisades Park)—Entire length FW2-NT/SE2
PACACK BROOK
(Stockholm)—Source to Pequannock River, excluding Canistear Reservoir, except segments described separately below FW2-NT
(Canistear)—Brook and tributaries upstream of Canistear Reservoir located entirely within the boundaries of the Newark Watershed FW1
PASSAIC RIVER
(Mendham)—Source to Rt. 202 bridge (Van Doren's Mill), except tributaries described separately below FW2-TM
(Paterson)—Rt. 202 bridge to Dundee Lake dam FW2-NT
(Little Falls)—Dundee Lake dam to confluence with Second River FW2-NT/SE2
(Newark)—Confluence with Second River to mouth SE3
TRIBUTARIES
(Fairfield)—Tributaries within Great Piece Meadows FW2-NT(C1)
PECKMAN RIVER (Verona)—Entire length FW2-NT
PEQUANNOCK RIVER
MAIN STEM
(Vernon)—Source to confluence with Pacack Brook FW1(tp)
(Newfoundland)—Pacack Brook to Hamburg Turnpike, (Bench Mark 257) in Bloomingdale except tributaries described separately below FW2-TM
(Riverdale)—Hamburg Turnpike bridge to Pompton River FW2-NT
TRIBUTARIES
(Copperas Mtn.)—Entire length FW2-TP(C1)
(Smoke Rise)—Entire length FW2-TP(C1)
(Green Pond Junction)—Tributary at Green Pond Junction FW1(tm)
(Jefferson)—Tributary joining the Main Stem about 3500± feet southeast of the Sussex-Passaic County line, near Jefferson FW1(tm)
(Lake Kampfe)—Source to, but not including, Lake Kampfe FW2-TM
(Lake Kampfe)—Lake Kampfe to Pequannock River, except tributary described separately below FW2-NT
(Lake Kampfe)—Tributary within the boundaries of Norvin Green State Forest, originating west of Torne Mtn. FW2-NT(C1)
PILES CREEK—Entire length SE3
POMPTON LAKE (Pompton Lakes) FW2-NT
POMPTON RIVER (Wayne)—Entire length FW2-NT
POND BROOK (Oakland)—Entire length FW2-NT
POSTS BROOK
(Bloomingdale)—Source to Wanaque Reservoir, except segment described below FW2-TM
(Norvin Green State Forest)—That segment of the stream and all tributaries within the boundaries of Norvin Green State Forest FW2-TM(C1)
(Haskell)—Wanaque Reservoir dam to Wanaque River FW2-NT
PREAKNESS [SINGAC] BROOK
(Wayne)—Source to, but not including, Barbours Pond FW2-TP(C1)
(Barbours Pond)—Pond to Passaic River FW2-NT
PRIMROSE BROOK
(Harding)—Source to Lees Hill Road bridge FW2-TP(C1)

(Harding)—Lees Hill Road bridge to Great Swamp National Wildlife Refuge boundary	FW2-NT
(Great Swamp)—Wildlife Refuge boundary to Great Brook	FW2-NT(C1)
RAHWAY RIVER	
SOUTH BRANCH	
(Rahway)—Source to Hazelwood Ave., Rahway	FW2-NT
(Rahway)—Hazelwood Ave. to mouth	SE2
MAIN STEM	
(Rahway)—Upstream of Pennsylvania Railroad bridge	FW2-NT
(Linden)—Penn. Railroad bridge to Route 1&9 crossing	SE2
(Carteret)—Route 1-9 crossing to mouth	SE3
RAMAPO LAKE (Ramapo)—Lake and all outlet streams and tributaries within the boundaries of Ramapo Mtn. State Forest	FW2-NT(C1)
RAMAPO RIVER (Mahwah)—State line to Pompton River	FW2-NT
TRIBUTARY (Oakland)—Entire length	FW2-TP(C1)
RINGWOOD CREEK	
(Ringwood)—Entire length, except segment described below	FW2-TM
(Sloatsburg)—Creek within Ringwood State Park	FW2-TM(C1)
RINGWOOD MILL POND (Ringwood)	FW2-NT(C1)
ROCKAWAY RIVER	
(Dover)—Source to Passaic River, excluding the Jersey City Reservoir and the segment described below	FW2-NT
(Berkshire Valley)—That segment within the boundaries of the Berkshire Valley Wildlife Management Area	FW2-NT(C1)
RUSSIA BROOK	
(Sparta)—Source to Lake Hartung dam	FW2-NT
(Milton)—Lake Hartung dam to, but not including, Lake Swannanoa	FW2-TM
SADDLE RIVER	
(Upper Saddle River)—State line to Bergen County Rt. 2 bridge	FW2-TP(C1)
(Saddle River)—Bergen County Rt. 2 bridge to Allendale Rd. bridge	FW2-TM
(Lodi)—Allendale Rd. bridge to Passaic River	FW2-NT/SE3
SAWMILL CREEK (Pompton Plains)—Entire length	FW2-NT
SHEPPARD LAKE (Ringwood)	FW2-TM(C1)
SINGAC BROOK—See PREAKNESS BROOK	
SLOUGH BROOK (Livingston)—Entire length	FW2-NT
SMITH CREEK—Entire length	FW2-NT/SE*[3]**2*
SPLIT ROCK RESERVOIR (Rockaway)	FW2-TM
SPLIT ROCK RESERVOIR TRIBUTARIES (Farny State Park)—Three tributaries within Farny State Park	FW2-NT(C1)
SPRING GARDEN BROOK (Florham)—Entire length	FW2-NT
STAG [CLOVE] BROOK (Mahwah)—Entire length	FW2-TP(C1)
STEPHENS BROOK	
(Roxbury)—Entire length, except segment described separately, below	FW2-NT
(Berkshire Valley)—That segment north of the boundaries of the Berkshire Valley Tract	FW1
STONE HOUSE BROOK (Kinnelon)—Entire length	FW2-NT
STONY BROOK (Boonton)—Entire length	FW2-NT
SURPRISE LAKE (Hewitt)	FW1
SWAN POND (Ringwood)	FW2-NT(C1)
TENAKILL BROOK (Demarest)—Entire length	FW2-NT
TERRACE POND (Wawayanda)	FW2-NT(C1)
TIMBER BROOK (Kitchell)—Entire length, except tributary described separately below	FW2-NT
TIMBER BROOK (Farny State Park)—Headwater segment of tributary to Timber Brook within Farny State Park	FW2-NT(C1)
TROY BROOK (Troy Hills)—Entire length	FW2-NT
WANAQUE RESERVOIR	FW2-TM
WANAQUE RIVER	
MAIN STEM	
(Hewitt)—Greenwood Lake outlet, through Wanaque Wildlife Management Area to the boundary of the State Park and Forest land at Monks, except tributary described separately below	FW2-TM(C1)
(Hewitt)—Entire length of tributary south of Jennings Creek	FW2-TP(C1)
(Monks)—Parkland boundary to Wanaque Reservoir	FW2-TM
(Pompton Lakes)—Wanaque Reservoir dam to Pompton River	FW2-NT
WEST BROOK (W. Milford)—Entire length	FW2-TP(C1)
WEST POND (Hewitt)	FW1
WEYBLE POND (Ringwood)	FW2-NT(C1)
WHIPPANY RIVER	
(Brookside)—Source to Whitehead Rd. bridge	FW2-TP(C1)
(Morristown)—Whitehead Rd. bridge to Passaic River	FW2-NT
TRIBUTARIES	
(Brookside)—Entire length	FW2-TP(C1)
(E. of Brookside)—Entire length	FW2-TM
(E. of Washington Valley)—Entire length	FW2-TM
(Gillespie Hill)—Entire length	FW2-TP(C1)
(Shongum Mtn.)—Entire length	FW2-NT
WONDER LAKE (West Milford)	FW2-NT(C1)
WOODBRIDGE RIVER—Entire length	FW2-NT/SE3

(f) The surface water classifications in Table 4 are for waters of the Raritan River and Raritan Bay Basin*[;]**:*

TABLE 4

WATER BODY	CLASSIFICATION
ALLERTON CREEK	
(Allerton)—Entire length	FW2-NT
AMBROSE BROOK	
(Piscataway)—Entire length	FW2-NT
AMWELL LAKE (Snydertown)	FW2-NT(C1)
ASSISCONG CREEK	
(Flemington)—Entire length	FW2-NT
BACK BROOK (Vanliew's Corners)—Entire length	FW2-NT
BALDWINS CREEK	
(Pennington)—Entire length, except segment described separately below	FW2-NT

(Baldwin)—Segment within the boundaries of Baldwin Lake Wildlife Management Area	FW2-NT(C1)
BARCLAY BROOK (Redshaw Corners)—Entire length	FW2-NT
BEAVER BROOK (Cokesbury)—Source to Reformatory Road bridge	FW2-TP(C1)
(Annandale)—Reformatory Rd. bridge to Raritan River, South Branch	FW2-TM
BEDEN BROOK (Montgomery)—Entire length	FW2-NT
BIG BEAR BROOK (West Windsor)—Entire length	FW2-NT
BIG BROOK (Vanderberg)—Entire length	FW2-NT
BLACK BROOK (Polktown)—Entire length	FW2-TP(C1)
BLACK RIVER—See LAMINGTON RIVER	
BLACKBERRY CREEK (Oceanport)—Source to a line beginning on the easternmost extent of Gooseneck Point and bearing approximately 162 degrees True North to its terminus on the westernmost extent of an unnamed point of land in the vicinity of the western extent of Cayuga Ave. in Oceanport	SE1
(Oceanport)—Creek below the line described above	SE1
BLUE BROOK (Mountainside)—Entire length	FW2-NT
BOULDER HILL BROOK (Tewksbury)—Entire length	FW2-TP(C1)
BOUND BROOK (Dunellen)—Entire length	FW2-NT
BRANCHPORT CREEK (Long Branch)—Source to a line beginning on the northernmost extent of an unnamed point of land lying north of Pocano Ave. in Oceanport and bearing approximately 055 degrees True North to its terminus on the westernmost extent of the northern bulkhead at the lagoon located between France Rd. and Lori Rd. in Monmouth Beach	FW2-NT/SE1
(Monmouth Beach)—Creek below line described above	SE1(C1)
BUDD LAKE (Mt. Olive)	FW2-NT(C1)
BURNETT BROOK (Ralston)—Entire length	FW2-TP(C1)
CAPOOLONG CREEK (Sydney)—Entire length	FW2-TP(C1)
CEDAR BROOK (Spotswood)—Entire length	FW2-NT
CHAMBERS BROOK (Whitehouse)—Entire length	FW2-NT
CHEESEQUAKE STATE PARK WATERS (S. Amboy)—Fresh waters within the park upstream of the limits of tidal influence	FW2-NT(C1)
CLAYPIT CREEK (Navesink)—Source to widening of the Creek near Linden Ave. and just north to the Locust Ave. bridge in Navesink	FW2-NT/SE1
(Navesink)—Widening of Creek to Navesink River	SE1(C1)
COLD BROOK (Oldwick)—Entire length	FW2-TP(C1)
CRAMERS CREEK (Hamden)—Entire length	FW2-NT
CRANBURY BROOK (Old Church)—Entire length	FW2-NT
CRUSER BROOK (Montgomery)—Entire length	FW2-NT
CUCKELS BROOK (Bridgewater)—Entire length	FW2-NT
DAWSONS BROOK (Ironia)—Entire length	FW2-TP(C1)
DEEP RUN (Old Bridge)—Entire length	FW2-NT
DEVILS BROOK (Schalks)—Entire length	FW2-NT
DRAKES BROOK (Flanders)—Entire length	FW2-NT(C1)
DUCK POND RUN (Port Mercer)—Entire length	FW2-NT
DUKES BROOK (Somerville)—Entire length	FW2-NT
ELECTRIC BROOK (Schooley's Mtn.)—Entire length	FW2-TP(C1)
FLANDER'S BROOK (Flanders)—Entire length	FW2-TP(C1)
FLANDERS CANAL (Flanders)—Entire length	FW2-NT(C1)
FROG HOLLOW BROOK (Califon)—Entire length	FW2-TP(C1)
GANDER BROOK (Manalapan)—Entire length	FW2-NT
GLADSTONE BROOK (St. Bernards School)—Entire length	FW2-TP(C1)
GREAT DITCH (S. Brunswick)—That portion of Great Ditch and its tributaries within Pigeon Swamp State Park	FW2-NT(C1)
GREEN BROOK (Watchung)—Source to Rt. 22 bridge	FW2-TM
(Plainfield)—Rt. 22 bridge to Bound Brook	FW2-NT
GUINEA HOLLOW BROOK (Tewksbury)	FW2-TP(C1)
HACKLEBARNEY BROOK (Hacklebarney)—Entire length	FW2-TP(C1)
HEATHCOTE BROOK (Kingston)—Entire length	FW2-NT
HERZOG BROOK (Pottersville)—Entire length	FW2-TP(C1)
HICKORY RUN (Califon)—Entire length	FW2-TP(C1)
HOCKHOCKSON BROOK (Colts Neck)—Entire length	FW2-TM
HOLLAND BROOK (Readington)—Entire length	FW2-NT
HOLLOW BROOK (Pottersville)—Entire length	FW2-TP(C1)
HOOKS CREEK LAKE (Cheesequake State Park)	FW2-NT(C1)
HOOPSTICK BROOK (Bedminster)—Entire length	FW2-NT
INDIA BROOK [NORTH BRANCH, RARITAN RIVER] (Randolph)—Entire length	FW2-TP(C1)
IRELAND BROOK (Paulus Corners)—Entire length	FW2-NT
IRESICK BROOK (Spotswood)—Entire length	FW2-NT

LAMINGTON RIVER [BLACK RIVER]
(Succasunna)—Source to Rt. 206 bridge FW2-NT(C1)
(Milltown)—Rt. 206 bridge to confluence with Rinehart Brook FW2-TM(C1)
(Pottersville)—Confluence with Rinehart Brook to Camp Brady bridge, Bedminster FW2-TP(C1)
(Vliettown)—Camp Brady bridge to Rt. 523 bridge FW2-TM
(Burnt Mills)—Rt. 523 to North Branch, Raritan River FW2-NT
LAWRENCE BROOK
(Deans)—Source to the intake of the New Brunswick Water Department at Weston's Mill Dam FW2-NT
(New Brunswick)—Weston's Mill Dam to Raritan River SE1
LEDGEWOOD BROOK
(Ledgewood)—Entire length FW2-TP(C1)
LITTLE BROOK (Califon)—Entire length FW2-TP(C1)
LITTLE SILVER CREEK
(Shrewsbury)—Source to a line beginning on the eastern bank of that unnamed lagoon located between Wardell Ave. and Oakes Rd. in Rumson and bearing approximately 171 degrees T (True North) to its terminus on the south shore of Little Silver Creek FW2-NT/SE1
(Rumson)—Creek below line described above SE1(C1)
LOMERSON BROOK—See HERZOG BROOK
MANALAPAN BROOK
(Jamesburg)—Source to Duhernal Lake dam except tributary described separately below FW2-NT
(Tennent)—That portion of the tributary at Tennent along the boundary of Monmouth Battlefield State Park FW2-NT(C1)
MATCHAPONIX BROOK (WEAMACONK CREEK)
(Mount Mills)—Entire length, except segments described below FW2-NT
(Freehold)—The brook and tributaries within the boundaries of Monmouth Battlefield State Park FW2-NT(C1)
MCGELLAIRDS BROOK
(Englishtown)—Entire length, except tributary described separately below FW2-NT
(Freehold)—Tributary within Monmouth Battlefield State Park FW2-NT(C1)
MCVICKERS (Mendham)—Entire length FW2-TM(C1)
MIDDLE BROOK (Greater Cross Roads)—Entire length FW2-NT
MIDDLE BROOK
EAST BRANCH
(Springfield)—Entire length FW2-TM
WEST BRANCH
(Martinsville)—Entire length FW2-NT
MAIN STEM (Bound Brook)—Confluence of East and West branches to Raritan River FW2-NT
MILFORD BROOK (Lafayette Mills)—Entire length FW2-NT
MILLSTONE RIVER
(Hightstown)—Entire length FW2-NT
MINE BROOK (Mine Brook)—Entire length FW2-NT
MINE BROOK (Colts Neck)—Entire length FW2-NT
MULHOCKAWAY CREEK
(Pattenburg)—Entire length FW2-TP(C1)
NAVESINK RIVER
(Red Bank)—Source to a line starting at a point at the northeast end of Blossom Cove, bearing approximately 142 degrees T (True North), through navigational aid C23 to the south bank near Riverview Hospital SE1
(Rumson)—River southeast of the line described above, except segment described below SE1(C1)
(Monmouth Beach)—All waters south and east of a line beginning on the northwesternmost point of land on Raccoon Island (in the vicinity of the western extent of Highland Ave.) in Monmouth Beach, and bearing approximately 056 degrees T (True North) to the southernmost point of a small unnamed island, and then bearing approximately 091 degrees T (True North) to its terminus on the northernmost point of land located at the northern extent of Monmouth Parkway in Monmouth Beach and all waters south of a line beginning on the western shoreline (just east of Monmouth Parkway in Monmouth Beach) and bearing approximately 081 degrees T (True North), intersecting Channel Marker Flashing Red 4 and Channel Marker Flashing Red 2 and terminating on the eastern shoreline of the Galilee section of Monmouth Beach. SE1
NESHANIC RIVER
(Reaville)—Entire length FW2-NT
NORTON BROOK (Norton)—Entire length FW2-TP(C1)
OAKDALE CREEK
(Chester)—Entire length FW2-TP(C1)
OAKEYS BROOK (Deans)—Entire length FW2-NT
OCEANPORT CREEK
(Fort Monmouth)—Source to a line beginning on the easternmost extent of Horseneck Point and bearing approximately 140 degrees T (True North) to its terminus on the westernmost extent of an unnamed point of land located at the westernmost extent of Monmouth Boulevard in Oceanport FW2-NT/SE1
(Oceanport)—Creek downstream of line described above SE1(C1)
PARKERS CREEK
(Fort Monmouth)—Source to a line beginning on the easternmost extent of Horseneck Point and

bearing approximately 000 degrees T (True North) to its terminus on Breezy Point on the Little Silver side (north) side of the creek.	FW2-NT/SE1
(Fort Monmouth)—Creek downstream of line described above	SE1(C1)
PEAPACK BROOK (Gladstone)—Entire length	FW2-TP(C1)
PETERS BROOK (Somerville)—Entire length	FW2-NT
PIGEON SWAMP (S. Brunswick)—All waters within the boundaries of Pigeon Swamp State Park	FW2-NT(C1)
PIKE RUN (Belle Meade)—Entire length	FW2-NT
PINE BROOK (Clarks Mills)—Entire length	FW2-NT
PINE BROOK (Cooks Mill)—Entire length	FW2-TM
PLEASANT RUN (Readington)—Entire length	FW2-NT
PRESCOTT BROOK (Stanton Station)—Entire length	FW2-TM
RAMANESSIN (HOP) BROOK (Holmdel)—Entire length	FW2-TM
RARITAN BAY—Entire drainage	FW2-NT/SE1
RARITAN RIVER	
NORTH BRANCH (Also see INDIA BROOK)	
(Pleasant Valley)—Source to, but not including, Ravine Lake	FW2-TP(C1)
(Far Hills)—Ravine Lake dam to Rt. 512 bridge	FW2-TM
(Bedminster)—Rt. 512 bridge to confluence with South Branch, Raritan River	FW2-NT
SOUTH BRANCH RARITAN RIVER	
(Mt. Olive)—Source to the dam that is 390 feet upstream of the Flanders-Drakestown Road bridge	FW2-NT(C1)
(Mt. Olive)—Dam to confluence with Turkey Brook	FW2-TM(C1)
(Naughright)—Confluence with Turkey Brook to confluence with Electric Brook	FW2-TP(C1)
(Clinton)—Confluence with Electric Brook to downstream end of Packers Island, except segment described separately, below	FW2-TM
(Ken Lockwood Gorge)—River and tributaries within Ken Lockwood Gorge Wildlife Management Area	FW2-TM(C1)
(Neshanic Sta.)—Downstream end of Packers Island to confluence with North Branch, Raritan River	FW2-NT
MAIN STEM RARITAN RIVER	
(Bound Brook)—From confluence of North and South Branches to Landing Lane bridge in New Brunswick and all freshwater tributaries downstream of Landing Lane bridge.	FW2-NT
(Sayreville)—Landing Lane bridge to Raritan Bay and all saline water tributaries	SE1
RINEHART BROOK (Hacklebarney)—Entire length	FW2-TP(C1)
ROCK BROOK (Montgomery)—Entire length	FW2-NT
ROCKAWAY CREEK	
NORTH BRANCH	
(Mountainville)—Source to Rt. 523 Bridge	FW2-TP(C1)
(Whitehouse)—Rt. 523 bridge to confluence with South Branch	FW2-TM
SOUTH BRANCH	
(Whitehouse)—Entire length	FW2-TM
MAIN STEM	
(Whitehouse)—Confluence of North and South Branches to Lamington River	FW2-NT
ROUND VALLEY RESERVOIR (Clinton)	FW2-TM
ROYCE BROOK (Manville)—Entire length	FW2-NT
SHREWSUBURY RIVER	
(Little Silver)—Source to Rt. 36 highway bridge	SE1(C1)
(Highlands)—Rt. 36 bridge to Sandy Hook bay	SE1
SIMONSON BROOK (Griggstown)—Entire length	FW2-NT
SIX MILE RUN (Franklin Church)—Entire length, except segment described below	FW2-NT
(Hillsborough)—Segment within the boundaries of Six Mile Run State Park	FW2-NT(C1)
SOUTH RIVER	
(Old Bridge)—Duhernal Lake to intake of the Sayreville Water Department.	FW2-NT
(Sayreville)—Below the intake of the Saryreville Water Department	SE1
SPOOKY BROOK (Bound Brook)	FW2-NT
SPRUCE RUN	
(Glen Gardner)—Source to, but not including, Spruce Run Reservoir	FW2-TP(C1)
(Clinton)—Spruce Run Reservoir dam to Raritan River, South Branch	FW2-TM
SPRUCE RUN RESERVOIR (Union)—Reservoir and tributaries	FW2-TM(C1)
STONY BROOK (Washington)—Entire length	FW2-TP(C1)
STONY BROOK	
(Hopewell)—Entire length, except that segment described below	FW2-NT
(Syndertown)—Brook and tributaries within Amwell Lake Wildlife Management Area	FW2-NT(C1)
STONY BROOK (Watchung)—Entire length	FW2-NT
SUN VALLEY BROOK (Mt. Olive)—Entire length	FW2-TP(C1)
SWIMMING RIVER	
(Red Bank)—Source to the intake of the Monmouth Consolidated Water Company at the Swimming River Reservoir dam	FW2-NT
(Red Bank)—Below the Swimming River Reservoir dam to the Navesink River	FW2-NT/SE1
TANNERS BROOK (Washington)—Entire length	FW2-NT(C1)
TEETERTOWN BROOK (Lebanon)—Entire length	FW2-TP(C1)
TEN MILE RUN (Franklin)—Entire length	FW2-NT

TENNENT BROOK (Old Bridge)—Entire length	FW2-NT
TEPEHEMUS BROOK (Manalapan)—Entire length	FW2-NT
TOWN NECK CREEK (Little Silver)—Source to a line beginning on the easternmost extent of the unnamed point of land located just east of Paag Circle on the south bank of Town Neck Creek and bearing approximately 095 degrees True North and terminating on Silver Point	FW2-NT/SE1
(Little Silver)—Creek below line described below	SE1(C1)
TROUT BROOK (Hacklebarney)—Entire length	FW2-TP(C1)
TURKEY BROOK (Mt. Olive)—Entire length	FW2-TP(C1)
WALNUT BROOK (Flemington)—Entire length	FW2-TM
WEAMACONK CREEK—See MATCHAPONIX BROOK	
WEMROCK BROOK (Millhurst)—Entire length, except that segment described below	FW2-NT
(Monmouth Battlefield State Park)—Those segments of the brook and its tributaries within the boundaries of Monmouth Battlefield State Park	FW2-NT(C1)
WEMROCK POND (Monmouth Battlefield State Park)	FW2-NT(C1)
WILLOUGHBY BROOK (Buffalo Hollow)—Entire length	FW2-TP(C1)
WILLOW BROOK (Holmdel)—Entire length	FW2-NT
YELLOW BROOK (Colts Neck)—Entire length	FW2-NT

(g) The surface water classifications in Table 5 are for waters of the Wallkill River Basin*[;]**:*

TABLE 5

WATER BODY	CLASSIFICATION
BEARFORT WATERS (Wawayanda)	FW2-NT(C1)
BEAVER RUN (Wantage)—Entire length	FW2-NT
BLACK CREEK (McAfee)—Source to Rt. 94 bridge, except those tributaries described separately, below	FW2-TM
(Vernon)—Rt. 94 bridge to Pochuck Creek	FW2-NT
TRIBUTARIES (Hamburg)—Three tributaries to Black Creek which originate in the Hamburg Mtn. Tract from their sources to the Tract Boundaries	FW1(tm)
(Rudeville)—Tributaries within the Hamburg Mtn. Tract not classified as FW1, above	FW2-TM(C1)
(McAfee)—Entire length	FW2-TP(C1)
(Vernon Valley)—Entire length	FW2-NT
CLOVE CREEK (Colesville)—Entire length	FW2-TM
CLOVE RIVER (Wantage)—Source to, but not including, Clove Acres Lake, except those tributaries described separately below	FW2-TM
(Sussex)—Clove Acres Lake to Papakating Creek	FW2-NT
(High Point)—Those portions of the two northern-most tributaries located entirely within High Point State Park boundaries, immediately east of Lake Marcia	FW1(tp)
FRANKLIN POND CREEK (Franklin)—Entire length, except those tributaries described separately, below	FW2-TM
(Hamburg Mtn.)—The first tributary, just south of Hamburg Mtn. flowing to the Wallkill River and located entirely within the Hamburg Mtn. Tract	FW1(tm)
(Hamburg Mtn.)—Tributaries within the Hamburg Mtn. Tract not classified as FW1 as described above	FW2-TM(C1)
GLENWOOD BROOK (Glenwood)—Outlet of Glenwood Lake to State line	FW2-TM
HAMBURG CREEK (Hamburg Mtn.)—Source to Rt. 517 bridge, Rudeville, except tributary described separately below	FW2-TM
(Hardistonville)—Rt. 517 bridge to Wallkill River	FW2-NT
(Hamburg Mtn.)—The third tributary just southwest of Hamburg Mtn. flowing toward the Wallkill River and located entirely within the Hamburg Mtn. Tract	FW1
HANFORD BROOK (Hanford)—Entire length within New Jersey	FW2-NT
LAKE LOOKOUT (Wawayanda)	FW2-NT(C1)
LAKE LOOKOUT BROOK (Wawayanda)—Brook and tributaries from source in Newark City Holdings, through the Wawayanda Tract, to confluence with the outlet stream from Lake Wawayanda	FW1
LAKE RUTHERFORD (Wantage)	FW1(tm)
LAUREL POND (Wawayanda)—Laurel Pond, including its outlet stream and tributaries, to the outlet stream from Lake Wawayanda	FW1
LIVINGSTON PONDS (Wawayanda)—The two northwestern ponds which are within State Park lands	FW2-NT(C1)
LONG HOUSE BROOK (Upper Greenwood Lake)—Source to State line, except segment described below	FW2-NT
(Upper Greenwood Lake)—Segment within the bounds of Hewitt State Forest	FW2-NT(C1)
LOUNSBERRY HOLLOW BROOK (Vernon Valley)—Outlet of Glenwood Lake to Pochuck Creek	FW2-TM

MUD POND OUTLET STREAM (Hamburg)—Outlet stream from the Pond, located within Hamburg Mtn. Tract	FW2-NT(C1)
PAPAKATING CREEK MAIN STEM (Frankford)—Source to Rt. 629 bridge	FW2-TM
(Pellettown)—Entire length of tributary	FW2-NT
(Wantage)—Rt. 629 bridge to Wallkill River	FW2-NT
WEST BRANCH (Wantage)—Entire length	FW2-NT
PARKER LAKE (Wawayanda)	FW2-NT(C1)
POCHUCK CREEK (Vernon)—Source to State line, except segment described separately below	FW2-NT
(High Point)—Segment within State Park lands	FW2-NT(C1)
QUARRYVILLE BROOK—See WILLOW BROOK	
RUTGERS CREEK (High Point)—The Cedar Swamp headwaters of the tributary to Rutgers Creek located entirely within the High Point State Park boundaries just south of the State line	FW1
SAND HILLS BROOK (Hamburg Mtn.)—The upstream portion of Sand Hills Brook located entirely within the boundaries of the Hamburg Mtn. Tract	FW1
(Hamburg)—Brook and tributaries beyond tract boundaries	FW2-NT
SAWMILL POND BROOK (W. Milford)—Entire length, except segment described separately below	FW2-NT
(Wawayanda)—Segment within the boundaries of Wawayanda State Park	FW2-NT(C1)
SPARTA GLEN BROOK (Sparta)—Entire length	FW2-TM
SPRING BROOK (Maple Grange)—Entire length	FW2-TP(C1)
TOWN BROOK (Vernon)—Entire length	FW2-TM
WALLKILL RIVER (Sparta)—Source to confluence with Sparta Glen Brook	FW2-NT
(Franklin)—Sparta Glen Brook to Rt. 23 bridge	FW2-TM
(Wantage)—Rt. 23 bridge to State line	FW2-NT
WANTAGE BROOK (Wantage)—Entire length	FW2-NT
WAWAYANDA CREEK (Vernon)—State line to Pochuck Creek, except unnamed tributary described below	FW2-TM
TRIBUTARY (Wawayanda)—Source to State line	FW2-NT
(Wawayanda)—Segment within State Park boundaries	FW2-NT(C1)
WAWAYANDA LAKE (Wawayanda)	FW2-TM(C1)
WILDCAT BROOK (Franklin)—Entire length	FW2-NT
WILLOW (QUARRYVILLE) BROOK (Wantage)—Entire length	FW2-TM

(h) FW1 waters are listed in Table 6 by tract within basins*[;]**:*

TABLE 6

ATLANTIC COASTAL PLAIN BASIN

ALLAIRE STATE PARK	MANASQAUN RIVER WATERSHED Those portions of the first and second southerly tributaries to the Manasquan River, which are west of Hospital Rd. and are located entirely within the boundaries of Allaire State Park The easterly tributary to Mill Run upstream of Brisbane Lake, located entirely within the boundaries of Allaire State Park
BASS RIVER STATE FOREST	BASS RIVER WATERSHED Tommy's Branch from its headwaters downstream to the Bass River State Forest Recreation Area service road Falkenburg Branch of Lake Absegami from its headwaters to the Lake
GREENWOOD FOREST WILDLIFE MANAGEMENT AREA	CEDAR CREEK WATERSHED Webbs Mill Branch and tributaries, located entirely within the Greenwood Forest Wildlife Management Area boundaries Chamberlain's Branch from its origins to a point 1000 feet west of Route 539 Those portions of the tributaries to Chamberlain's Branch originating and wholly contained within the boundaries of the Greenwood Forest Wildlife Management Area WADING RIVER WATERSHED Westerly tributary to the Howardsville Cranberry Bog Reservoir and other tributaries that are located entirely within the boundaries of the Greenwood Forest Wildlife Management Area
ISLAND BEACH STATE PARK	BARNEGAT BAY WATERSHED All freshwater ponds in Island Beach State Park
LESTER G. MACNAMARA WILDLIFE MANAGEMENT AREA	GREAT EGG HARBOR RIVER WATERSHED Hawkins Creek and tributaries and the next adjacent, northern stream and tributaries that enter the Great Egg Harbor River, from their origins downstream to where the influence of impoundment begins

TUCKAHOE PUBLIC FISHING AND HUNTING GROUNDS	See LESTER G. MACNAMARA WILDLIFE MANAGEMENT AREA
WHARTON STATE FOREST	MULLICA RIVER WATERSHED Deep Run and tributaries from their headwaters downstream to Springer's Brook Skit Branch and tributaries from their headwaters downstream to the confluence with Robert's Branch Tulpehocken Creek and tributaries from their sources downstream to the confluence with Featherbed Branch The westerly tributaries to Tulpehocken Creek and those natural ponds within the lands bounded by Hawkins Rd., Hampton Gate Rd., and Sandy Ridge Rd. Stream in the southeasterly corner of Wharton State Forest, located between Ridge Rd. and Seaf Weeks Rd. downstream to the boundaries of Wharton State Forest. Brooks and tributaries immediately to the west of Tylertown and Crowleytown, from their headwaters downstream to the head of tide at mean high water The easterly branches of the Batsto River from Batsto Village to the confluence with Skits Branch Gun Branch from its headwaters downstream to U.S. Route 206
DELAWARE RIVER BASIN	
ALLAMUCHY STATE PARK	MUSCONETCONG RIVER WATERSHED All those tributaries to Deer Park Pond and its outlet stream, that are located entirely within the boundaries of Allamuchy State Park PEQUEST RIVER WATERSHED All tributaries that are located entirely within Allamuchy State Park and flow into Allamuchy Pond
BELLEPLAIN STATE FOREST	EAST CREEK WATERSHED All tributaries to Lake Nummi from their origins downstream to the Lake Those two tributaries to Savages Run and portions thereof downstream of Lake Nummi, which are located entirely within the Belleplain State Forest boundaries The stream and its tributaries that originate just south of East Creek Mill Rd., 1.2± miles north-northeast of Eldora, and are located entirely within the boundaries of Belleplain State Forest WEST CREEK WATERSHED The portion of the tributary to West Creek that originates about 0.9 miles southeast of Hoffman's Mill and is located entirely within the boundaries of Belleplain State Forest Eastern branch of the easterly tributary to Pickle Factory Pond from its origin to its confluence with the western branch Those tributaries to the stream which enter West Creek approximately 0.5 miles upstream of Hoffman's Mill and which are located entirely within the boundaries of Belleplain State Forest
COLLIERS MILLS WILDLIFE MANAGEMENT AREA	CROSSWICKS CREEK WATERSHED All tributaries to Lahaway Creek originating in the Colliers Mills Wildlife Management Area north-northeast of Archers Corner, from their origins downstream to the boundaries of the Colliers Mills Wildlife Management Area.
DELAWARE WATER GAP NATIONAL RECREATION AREA	DELAWARE RIVER WATERSHED All tributaries to Flat Brook flowing from the Kittatinny Ridge and located entirely within the boundaries of the Delaware Water Gap National Recreation Area Rundle Brook upstream of Sussex County Route 615 Smith Ferry Brook Donkey's Corner Brook Sambo Island Brook and Pond Coppermine Brook in Pahaquarry Dunnfield Creek to Route I-80
DIX WILDLIFE MANAGEMENT AREA	MIDDLE MARSH CREEK WATERSHED All fresh waters which originate in and are located entirely within the boundaries of the Dix Wildlife Management Area
EDWARD G. BEVAN WILDLIFE MANAGEMENT AREA	MAURICE RIVER WATERSHED Joshua and Pine Branches of Buckshutem Creek to their confluences with Buckshutem Creek Gravelly Run downstream to the boundaries of the Edward G. Bevan Wildlife Management Area NANTUXENT CREEK WATERSHED Cedar and Mile Branches to Shaw's Mill Pond

	DIVIDING CREEK WATERSHED Those tributaries to Cedar Creek which originate in and are located entirely within the boundaries of the Edward G. Bevan Wildlife Management Area Those portions of tributaries to Dividing Creek, located entirely within the boundaries of the Edward G. Bevan Wildlife Management Area
FLATBROOK-ROY WILDLIFE MANAGEMENT AREA	FLAT BROOK WATERSHED The tributary to Little Flat Brook which originates north of the Bevans-Layton Rd., downstream to the first pond adjacent to the Fish and Game headquarters building Two tributaries to Big Flat Brook which originate along Struble Rd. in Stokes State Forest, downstream to the confluence with Big Flat Brook on Fish and Game property
GLASSBORO WILDLIFE MANAGEMENT AREA	MAURICE RIVER WATERSHED The portion of a branch of Little Ease Run situated immediately north of Stangor Avenue, and entirely within the Glassboro Wildlife Management Area First and second easterly tributaries to Little Ease Run north of Academy Road
HIGH POINT STATE PARK AND STOKES STATE FOREST	CLOVE BROOK WATERSHED The second and third northerly tributaries to Clove Brook, those tributaries to Steeny Kill Lake and those downstream of the Lake which originate in High Point State Park, downstream to the confluence with Clove Brook or to the boundaries of High Point State Park The northerly tributaries to Mill Brook due west of Steeny Kill Lake, within the High Point State Park boundaries FLAT BROOK WATERSHED All surface waters of the Flat Brook drainage within the boundaries of High Point State Park and Stokes State Forest except the following: (1) Saw Mill Pond and Big Flat Brook downstream; (2) Mashipacong Pond and its outlet stream (Parker Brook) to the confluence with Big Flat Brook; (3) Lake Wapalanne and its outlet stream to the confluence with Big Flat Brook; (4) Lake Ocquittunk and waters connecting it with Big Flat Brook; (5) Stony Lake and its outlet stream (Stony Brook) downstream to the confluence with the Big Flat Brook; (6) Kittatinny Lake, that portion of its inlet stream outside the Stokes State Forest boundaries, and its outlet stream, including the Shotwell Camping Area tributary, to the confluence with Big Flat Brook; (7) Deer Lake and its outlet stream to Lake Ashroe; (8) Lake Ashroe, the portions of its tributaries outside the Stokes State Forest boundaries, and its outlet stream to the confluence with Big Flat Brook; (9) Lake Shawanni and its outlet stream to the confluence with Big Flat Brook; (10) Crigger Brook and its tributary to the confluence with Big Flat Brook SHIMERS BROOK WATERSHED The portion of Shimers Brook and its tributaries that are located within the boundaries of High Point State Park
JOHNSONBURG NATURAL AREA	PEQUEST RIVER WATERSHED Mud Pond and its outlet stream, Bear Creek, to the Erie-Lackawanna Railroad trestle, north of Johnsonburg
LEBANON STATE FOREST	RANCOCAS CREEK WATERSHED Deer Park Branch and tributaries near Buckingham, downstream to the confluence with Pole Bridge Branch Tributaries to the South Branch of Mount Misery Brook located entirely within the boundaries of Lebanon State Forest Cooper Branch and tributaries downstream to Pakim Pond and those tributaries to Cooper Branch downstream of Pakim Pond that are located entirely within the boundaries of Lebanon State Forest Shinns Branch and tributaries located entirely within the boundaries of Lebanon State Forest Jade Run located entirely within the boundaries of Lebanon State Forest MacDonald's Branch and tributaries located entirely within the boundaries of Lebanon State Forest
MILLVILLE FISH AND GAME TRACT	See EDWARD G. BEVAN WILDLIFE MANAGEMENT AREA
PASADENA WILDLIFE MANAGEMENT AREA	RANCOCAS CREEK WATERSHED The two easterly branches of the South Branch of Mount Misery Brook, located entirely within the boundaries of the Pasadena Wildlife Management Area

PEASELEE WILDLIFE MANAGEMENT AREA	MAURICE RIVER WATERSHED Middle Branch of Muskee Creek from its origin to the boundaries of the Peaselee Wildlife Management Area Cedar Branch of the Manumuski River, from its origin to the boundaries of the Peaselee Wildlife Management Area Those portions of tributaries to Slab Branch located entirely within the boundaries of the Peaselee Wildlife Management Area
WASHINGTON CROSSING STATE PARK	STEELE RUN WATERSHED That portion of Steele Run which is located within the boundaries of Washington Crossing State Park and is upstream of New Jersey Rt. 29
WHITTINGHAM WILDLIFE MANAGEMENT AREA	PEQUEST RIVER WATERSHED Northwesterly tributaries to the Pequest River, including Big Spring, located within the boundaries of the Whittingham Wildlife Management Area southwest of Springdale, from their origins to their confluence with the Pequest River
WORTHINGTON STATE FOREST	DUNNFIELD CREEK WATERSHED Dunnfield Creek to I-80 Sunfish Pond, its outlet stream to the Delaware River and all unnamed waters located entirely within the boundaries of the Worthington State Forest
PASSAIC RIVER, HACKENSACK RIVER, NY HARBOR COMPLEX BASIN	
A.S. HEWITT STATE FOREST	WANAQUE RIVER WATERSHED Cooley Brook and tributaries located entirely within the boundaries of Hewitt State Forest Surprise Lake Green Brook and tributaries located entirely within the boundaries of Hewitt State Forest West Pond
BERKSHIRE VALLEY WILDLIFE MANAGEMENT AREA	ROCKAWAY RIVER WATERSHED Stephens Brook north of the boundaries of the Berkshire Valley Wildlife Management Area
CITY OF NEWARK HOLDINGS AND WAWAYANDA STATE PARK	PEQUANNOCK RIVER WATERSHED Northern tributary to Cedar Pond from its origin, downstream to about 1000 feet from the entrance into the pond Hanks Pond and all tributaries Tributary to Pequannock River at Green Pond Junction from its origin downstream to Route 23 Tributary joining the main stem of the Pequannock River 3500± feet southeast of the Sussex-Passaic County line, near Jefferson, from its origin to about 2000 feet upstream of the pond Pacack Brook and its tributaries upstream of Canistear Reservoir, located entirely within the boundaries of the Newark watershed and Wawayanda State Park Cherry Ridge Brook and its tributaries north of Canistear Reservoir, located entirely within the boundaries of the Newark watershed lands and Wawayanda State Park The southern branch of the easterly tributary to Canistear Reservoir Pequannock River and tributaries upstream of the confluence with Pacack Brook The northwestern tributary to Oak Ridge Reservoir The portion of the westerly tributary to Lake Stockholm Brook, from its origins to about 1000 feet south of the Route 23 Bridge, located entirely within the boundaries of the Newark watershed Lud-Day Brook downstream to its confluence with the southwestern outlet stream from Clinton Reservoir just upstream of the confluence of the outlet stream and a tributary from Camp Garfield Brook between Hamburg Turnpike and Vernon-Stockholm Road, downstream to its confluence with Lake Stockholm Brook, north of Rt. 23
RARITAN RIVER BASIN	NONE
WALLKILL RIVER BASIN	
CITY OF NEWARK HOLDINGS AND WAWAYANDA STATE	LAKE LOOKOUT BROOK WATERSHED Lake Lookout Brook and tributaries from its headwaters in the Newark City holdings, downstream through the State-owned Wawayanda State Park, to the confluence with the outlet stream from Lake Wawayanda
HAMBURG MOUNTAIN WILDLIFE MANAGEMENT AREA	SAND HILLS BROOK WATERSHED The upstream portion of Sand Hills Brook located entirely within the boundaries of the Hamburg Mtn. Wildlife Management Area BLACK CREEK WATERSHED All those portions of three tributaries to Black Creek originating in the Hamburg Mtn. Wildlife Management Area, from their origin downstream to the Management Area boundaries

	FRANKLIN POND CREEK WATERSHED The first tributary to Franklin Pond Creek just south of Hamburg Mountain, flowing toward the Wallkill River and located entirely within the Hamburg Mtn. Wildlife Management Area HAMBURG CREEK WATERSHED The third tributary just southwest of Hamburg Mountain, which flows toward the Wallkill River and is located entirely within the Hamburg Mtn. Wildlife Management Area
HIGH POINT STATE PARK	CLOVE RIVER WATERSHED Those portions of the two northernmost tributaries to Clove River which are located entirely within the boundaries of High Point State Park, and are immediately east of Lake Marcia RUTGERS CREEK WATERSHED The Cedar Swamp headwaters of the tributary to Rutgers Creek, located entirely within the boundaries of High Point State Park, just south of the New Jersey-New York state line
SUSSEX BOROUGH WATER SUPPLY LAND	LAKE RUTHERFORD WATERSHED Lake Rutherford, located northwest of Colesville
WAWAYANDA STATE PARK	LAUREL POND WATERSHED Laurel Pond, and its outlet stream and tributaries downstream to the outlet stream from Lake Wawayanda

(i) The following are the outstanding national resource waters of the State:
1. FW1 Waters; and
2. PL Waters.

(a)

DIVISION OF COASTAL RESOURCES

Flood Hazard Area Control

Readoption: N.J.A.C. 7:13

Proposed: February 21, 1989 at 21 N.J.R. 371(a).
Adopted: July 14, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: July 14, 1989 as R.1989 d.415, **without change.**

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

DEP Docket Number: 003-89-01.
Effective Date: July 14, 1989.
Expiration Date: July 14, 1994.

Summary of Public Comments and Agency Responses:

The proposal to readopt the Flood Hazard Area Control rules, N.J.A.C. 7:13, without change was published in the New Jersey Register on February 21, 1989 at 21 N.J.R. 371(a). A public hearing concerning the proposed readoption was held on March 15, 1989 at the War Memorial Building in Trenton, New Jersey. No members of the public presented comment at the public hearing. The Department received written comments from six commenters during the public comment period ending March 23, 1989.

On April 7, 1989, the Department gave notice that it was extending the comment period for the proposed readoption until May 8, 1989 (see 21 N.J.R. 1046(a)). No additional written comments concerning the proposal were received by the Department during the extended comment period ending May 8, 1989.

Under the rules of the Office of Administrative Law (OAL), readoption of an unexpired rule is effective upon the filing of the adoption notice with the OAL. If the rule lapses before readoption is accomplished, the readoption is treated as a new rule adoption and is not effective until publication of the adoption notice approximately one month later. For these rules, the Department was unable to complete readoption before the expiration of the chapter on May 4, 1989. Because the flood hazard area control program is necessary to protect public health, public safety, and the environment from the effects of unregulated activities in the flood hazard area, it was important that the Department minimize any lapse of these rules. Therefore, on May 5, 1989 the Department obtained a Gubernatorial waiver under Executive Order No. 66 (1978) which waived the five-year sunset provision for this chapter to the extent that the expiration date was set as July 17, 1989 (see 21 N.J.R. 1481(a)). In accordance with the extension granted in the Gubernatorial waiver, the Department is adopting the proposed readoption without change effective upon its filing with the Office of Administrative Law.

Within the next few months, the Department expects to propose technical and clarifying amendments to the readopted rules. Although the Department received during the comment period a number of suggestions for improving the Flood Hazard Area Control rules, amending the chapter at this time is beyond the scope of the readoption proposal, which did not propose any changes to the chapter. In responding to the comments received the Department has tried to evaluate the merits of the suggested changes, and will include appropriate revisions in its forthcoming proposal.

COMMENT: The Department should establish a unified tracking system for all its permits. Such a system would enable the Department to coordinate permit review more efficiently and to take a comprehensive approach to preventing flooding and protecting important natural resources.

RESPONSE: The Department is working to consolidate its permit numbering and data base management programs. However, any permit tracking system would likely be implemented independently of the rule in this chapter.

COMMENT: Under the current rules, it is impossible to obtain unbiased evaluation of stream encroachment permit applications because the Department is understaffed, local officials are politically motivated and application information is manipulated by professional engineers hired by the applicants.

RESPONSE: All applications made to the Department are reviewed for compliance with the technical and administrative requirements of the Department's rules. Most permit application reviews are conducted on the basis of the information submitted by the applicant, but site inspections to verify the information submitted are performed at random and when a question requiring a site inspection arises during the review. The Department frequently requests revisions to proposed projects.

COMMENT: Municipal and county ad hoc groups should be formed as advocates to enforce the Flood Hazard Area Control rules and defend the environment against private interest groups.

RESPONSE: The Department actively promotes the participation of municipal and county agencies, as well as private citizens groups, in its efforts to protect the environment. Each year, the Department conducts seminars throughout the State to explain its programs and the role of public participation. In particular, citizens have the opportunity to become involved through the establishment of local River Watch groups and through specific interagency agreements between the Department and counties under the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq.

COMMENT: The Department should not relax its jurisdictional powers under the Flood Hazard Area Control rules. To do so would allow highly financed projects to take precedence over the following objectives of the rules: protecting of public and private property; safeguarding the public from flood dangers and damages; protecting public health and welfare; preventing degradation of water quality; and protecting wildlife, fisheries, stream channels and flood plains.

RESPONSE: The Department does not intend to abdicate any of the jurisdiction or powers granted to it under the Flood Hazard Area Control Act and the other statutes under which these rules were promulgated. The Department is drafting revisions to the rules at N.J.A.C. 7:13, for proposal within the next few months, to more clearly state the purpose and intent of the stream encroachment permit program and its relationship to other resource protection programs.

COMMENT: N.J.A.C. 7:13-1.1(a) (Purpose and scope) should be rewritten to read as follows: "The general purpose of this chapter is to **plan and to** control construction and other developmental activities in stream channels and in areas subject to flooding in order to avoid or **primarily** mitigate the detrimental **hydraulic and hydrologic** effects of such activities."

RESPONSE: The rules at N.J.A.C. 7:13 are designed to prevent and/or minimize the impact of construction on flooding and on the environment, encompassing both planning and actual construction in the flood hazard area. Further, the Department does not intend to limit the scope of these rules to **primarily** mitigating the detrimental **hydraulic and hydrologic** effects of such activities, since the Department has clear authority to address the full range of potential detrimental effects on the environment.

COMMENT: The Department should delete the phrase "and to protect wildlife and fisheries by preserving and enhancing water quality and the environment of the stream channel and flood plain" from N.J.A.C. 7:13-1.1(c) (Purpose and scope), and replace it with "within the flood plain."

RESPONSE: Protection of the environment is part of the Department's mission in all of its programs. The statutes under which these rules have been adopted clearly authorize the full scope of this mission. Although the Department will be revising the rules at N.J.A.C. 7:13, the revised rules will still require applicants to address the environmental impacts of proposed projects.

COMMENT: Many of the terms used in the Flood Hazard Area Control rules are misleading and are deliberately misused by applicants in their dealings with local officials. To protect local officials from such tactics, the Department should clarify or define the following terms: "delineated," "non-delineated," "flood plain fringe," "flood hazard area," "gullies," "ditches," "perennial streams," "spring-fed areas," "perched water," and "man-made."

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider clarifying these terms as part of the revision.

COMMENT: N.J.A.C. 7:13-1.2, Definitions, should be amended to clarify the definitions of "delineated stream," "non-delineated stream," "flood plain," "floodway," "flood fringe," "flood hazard design elevation," and "base flood elevation."

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider these changes as part of the revision.

COMMENT: The N.J.A.C. 7:13-1.2 definition of "applicant" should be amended to include any person with a legal interest in the property.

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider clarifying this term as part of the revision.

COMMENT: The definitions of "dam" and "low dam" at N.J.A.C. 7:13-2.1 should be amended to clarify how the Department measures whether the barrier raises the water level five feet or more above its usual mean low water height, for example, from the toe of the wall (impoundment) to the water surface.

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider this change as part of the revision.

COMMENT: Under the definition at N.J.A.C. 7:13-1.2, a "delegated county" is a county to which the Department has delegated its power to approve or disapprove certain classes of stream encroachment applications. The Department should amend this definition to prohibit delegated counties from deferring their delegated powers to municipal engineers, as has been the practice in some areas.

RESPONSE: The only delegation that the Department has made to date under this chapter has been to Monmouth County to issue stream cleaning permits. Under this delegation, municipal engineers may approve certain projects with small drainage areas, subject to the Department's approval. The Department will consider whether the language on delegation should be clarified as part of the upcoming revision of N.J.A.C. 7:13.

COMMENT: The definition of "exceptional and undue hardship" at N.J.A.C. 7:13-1.2 refers only to the owner of the property or the applicant for a stream encroachment permit. This definition should be amended to address the hardship that may be experienced by abutting property owners, downstream landowners, or interested parties affected by the Department's decision-making process.

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider clarifying this term as part of the revision.

COMMENT: The Department's current Flood Hazard Area Control rules regulate the entire flood fringe area on an equal basis. The Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., instructs the Department to "identify the various subportions of the flood hazard area for reasonable and proper use according to relative risks." Therefore, the Department is required to consider the differential risk within the flood fringe area. Areas further upland of the floodway itself are not necessarily subject to the same risk as lands closer to the floodway. The potential for damage in areas upland of the floodway is not as great because floods will not occur as frequently and will be of lesser velocity and duration.

RESPONSE: These rules currently divide the flood hazard area into two areas, the floodway and flood fringe. The floodway is where flood velocities are expected whereas the flood fringe is considered to be a ponding area. Areas closer to the upland limits of the flood plain will flood less frequently and to a lesser depth, but are still susceptible to water damage and still displace a volume which would be available for flood waters. The Department does not consider it necessary to further subdivide the flood fringe into different regulatory areas.

COMMENT: The Department should reconsider the continuing validity of defining the "flood hazard area design flood" in delineated areas as the 100-year storm plus 25 percent. The Department should solicit public comment as to whether the 25 percent "add-on" should be rescinded.

RESPONSE: The 25 percent increase in the 100-year flood was developed as a safety factor to account for the impacts on flood elevations of a fully developed flood plain. As the State's stream basins have become developed, the Department's data has verified that the 25 percent add-on is a fairly accurate projection of flood waters.

COMMENT: The definition of "hazardous materials" at N.J.A.C. 7:13-1.2 should be amended to include discharge of deleterious substances, including, but not limited to, debris, siltation, and products of erosion and excavation. This amendment would make the Flood Hazard Area Control rules consistent with P.L. 1971, c. 173 and N.J.S.A. 23:5-28, 23:9-36, and 23:9-52. The amendment would also allow the Department to consider the harmful impacts of hazardous materials on fisheries and wildlife habitats when reviewing stream encroachment permit applications.

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider clarifying this term as part of the revision.

COMMENT: The definition of "perennial stream" at N.J.A.C. 7:13-1.2 should include streams mapped on county documents for bridge crossings (which generally record water depths), and on the Federal F.I.R. (Flood Insurance Rate) maps published by the Federal Emergency Management Agency.

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider clarifying this term as part of the revision.

COMMENT: The definition of "stream encroachment" at N.J.A.C. 7:13-1.2 should be rewritten to read as follows: " 'Stream encroachment' means any structure, alteration, filling, construction or other activity that affects the hydraulics within the area which would be inundated by the 100-year flood of any non-delineated stream or within the Flood Hazard Area of a delineated stream."

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider clarifying this term as part of the revision.

COMMENT: The definition of "stream encroachment permit" at N.J.A.C. 7:13-1.2 should include "delegated agency or municipality" only if that agency is in compliance with the Flood Hazard Area Control rules, N.J.A.C. 7:13, and the stormwater management program authorized pursuant to N.J.S.A. 40:55D-28(b), 40:55D-93, and 40:55D-98.

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider clarifying this term as part of the revision.

COMMENT: The term "trout associated" should be changed to "trout maintenance and production" throughout this chapter.

RESPONSE: The protection of the State's trout waters is of major concern to the Department. The effect of the suggested change would be to relax construction requirements for areas upstream of trout maintenance and production waters; this would undoubtedly have a detrimental environmental impact on these areas. Therefore, the Department does not intend to propose this amendment.

COMMENT: N.J.A.C. 7:13-1.4, Applicability, should be amended to clarify how the Department defines a 50 acre drainage area. Also, the rules should not allow the Department to classify projects at locations with drainage areas under 50 acres as Projects of Special Concern.

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider clarifying the definition of a 50 acre drainage area as part of the revision. However, because the headwaters of a stream have a crucial role in determining the water quality of the entire stream, the Department intends to continue to classify certain projects at locations with drainage areas less than 50 acres as Projects of Special Concern.

COMMENT: The Department should amend N.J.A.C. 7:13-1.4(e) to exempt projects and activities along tidal water bodies from obtaining a stream encroachment permit from the Department if they are constructed in accordance with the FEMA construction standards, 44 C.F.R. 60.6(b), as set forth by the BOCA Flood Resistance Construction Code for New Jersey.

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider this amendment as part of the revision.

COMMENT: The Department should expand the N.J.A.C. 7:13-1.4(e) list of tidal water bodies upon which activities otherwise encompassed by this chapter are exempt from the stream encroachment permit requirement.

RESPONSE: The list of tidal water bodies at N.J.A.C. 7:13-1.4(e) exempts activities otherwise encompassed by the Flood Hazard Area Control rules from obtaining a stream encroachment permit because projects in these areas are required to obtain a waterfront development permit from the Department, thereby adequately addressing flooding concerns. The Department is aware that there are tidal water bodies not on this list where a waterfront development permit is required for activities otherwise encompassed by this chapter, and will clarify this issue in the upcoming revisions to the Flood Hazard Area Control rules, N.J.A.C. 7:13.

COMMENT: N.J.A.C. 7:13-1.4(g) addresses the same issue as N.J.A.C. 7:13-1.4(e) and should be deleted.

RESPONSE: N.J.A.C. 7:13-1.4(e) exempts activities otherwise encompassed by the Flood Hazard Area Control rules, on tidal water bodies listed in the section, from the requirement of obtaining a stream encroachment permit. As noted above, activities in these areas require a waterfront development permit which adequately addresses flooding concerns for these locations. By contrast, N.J.A.C. 7:13-1.4(g) exempts activities on non-listed water bodies which qualify as tidal waters from the net fill limitations at N.J.A.C. 7:13-4.7(d) but not from obtaining a stream encroachment permit.

COMMENT: The Department should amend N.J.A.C. 7:13-1.8(a)1 to clarify how maps are "adopted pursuant to the National Flood Insurance Program."

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider clarifying this procedure as part of the revision. Currently, the Department relies on F.I.R. (Flood Insurance Rate) maps published by the National Flood Insurance Program, which are developed by municipalities participating in the program and have been published for most of the jurisdictions in the State. If an applicant is unsure whether a map has been adopted pursuant to the National Flood Insurance Program, he or she should check with the Department.

COMMENT: The Department should not require major projects or Projects of Special Concern to submit an analysis and determination of the 100-year flood plain, N.J.A.C. 7:13-1.8(c).

RESPONSE: Under the rules in this chapter, the Department has the responsibility for regulating construction within the 100-year floodplain. In cases where the State has not delineated the 100-year floodplain, it is up to the applicant to provide all the necessary topographical information and calculations so that the Department can determine the limits of the 100-year floodplain.

COMMENT: In addition to the present requirements, N.J.A.C. 7:13-2.1 should require all applications for stream encroachment permits to include the following information: Description of the proposed project; preliminary site plan or subdivision map; description of alternatives to the proposed encroachment, including alternative sites, alternative construction methods, and reasons for rejecting the alternatives; lists of approvals required for the proposed activity by other Federal, interstate, State, county and local agencies, including a record of all approvals and denials received; a vicinity map identifying the proposed activity site and the local jurisdictions close to the site; location of the proposed project by block, lot and street address; and a site map showing location of the proposed project, location of the proposed stream encroachment, and location of the project within the stream's watershed.

RESPONSE: In accordance with N.J.A.C. 7:13-2.1, the Department already requires most of the above information as part of its standard stream encroachment permit application. One of the exceptions is the alternatives to the project, which is only required for Projects of Special Concern. The Department does not request a list of approvals required from other agencies because these approvals do not have any bearing on the project's compliance with the requirements of this chapter. However, the stream encroachment permits issued by the Department contain a standard clause specifying that they are not valid until all other applicable permits are obtained.

COMMENT: The Department should include a binding pre-application checklist, listing a fee schedule and all the information required for a complete permit application, as part of the procedures in N.J.A.C. 7:13-2.1, Required information for all applications submitted to the Department and N.J.A.C. 7:13-2.3, Pre-application conference.

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider this change as part of the revision.

COMMENT: The notice of application presently provided to municipalities by applicants for stream encroachment permits pursuant to N.J.A.C. 7:13-2.2 contains almost no meaningful information. As a result, applications are often bounced between the State and local agencies without final resolution, and proposed projects are insensitive to State and local environmental considerations. The applicant should be required to furnish the municipal agencies with enough data and information for them to make an informed judgment about how the stream encroachment proposal relates to the site plan/subdivision proposal under consideration. Therefore, N.J.A.C. 7:13-2.2 should be amended to require the notice to municipalities to include the following information and documentation: description of nature of proposed project; lists of approvals required for the proposed activity by other Federal, interstate, State, county, and local agencies, including a record of all approvals or denials received; a vicinity map identifying the proposed activity site and the local jurisdictions close to the site; and location of the proposed project by block, lot and street address.

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider this amendment as part of the revision.

COMMENT: Under the present system, applicants often send a notice of their proposed project to the municipal agencies, as required by N.J.A.C. 7:13-2.2, long before they file a stream encroachment permit application with the Department. Since a stream encroachment project is not assigned a project number by the Department until the permit application is filed, this premature notice makes it difficult for municipal agencies to track the proposed project through the State system. Therefore, the Department should revise the Flood Hazard Area Control rules to state that the Department will not consider a stream encroachment application complete until the applicant has furnished verification that a registered mail notice and a copy of the vicinity map has been provided to the appropriate persons. At a minimum, these persons should include the clerk, environmental commission and planning board of the municipality and county in which the proposed stream encroachment will occur, and landowners within 200 feet of the property or properties on which the proposed stream encroachment will occur.

RESPONSE: Under the current rules, a stream encroachment permit application is not considered complete until proof of notice is received. However, a vicinity map is not required as part of the notice at this time. The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider including this requirement as part of the revision.

COMMENT: The Department should not require the applicant to send notice under N.J.A.C. 7:13-2.2(a)5 to "any other agencies or bodies as requested by the Department or the county."

RESPONSE: In some cases, applicants will propose projects before the Department that should be brought to the attention of other agencies

unaware of the proposal. Therefore, the Department does not intend to amend the language in this section in the manner requested.

COMMENT: The Department should add the following language to N.J.A.C. 7:13-2.3, Pre-application conference: "Fees will be determined at the pre-application meeting and may be revised by the Department later, during review of the application."

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider this amendment as part of the revision.

COMMENT: Delegated authorities with optional review jurisdiction under N.J.A.C. 7:13-2.5 will tend to have technical expertise but not regulatory expertise. In their eagerness to generate fees from project review, delegated authorities will try to address problems through technical solutions instead of unbiased environmental review.

RESPONSE: Any authority delegated under this chapter will be subject to review and oversight by the Department which will include both engineering and environmental concerns.

COMMENT: The drainage area outlined in N.J.A.C. 7:13-2.5(b), Optional review for projects in small drainage areas, does not account for the detrimental impacts a small project can have on a large drainage area. Instead of designating small projects by acreage, the Department should look at the proposed discharge point, whether sensitive soils are present, and the quality of the existing ecosystem on a site-specific basis.

RESPONSE: Under this section, a project cannot be approved by the county or municipal engineer if it is classified by the Department as a Project of Special Concern. If a small project is likely to have detrimental impacts on a large drainage area, because of sensitive soils or other factors, it would likely be classified as a Project of Special Concern under these rules. In such a situation, the project review would be conducted by the Department and not under an optional review by the delegated authority.

COMMENT: In most municipalities, the public is only privy to information and public comment which is part of a planning board public hearing or other local hearing. The procedure at N.J.A.C. 7:13-2.5(c), Optional review for projects in small drainage areas, should be amended to require that any alterations of the application or change in testimony at the time of the hearing be made available for additional review by interested parties.

RESPONSE: Although the only delegation of authority under this chapter to date has been to Monmouth County for stream cleaning permits, the Department provides the option of local review of projects in small drainage areas because of the minimal impact these projects are likely to have and the available municipal expertise for reviewing permit applications. If a municipality is exercising its optional review jurisdiction for projects in small drainage areas, the review process is conducted according to the municipality's procedural requirements. The Department believes that for this class of projects, relying on local review procedures adequately addresses public concerns and ensures public participation. The Department suggests that public participation concerns for projects in small drainage areas be raised in the first instance before the municipality exercising the optional review jurisdiction.

COMMENT: Under N.J.A.C. 7:13-2.5(d), Optional review for projects in small drainage areas, an applicant may obtain a permit by submitting an approval letter from a municipal, county, or professional engineer. This section should be amended to require that the approval letter include the following: a transcript or minutes of public hearing testimony regarding the application; any available written comment by interested parties regarding the application; and any review or comments by the affected township's environmental commission.

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider these changes as part of the revision.

COMMENT: The Department should coordinate its requirements for soil erosion and sediment control with the rules of the Department of Agriculture at N.J.A.C. 2:90-1.1, Standards for soil erosion and sediment control in New Jersey, which require applicants to submit a permit application to the Soil Conservation Service unless the project requires modification of the channel or stream banks or requires disturbance of 1,000 square feet of the surface area of land within 50 feet of the stream bank of trout associated streams and 25 feet of the stream bank for all other streams, in which case, the applicant must submit an application to the Department.

RESPONSE: The Department is working with the Soil Conservation Districts to coordinate the requirements of the two programs. The Department will consider this suggestion as part of the upcoming revisions to this chapter.

COMMENT: N.J.A.C. 7:13-2.7(a)1 should be amended to allow applicants to contact the Department by facsimile machine in cases of emergency permit waiver.

RESPONSE: The present rules do not preclude an applicant from submitting information by facsimile machine, but project work cannot commence until verbal approval is received from the Department.

COMMENT: N.J.A.C. 7:13-2.7(a) should be amended to include a new section as follows: "These emergency projects shall be deemed approved if the Department does not respond in writing within three working days after the initial telephone message described in 1 above."

RESPONSE: Under the present rules, the Department can approve emergency work during the initial telephone contact. The Department will, within three days, send the applicant a written confirmation of this approval. Moreover, a stream encroachment permit will have to be obtained after the fact. The Department does not believe that the approval by default suggested in the above comment is necessary or justified.

COMMENT: N.J.A.C. 7:13-2.8(b) should be amended to eliminate "denial with prejudice" as one of the Department's options in deciding upon a stream encroachment permit application.

RESPONSE: The Department very rarely issues a decision of "denial with prejudice" when evaluating a stream encroachment permit application. However, the option to deny an application with prejudice, which prevents the applicant from resubmitting the application, should remain for those projects for which the engineering and environmental designs are so unsound that the Department could never approve them. A decision to deny an application with prejudice does not preclude the applicant from appealing the Department's decision under the provisions of N.J.A.C. 7:13-2.11.

COMMENT: N.J.A.C. 7:13-2.8(b)6 should be amended to make a 30-day extension of time to the 90-day review period available if agreed upon by both parties, whether or not requested at least 15 days prior to the expiration date for the approval or disapproval of the permit application.

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider this change as part of the revision.

COMMENT: The Flood Hazard Area Control rules should set a time limit of 45 days for processing permits for minor projects, N.J.A.C. 7:13-2.4, and 15 days from local approval for processing permits for projects in small drainage areas, N.J.A.C. 7:13-2.5(a).

RESPONSE: The Department has 90 days to review stream encroachment permit applications under the 90-Day Act, N.J.S.A. 13:1D-29 through 13:1D-33, and the 90-Day Construction rules at N.J.A.C. 7:1C. The Department is not under any time restriction for acknowledging local approvals for projects in small drainage areas. As a policy, the Department tries to process these reviews as expeditiously as possible, depending on its workload. However, because of the time limit already imposed by the 90-Day rules, further regulatory limits are not justified and will not be considered in the revision of these rules.

COMMENT: The Department should determine the completeness of an application for a stream encroachment permit by comparing it to the pre-application checklist, and make any requests for additional information within 45 days of declaring the application administratively complete. Should the applicant submit this additional information within 75 days of the day the Department declared the application administratively complete, then the Department should not be allowed to deny the application for lack of information. Both parties should be able to request a 30 day extension on day 75, if necessary. If the Department requests additional substantive information on or after day 75, the applicant should have the option of suspending the N.J.A.C. 7:13-2.8 90-day permit review period until the Department receives the required information.

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider some of these suggestions as part of the revision. The Department does not favor waiving the 90-day limit since many revision requests made late in the review period, for which a waiver would be requested, are made because the project must be partially or totally redesigned. When the Department receives the revisions, it would then be required to review what is essentially a new permit application in at most 45 days. This would interrupt reviews of properly designed projects to accommodate projects which were poorly designed in the first place.

COMMENT: When the Department or a delegated agency reviews a stream encroachment permit application, the permit review staff should verify that property boundaries and monumentation are as stated on the application. The Department should also require that applications be endorsed by a certified land surveyor to ensure that identical applications are submitted to planning boards, the Department, and other agencies.

RESPONSE: The Department does not have sufficient staff to verify property lines on every application. The Department may be able to obtain this information through other channels, and will consider this suggestion as part of the upcoming revision of these rules. The Department is not aware that there have been problems with substantially different applications for the same project being submitted to planning boards, the Department, and other agencies. However, if this is in fact occurring, the Department will consider the suggested revision as part of the upcoming revisions to the Flood Hazard Area Control rules, N.J.A.C. 7:13.

COMMENT: The Department should issue stream encroachment permits for a term of five years instead of two years, N.J.A.C. 7:13-2.8(b)3i.

RESPONSE: At present, the Department issues stream encroachment permits for a period of two years, renewable on a yearly basis for up to five years. The renewal procedure allows the Department to periodically review projects which are under construction or about to begin construction, to verify that they are in conformance with current standards.

COMMENT: N.J.A.C. 7:13-2.9(a) should be amended to allow the Department to grant a hardship waiver if doing so would be consistent with the purpose and intent of the Flood Hazard Area Control rules. The reference to "consistent with the reasonable requirements of the public health, safety and welfare" should be deleted from N.J.A.C. 7:13-2.9(a). An applicant for a hardship waiver should not be required to justify the hardship on adjacent properties and on the public health, safety, and welfare. Also, the following requirements should be deleted from N.J.A.C. 7:13-2.9(e): the requirement that the applicant provide a floodproofing plan (N.J.A.C. 7:13-2.9(e)1); information on soil type, land use and value, existing development in the area (N.J.A.C. 7:13-2.9(e)6 through (e)8); and information on environmental impacts (N.J.A.C. 7:13-2.9(e)11).

RESPONSE: The purpose and intent of the Flood Hazard Area Control rules, N.J.A.C. 7:13, is to protect public health, safety, and welfare and the reasonable expectations of adjacent landowners, as well as the environment. In order for the Department to issue a hardship waiver consistent with the purpose and scope of the rules, as authorized by various statutes, it needs to consider all the above information.

COMMENT: N.J.A.C. 7:13-2.9(b)3i, Permit application review procedures by the Department, should be amended to require notice both by publication and by mail to those interested parties who will be impacted by the approved permit.

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider this change as part of the revision. Currently, this chapter only requires notification by publication for Projects of Special Concern.

COMMENT: N.J.A.C. 7:13-2.9(g)1 should be amended to require that the Department notify applicants for hardship waivers of the results of its review in the same manner as decisions made under N.J.A.C. 7:13-2.8, Permit application review procedure by the Department.

RESPONSE: Under the current rules, applications for hardship waivers are submitted as standard stream encroachment permit applications. Therefore, applicants for hardship waivers are notified of the results of the Department's review in the same manner as decisions made on all other stream encroachment permit applications.

COMMENT: The procedure at N.J.A.C. 7:13-2.10 for modifying stream encroachment permits should be amended to require notification to all interested parties and to allow a comment period before the permit is modified.

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13. and will consider this as part of the revision.

COMMENT: The procedure at N.J.A.C. 7:13-2.10(b) for modification in detail of stream encroachment permits, to alter a project after a permit has been granted, should be amended to specify that fees for modification will be mutually agreed to by the Department and the applicant, and that no fact-finding meeting shall be required for this transaction.

RESPONSE: The fees for modification in detail are not set by the rules in this chapter, but are set by the 90-Day Construction Permit rules, N.J.A.C. 7:1C.

COMMENT: N.J.A.C. 7:13-2.11 should be amended to require that within 15 days of applying for a hearing on appeal from the Department's decision on a stream encroachment permit application, the applicant or third party must forward to the Commissioner proof of publication of the request. The Department should grant any request by an applicant for a hearing on appeal. The Department should grant a request by a third party for a hearing on appeal only upon a showing of compelling and extraordinary circumstances.

RESPONSE: In granting or denying hearings on appeal from stream encroachment permit decisions, the Department is bound by the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The Department reviews every request for a hearing in accordance with these requirements. In its upcoming revisions to this chapter, the Department will consider requiring publication of the notice of appeal, in order to inform potential intervenors and participants of the existence of an appeal request.

COMMENT: The Department's stream encroachment permit appeal procedure at N.J.A.C. 7:13-2.11 should require that copies of the decision by the Department, the actual application forms, and all proposals be made available in a convenient location to all interested parties. Interested parties should be notified of the Department's decision and of the time limit for submitting comments.

RESPONSE: All applications submitted to the Department are available for review, by appointment, by any interested parties. Under the current rules, interested parties may submit comments on the application at any time during the review period. Interested parties can check the DEP Bulletin for decisions, or notify the Department that they are interested in receiving a copy of the decision. Once the Department has reached a decision on the permit application, the Department does not accept further comments, but the Department's decision may be appealed pursuant to N.J.A.C. 7:13-2.11.

COMMENT: If stream encroachment permit review is performed by delegated agencies pursuant to N.J.A.C. 7:13-2.12, the delegated agency should be required to comply with certain minimum standards and with all State statutes. The permit review standards should address at least the following: notifying interested parties when permits are granted; publicizing time limits for appeals, comments, and/or objections to permits; recording minutes of any hearings held by the delegated agency; and ensuring availability of the complete application and the determination by the delegated agency. If a delegated agency grants a stream encroachment permit, the Department should not allow the proposed project to commence unless the permit review standards have been met.

RESPONSE: Any agency delegated authority under this chapter must comply with the requirements of this chapter and all State statutes. The Department is in the process of amending the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider clarifying this matter as part of the revision.

COMMENT: The fish passage requirements at N.J.A.C. 7:13-3.4 should apply only to trout production or trout maintenance streams, not all perennial streams.

RESPONSE: It is important to maintain fish passage for many species of fish besides trout. Therefore, the Department has no plans to amend this section.

COMMENT: The references to "manholes" at N.J.A.C. 7:13-3.11(b)5, Underground utility crossings, should read "sanitary manholes."

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider this amendment as part of the revision.

COMMENT: Any Department review of local flood fringe ordinances pursuant to N.J.A.C. 7:13-4.2 should be in writing and available for public inspection at the local township clerk's office. Because State statutes, Department rules, and township ordinances are subject to change, this section should also require the Department to conduct periodic compliance reviews of local flood fringe ordinances.

RESPONSE: The only delegation the Department has made to date under this chapter has been to Monmouth County to issue stream cleaning permits. The Department does periodically monitor Monmouth County's program.

COMMENT: The Department should delete the last sentence of N.J.A.C. 7:13-4.2(a) and delete N.J.A.C. 7:13-4.2(a)1; the Department should not allow local flood fringe area ordinances to be more restrictive than the rules in this chapter; and local flood fringe ordinances should not take precedence over any existing ordinance establishing less restrictive standards.

RESPONSE: The Department does not have the authority to direct municipalities to pass ordinances or to require standards less stringent than the Department's standards, but merely to require that municipal ordinances be no less stringent than the Department's standards.

COMMENT: N.J.A.C. 7:13-4.2(g) allows the Department to re-establish permit review jurisdiction if local agencies fail to enforce their flood control ordinances or resolutions to an adequate degree. Given limited

Department staffing, an ad hoc citizens group would prove valuable for identifying problems with enforcement by local agencies.

RESPONSE: The Department has always relied on citizens to report violations. The Department welcomes any help offered by citizens, either individually or in organized groups, to identify problems in floodplain areas. As indicated above, Monmouth County is to date the only county to seek delegation of a portion of the flood plain management program, and there is no indication that the County is not in compliance with the terms of that delegation.

COMMENT: The Department should amend N.J.A.C. 7:13-4.2(i) to require, not just encourage, municipalities to implement development standards more restrictive than the Department's in areas particularly subject to flood hazard.

RESPONSE: The Department lacks a specific statutory mandate to implement such an approach. N.J.A.C. 7:13-4.2(i) simply clarifies that the rules in this chapter do not preempt municipalities from imposing development standards stricter than the Department's in areas particularly subject to flood hazard.

COMMENT: N.J.A.C. 7:13-4.3, Applications to local agency, should be amended to require that notice of an application to a local agency be forwarded to interested parties in addition to publication in accordance with the requirements of this chapter.

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider this change as part of the revision.

COMMENT: N.J.A.C. 7:13-4.3(f) should be amended to require that the local agency render its decision and notify the applicant in writing within 90 days of declaring the application complete.

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider this change as part of the revision.

COMMENT: Due to advancements in telecommunications technology, today's compact high-capacity digital fiber optic telecommunications equipment can be contained in rather small structures. Although these structures exceed the 100 square foot area limitation imposed by N.J.A.C. 7:13-4.6(a)1, in almost all cases they will not exceed 200 square feet in area. Installation of such structure does not require a significant amount of site preparation work, and does not entail modification or relocation of any stream channel. Because these structures will not pose any detriment to flood hazard areas, the 100 square foot limitation should be changed to 200 square feet so that they qualify as "non-regulated uses." This amendment would parallel the existing 200 square foot allowance at N.J.A.C. 7:13-4.6(b)1 for auxiliary utility buildings for residential uses.

RESPONSE: The size restrictions for structures under non-regulated uses were intended to allow small utility buildings and residential additions in areas already disturbed and with construction involving almost no site grading. The structures described above will most likely be sited in undeveloped areas and require disturbance of the existing vegetation far in excess of the 200 square feet needed for the building. The Department would thus have to review the project for impacts on flooding and the environment, and cannot consider this change at this time.

COMMENT: The N.J.A.C. 7:13-4.7(c) requirement of providing access above the flood elevation should not apply when the proposed access for a project is by an existing road.

RESPONSE: The Department has granted hardship waivers for projects because of problems associated with raising existing roads, and recognizes that a conflict exists. The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider this amendment as part of the revision.

COMMENT: The Department should rewrite the 20 percent net fill limitation as N.J.A.C. 7:13-4.7(d)1ii to calculate net fill from the existing and not the natural ground surface.

RESPONSE: The purpose of the 20 percent net fill requirement is to prevent flooding downstream of the site caused by the loss of storage area on site. This purpose would be contravened if the Department did not consider fill placed on site at some time in the past.

COMMENT: The 20 percent net fill requirement at N.J.A.C. 7:13-4.7(d) should only include previous fill on the site if the fill was placed there after the effective date of the Flood Hazard Area Control rules (May 21, 1984).

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider this as part of the revision.

COMMENT: N.J.A.C. 7:13-4.7(k), which governs minimization of environmental damage from regulated uses in the flood fringe area of delineated streams and between the encroachment line and the boundaries of the 100-year flood plain of non-delineated streams, should be deleted.

RESPONSE: The purpose and scope of the Flood Hazard Area Control rules, N.J.A.C. 7:13, as authorized by the various statutes under which the rules were promulgated, includes the protection of the environment. Therefore, the Department has no plans to remove this section.

COMMENT: The general provisions for Projects of Special Concern, outlined at N.J.A.C. 7:13-5.1(b), should be deleted.

RESPONSE: The provisions at N.J.A.C. 7:13-5.1(b) outline how the Department classifies projects as Projects of Special Concern and contain the Department's standards for approving permits for Projects of Special Concern. The purpose and scope of the Flood Hazard Area Control rules, N.J.A.C. 7:13, as authorized by the various statutes under which the rules were promulgated, includes the protection of the environment. The Department has developed the category of Projects of Special Concern to provide for enhanced review of projects with potentially serious adverse effects on the environment and the public. The Department does not believe that this section is duplicative of N.J.A.C. 7:13-5.2, and does not intend to remove these general provisions.

COMMENT: The general provisions at N.J.A.C. 7:13-5.1(c), which impose special requirements for public notice and fact-finding meetings on dam construction, are unnecessary and should be deleted.

RESPONSE: The Department is in the process of determining whether the special requirements for public notice and fact-finding meetings imposed on dam construction by these rules should apply to all dam construction, or be modified for construction of low dams. By definition, low dams (such as retention basins) do not raise the water level of a stream or river by more than five feet above its usual mean low water height, and thus do not have the same degree of flood risk associated with them as other dams. Therefore, the public notice requirements imposed by these rules may be unnecessarily burdensome for construction of low dams.

COMMENT: N.J.A.C. 7:13-5.2(a)2 should be deleted from the definition of Projects of Special Concern so that a loss of more than 6,000 square feet of the existing woodland within 25 feet of the bank will not constitute a Project of Special Concern.

RESPONSE: The vegetation adjacent to a stream is very important to the stability of the banks, water quality, and wildlife habitat. The Department is concerned with protecting this area, and does not plan to delete the above requirement.

COMMENT: N.J.A.C. 7:13-5.2(b) should be amended to read: "When a project consists of greater than 400 residential units or greater than 100,000 square feet of commercial/industrial space, the number of applications shall be determined at a pre-application meeting."

RESPONSE: In a pre-application meeting, the Department may agree to multiple phased applications for large scale projects. However, the applicant must submit in the first application a development plan for the entire area to be developed. Otherwise, the Department would be unable to evaluate the overall impact of the project on the hydrology and hydraulics of the stream, any impacts on the environment, and the cumulative impacts of the large scale project.

COMMENT: N.J.A.C. 7:13-5.2(c), which classifies as Projects of Special Concern all projects which could produce serious adverse effects on the water resources of the State, should be deleted and replaced with the following language: "The Department, in its discretion, may require the applicant to set forth a conceptual plan identifying all subsequent phases of development."

RESPONSE: The scope and purpose of the Flood Hazard Area Control Rules, N.J.A.C. 7:13, includes the protection of the environment and especially protection of water resources. Therefore, the Department does not plan to modify this subsection at this time.

COMMENT: Projects exposing acid-producing deposits, as defined by N.J.A.C. 7:13-5.2(d)2, should not be considered Projects of Special Concern.

RESPONSE: The disturbance of acid-producing soils can create very serious water quality problems in a stream, as well as major problems in trying to reestablish vegetation in a disturbed area even when proper procedures are followed. Therefore, the Department will still consider projects involving the disturbance of acid-producing soils as Projects of Special Concern.

COMMENT: The Department should add a new subsection to N.J.A.C. 7:13-5.2 specifying that projects that do not fit the criteria in this section are not considered Projects of Special Concern.

RESPONSE: The Department believes such a new subsection is unnecessary since N.J.A.C. 7:13-5.2 defines Projects of Special Concern; if a project does not fit this definition, it is not considered a Project of Special Concern.

COMMENT: The Department should amend the procedural requirements at N.J.A.C. 7:13-5.3(b)1 for Projects of Special Concern to read: "A copy of an affidavit of public notice shall be submitted within 30 days of submission of an application."

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider this change as part of the revision.

COMMENT: N.J.A.C. 7:13-5.3(e) should not require fact-finding meetings for Projects of Special Concern in cases where there is no public comment on the project objecting to the permit and no request for hearing.

RESPONSE: As currently written, the rules in this chapter do not require the Department to hold a fact-finding meeting where there is no objection to the proposed project.

COMMENT: N.J.A.C. 7:13-5.3(e)2, which refers to fact-finding meetings for Projects of Special Concern, should require minutes of the meeting to be distributed to the applicant and all attendees within 15 days of the meeting. Also, the Department should allow the applicant to have a stenographic transcript of the fact-finding meeting prepared.

RESPONSE: Fact-finding meetings are by nature informal and are held for the purpose of collecting facts from interested parties. The Department does not render any decisions at fact-finding meetings. Minutes of fact-finding meetings are kept by the Department and are available upon request. If any applicant wishes to provide a stenographer to record the proceedings, this may be done at the applicant's expense.

COMMENT: N.J.A.C. 7:13-5.4(a)1 through (a)3 should be deleted and N.J.A.C. 7:13-5.4(a) amended to allow the Department to grant permits for those Projects of Special Concern which will comply with the purpose and intent of the Flood Hazard Area Control rules.

RESPONSE: By definition, Projects of Special Concern are those projects which may have serious adverse impacts on the environment. Therefore, the Department imposes additional requirements on these projects before issuing a permit. The proposed deletions would contravene the basic purpose and intent of classifying projects as Projects of Special Concern.

COMMENT: The procedural requirements for low dams, N.J.A.C. 7:13-5.5, are unnecessary and should be deleted from this chapter.

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will consider this change as part of the revision.

COMMENT: N.J.A.C. 7:13-5.6(e)3f should read as follows: "Any stream bank disturbed during *fording* shall be stabilized within 48 hours to minimize the potential for erosion."

RESPONSE: The Department is in the process of drafting amendments to the Flood Hazard Area Control rules, N.J.A.C. 7:13, and will correct this error as part of the revision.

COMMENT: The restrictions at N.J.A.C. 7:13-5.10(a) on projects exposing acid-producing deposits should apply to all acid-producing deposits in the Coastal Plain geologic formations. All references to specific geologic formations within the Coastal Plain geologic formations should be deleted from this section. Also, the reference to "formations" in N.J.A.C. 7:13-5.10(a)2 should be changed to "locations."

RESPONSE: In this section, the Department has already listed all the types of acid-producing deposits within the Coastal Plain geologic formations. The Department feels that it is more descriptive to specifically list the types of formations which are acid-producing than to refer to acid-producing deposits in general. The geologic overlay maps referred to in the rules give only a general idea of where acid-producing geologic formations occur, and are not specific enough to be used as a location map.

COMMENT: The Department should adopt rules establishing standard methods for delineations and redelineations.

RESPONSE: The recent decision in *American Cyanamid Co. v. State, Department of Environmental Protection*, (App. Div., Docket No. A-3481-87T8) held in part that the dictates of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., do not obligate the Department to codify standard methods for stream delineations and redelineations. In light of this decision and the practical and technical difficulties that would be involved in developing such rules, the Department does not intend at this time to adopt rules establishing standard methods for delineations and redelineations.

COMMENT: As part of the Flood Hazard Area Control rules, the Department should identify acceptable computer models for delineations and provide standards for selecting a specific computer model in an individual delineation.

RESPONSE: The recent decision in *American Cyanamid Co. v. State, Department of Environmental Protection*, (App. Div., Docket No. A-3481-87T8) held in part that the dictates of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., do not obligate the Department to codify standard methods for stream delineations and redelineations. In its opinion, the court noted that "there does not appear to be any practical way that the DEP could adopt a uniform regulation encompassing the hydraulic computer model and methodology to be used in every instance." In light of this decision and the practical and technical difficulties that would be involved in developing such rules, the Department does not intend at this time to adopt rules establishing standard methods for delineations and redelineations or specifying standards for selecting a computer model for an individual delineation.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:13.

(a)

DIVISION OF FISH, GAME AND WILDLIFE
FISH AND GAME COUNCIL
1989-90 Game Code
Adopted Amendments: N.J.A.C. 7:25-5

Proposed: May 15, 1989 at 21 N.J.R. 1289(b).

Adopted: July 13, 1989 by the Fish and Game Council, Cole Gibbs, Acting Chairman.

Filed: July 17, 1989 as R.1989 d.418, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 13:1B-29 et seq., particularly 13:1B-30, and 23:1-1 et seq.

DEP Docket Number: 023-89-04.

Effective Date: August 7, 1989.

Expiration Date: February 18, 1991.

Summary of Public Comments and Agency Responses:

These amendments were proposed on May 15, 1989. The public comment period ended on June 14, 1989. Six written comments were received during this period. A public hearing was held by the Fish and Game Council ("Council") on June 6, 1989. Seven commenters presented oral or submitted written comments. Some of the commenters provided multiple comments. A number of the comments received were outside of the scope of the proposed amendments.

COMMENT: Two comments expressed general opposition to hunting and/or trapping, one of which opposed the proposed amendments in their entirety, and made specific reference to hunting at the Great Swamp National Wildlife Refuge. The other made specific reference to the change in hunting hours from 7:00 A.M. E.S.T. to 5:00 P.M. to sunrise to 1/2 hour after sunset for the muzzleloader and shotgun permit deer seasons, stating that it will be more difficult to know when hunting is legal or not.

RESPONSE: The rights of individuals and organizations to be philosophically opposed to hunting and trapping is recognized by the Council. The Council is legally mandated to manage wildlife throughout the State of New Jersey, including the wildlife in Great Swamp National Wildlife Refuge, as a renewable natural resource and to maximize the benefits to be derived from this resource, including taking of game species, while minimizing its negative impacts. The Council believes annual promulgation of amendments to the Game Code is essential to meet these responsibilities. The Council has considered the best scientific information available in establishing seasons, bag limits and methods of take.

Hunting hours of sunrise to 1/2 hour after sunset have been successfully used by hunters for upland game hunting for many years. A sunrise-sunset table is made available annually by the Division to all hunting licensees. This change will provide the same hunting hours for firearm deer permit seasons as currently established for rabbit, squirrel, grouse, pheasant, quail, etc. It should facilitate compliance and provide for the optimum use of daylight hours as they change over the course of the deer season.

COMMENT: A representative of a trappers organization expressed favor with the proposed amendments and provided two comments outside the scope of the proposal. Another person commented that the amendments should be accepted as proposed. A third person representing a hunting organization expressed approval of the five additional days of winter bow hunting.

RESPONSE: The Council appreciates the support expressed.

COMMENT: A representative of the New Jersey Farm Bureau proposed that Deer Management Zones 5, 8 and 14 be included in the eight day permit shotgun season which would include the first and last days of the firearm buck season.

RESPONSE: The amendments proposed for Zones 5, 8 and 14, including an additional hunting day in January which increases the season length to six days and permit quota increases, along with other deer season proposals, will aid the Division in meeting the deer harvest objectives of reducing the deer population in these zones without impacting on the six day firearm season. The amendments as proposed will further insure a continuation of the harvest success achieved during the 1988-89 season. Therefore, the Council has determined that it will not make this revision to the zones included in the eight day permit shotgun season.

COMMENT: A trapper commented that the season limits for beaver and otter be increased to seven and two respectively.

RESPONSE: The season limits and permit quotas for beaver and otter are based on annual harvest objectives which are derived from the best information available. To increase the season limits without decreasing the permit quotas would result in an overharvest of these species.

COMMENT: One commenter suggested that the muzzleloading rifle squirrel season be extended.

RESPONSE: The Council believes that due to the importance of the winter bow and permit shotgun seasons in terms of recreational use and proper deer management, it is in the best interest of these programs to keep them separate from the muzzleloading rifle squirrel season at this time. Therefore, the Council did not consider an extended season this year and, in fact, found it necessary to reduce the muzzleloader rifle squirrel season by five days this year in order to accommodate the increase in the number of winter bow season days. In terms of the overall squirrel season, ample opportunity exists for squirrel hunters to hunt with shotguns or muzzleloading shotguns over a four month period.

COMMENT: One comment suggested that the hunting hours for muzzleloader and shotgun permit seasons remain 7:00 A.M. to 5:00 P.M., stating that sunrise is too early (dark) and, therefore, safety should be a consideration.

RESPONSE: In addition to the response already provided concerning changes in the hunting hours for the muzzleloader and shotgun permit seasons, the Council advises that sunrise is later not earlier than 7:00 A.M. during the muzzleloader and shotgun permit season and, therefore, safety is not lessened.

COMMENT: Other comments received addressed deer damage, deer damage permits, hunting arrow heads, deer permit application information, small game hunting during the permit shotgun season, .22 caliber rifle for squirrel hunting and trapping on Sundays, muzzleloading rifle use during other deer seasons, a revised "hunters choice" zone, multiple zone bow permits, use of the 160 conibear trap on land, revised muzzleloader rifle squirrel zones, and the addition of three trapping requirements and trespassing concerns.

RESPONSE: These comments are outside the scope of the proposal.

Agency Initiated Changes:

The Council noted that the deer management zones designated for a bow permit season of November 11-December 2 under N.J.A.C. 7:25-5.30(d) required some changes for clarification. Therefore, to avoid any possible misinterpretation and to clarify the intent of the amendments, the Council deleted zones 4, 31, 32, 43 from this section since, as provided by N.J.A.C. 7:25-5.30(k), these zones do not have bow permit quotas, and therefore, no bow permit season.

Several typographical errors were corrected by the Council. Zones 37 and 51 as provided in N.J.A.C. 7:25-5.28(d) as two segment zones were changed to Zones 37 and 52. Zone 51 is correctly provided for elsewhere in the same subsection. In N.J.A.C. 7:25-5.28(k), the 1989 anticipated harvests of 25, 12 and 24 deer for Zones 57, 58 and 61, respectively, were inadvertently bracketed, thereby providing no anticipated harvest figures for the permits to be issued. The Council made the correction which in effect retained the anticipated harvests. In N.J.A.C. 7:25-5.29(d)3, a deletion bracket was misplaced by placing it before Zone 11 instead of before Zone 12. The Council made the correction which then included Zone 11 in the 6-day shotgun season as provided elsewhere in the Game Code (for example, N.J.A.C. 7:25-5.29(k)). In N.J.A.C. 7:25-5.30(k), the 1989 bow permit quota of 23 for Zone 54 was corrected to 28 and, consequently, the Statewide total was changed from 27,423 to 27,428.

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

SUBCHAPTER 5. 1989-90 GAME CODE

7:25-5.1 General provisions

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

(c) This Code, when adopted and when effective, shall supersede the provisions of 1988-89 Game Code.

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

7:25-5.2 Pheasant—Chinese ringneck (Phasianus colchicus torquatus), English or blackneck (P. c. colchicus), Mongolian (P. c. mongolicus), Japanese green (Phasianus versicolor); including mutants and crosses of above

(a) The duration for the male pheasant season is November 11, to December 2, 1989, inclusive, and December 11, 1989 through January 6, 1990, excluding December 13, 14 and 15, 1989 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The duration for the male pheasant season for properly licensed persons engaged in falconry is September 1 to December 2, 1989, inclusive, and December 11, 1989 through March 31, 1990, excluding November 10 and December 13, 14 and 15, 1989 and January 19, 20 and 27, 1990 in those management zones in which a shotgun deer permit season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) The duration of the season for pheasants of either sex in the area described as Warren County north of Route 80, Morris County north of Route 80, Ocean County south of Route 70 and the counties of Sussex, Passaic, Bergen, Hudson, Essex, Camden, Atlantic and Cape May and on all wildlife management areas is November 11 to December 2, 1989, inclusive, and December 11, 1989 through February 19, 1989, excluding December 13, 14 and 15, 1989 and January 19, 20 and 27, 1990 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(e) The hours for hunting pheasants on November 11, 1989 are 8:00 A.M. to 1/2 hour after sunset. All other days on which the hunting for pheasants is legal, the hours are sunrise to 1/2 hour after sunset.

(f) (No change.)

(g) The opening of the season on semi-wild preserves coincides with the listed Statewide opening of November 11, 1989.

(h) (No change.)

7:25-5.3 Cottontail rabbit (Sylvilagus floridanus), black-tailed jack rabbit (Lepus californicus), white-tailed jack rabbit (Lepus townsendii), European hare (Lepus europeus), chukar partridge (Alectoris graeca), and quail (Colinus virginianus)

(a) The duration of the season for the hunting cottontail rabbit, black-tailed jack rabbit, white-tailed jack rabbit, European hare, chukar partridge and quail is November 11 through December 2, 1989, inclusive, and December 11, 1989 to February 19, 1990, excluding December 13, 14 and 15, 1989 and January 19, 20 and 27, 1990 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(b) The duration of the season for the hunting of the animals enumerated by (a) above for properly licensed persons engaged in falconry is September 1 to December 2, 1989, inclusive, and December 11, 1989 through March 31, 1990, excluding November 10 and December 13, 14 and 15, 1989 and January 19, 20 and 27, 1990 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change in text.)

(d) The hunting hours for the animals enumerated in this section are as follows: November 11, 1989, 8:00 A.M. to 1/2 hour after sunset. On all other days for which hunting for these animals is legal, the hours are sunrise to 1/2 hour after sunset.

(e) (No change in text.)

7:25-5.4 Ruffed grouse (Bonasa umbellus)

(a) The duration of the season for the hunting of grouse is October 14 through December 2, 1989, inclusive, and December 11, 1989 to February 19, 1990, excluding December 13, 14 and 15, 1989 and January 19, 20 and 27, 1990 in those deer management zones in which a shotgun permit deer season is authorized and excluding any extra deer permit season day(s) that is declared open.

(b) (No change.)

(c) The hunting hours for ruffed grouse are sunrise to 1/2 hour after sunset, with the exception of November 11, 1989 when legal hunting hours are 8:00 A.M. to 1/2 hour after sunset.

(d) (No change.)

7:25-5.5 Eastern gray squirrel (Sciurus carolinensis)

(a) The duration of the season for the hunting of squirrels is October 14 through December 2, 1989, inclusive, and December 11, 1989 to February 19, 1990 excluding, December 13, 14 and 15, 1989 and January 19, 20 and 27, 1990 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit season day(s) if declared open.

(b) The duration of the season for the hunting of squirrels for properly licensed persons engaged in falconry is September 1 to December 2, 1989, inclusive, and December 11, 1989 through March 31, 1990, excluding December 13, 14 and 15, 1989 and January 19, 20 and 27, 1990 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s) if declared open.

(c) (No change.)

(d) Hunting hours for squirrels are sunrise to 1/2 hour after sunset, with the exception of November 11, 1989 when legal hunting hours are 8:00 A.M. to 1/2 hour after sunset.

(e) (No change.)

7:25-5.6 (No change.)

7:25-5.7 Wild turkey (Meleagris gallapavo)

(a) The duration of the Spring Wild Turkey Gobbler hunting season includes five separate hunting periods of four, five or 10 days each. The hunting periods for all hunting areas shall be:

1. Monday, April 23, 1990—Friday, April 27, 1990;
2. Monday, April 30, 1990—Friday, May 4, 1990;
3. Monday, May 7, 1990—Friday, May 11, 1990;
4. Monday, May 14, 1990—Friday, May 18 and Monday, May 21, 1990—Friday, May 25, 1990;
5. Saturday, April 28, 1990; Saturday, May 5, 1990; Saturday, May 12, 1990; and Saturday May 19, 1990.

(b)-(g) (No change.)

(h) Wild Turkey Hunting Permits shall be applied for as follows:

1. Only holders of valid and current firearm or archery hunting licenses, including juvenile licenses, may apply by detaching from the hunting license the stub marked "Special Spring Turkey", signing as provided on the back, and sending the stub together with an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i. License issuing agents;

ii.-iv. (No change in text.)

2. (No change.)

3. The application form shall be filled in to include: Name, address, 1990 firearm or archery hunting license number, turkey hunting areas applied for, hunting periods applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of February 1-15, 1990, inclusive. Applications received after February 15 will not be considered for the initial drawing. Selection of permits will be by random drawing.

i. If a fall turkey hunting season is authorized for 1990, application shall be made in conjunction with the spring season application procedures in a form as prescribed by the Division.

4.-6. (No change.)

(i) Special Farmer Spring Turkey Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, address and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of February 1-15, 1990. There is no fee required and all qualified applicants will receive a Special Farmer Spring Turkey Permit delivered by mail.

4. Only one farmer application may be submitted per individual during the initial application period. Application for a farmer turkey permit shall not preclude a farmer from applying for and the Division's issuing one regular turkey season permit as a holder of a valid hunting license.

(j) (No change.)

(k) The Turkey Hunting Area Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1990 Spring Turkey Hunting Season Permit Quotas are as follows:

1990 SPRING TURKEY HUNTING SEASON PERMIT QUOTAS

Turkey Hunting Area Number	Weekly Permit Quota*	Season Total	Portions of Counties Involved
1	100	500	Sussex
2	120	600	Sussex, Warren
3	80	400	Sussex, Warren
4	100	500	Sussex, Warren, Morris
5	100	500	Sussex
6	150	750	Sussex, Passaic, Bergen
7	150	750	Sussex, Morris, Passaic
8	50	250	Warren, Hunterdon
9	50	250	Warren, Hunterdon, Morris
10	25	125	Essex, Middlesex, Morris, Somerset, Union
11	25	125	Middlesex, Mercer, Hunterdon, Somerset
14	50	250	Burlington, Ocean, Mercer, Monmouth

15	50	250	Burlington, Camden, Atlantic
16	60	300	Burlington, Atlantic, Ocean, Cape May, Cumberland
20	50	250	Cumberland, Salem
21	50	250	Atlantic, Cumberland, Salem
22	0	0	Atlantic, Cape May, Cumberland
	1,210	6,050	

*Applied to each of the five hunting periods (A, B, C, D, E) in all areas:

A. Monday, April 23, 1990—Friday, April 27, 1990;
B. Monday, April 30, 1990—Friday, May 4, 1990;
C. Monday, May 7, 1990—Friday, May 11, 1990;
D. Monday, May 14, 1990—Friday, May 18, 1990 and Monday, May 21, 1990—Friday, May 25, 1990;
E. Saturday, April 28, 1990; Saturday, May 5, 1990; Saturday, May 12, 1990; and Saturday May 19, 1990.

(l)-(m) (No change.)

7:25-5.8 Mink (Mustela vison), muskrat (Ondatra zibethicus) and nutria (Myocaster coypus) trapping only

(a) (No change.)

(b) The duration of the mink, muskrat and nutria trapping season is as follows:

1. Northern Zone: 6:00 A.M. on November 15, 1989 through March 15, 1990, inclusive, except on State Fish and Wildlife Management Areas.

2. Southern Zone: 6:00 A.M. on December 1, 1989 through March 15, 1990, inclusive, except on State Fish and Wildlife Management Areas.

3. (No change.)

4. On State Fish and Wildlife Management Areas: 6:00 A.M. on January 1 through March 15, 1990, inclusive.

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

7:25-5.9 Beaver (Castor canadensis) trapping

(a) (No change.)

(b) The duration of the trapping season for beaver shall be February 1 through February 28, 1990, inclusive.

(c) Special Permit: A special $7.00 permit obtained from the Division of Fish, Game and Wildlife shall be required to trap beaver. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders.) Applications shall be received in the Trenton office during the period December 1, 1989-December 26, 1989. Applicants may apply for only one beaver trapping permit and shall provide their 1989 trapping license number. Permits will be allotted on a zone basis as follows: Zone 1-7, Zone 2-12, Zone 3-1, Zone 4-4, Zone 5-3, Zone 6-10, Zone 7-3, Zone 8-2, Zone 9-3, Zone 10-11, Zone 11-4, Zone 12-5, Zone 13-0, Zone 14-1, Zone 15-0. Total 66. Successful applicants must trap with a valid, current trapping license.

(d) (No change.)

(e) A "beaver transportation tag" provided by the Division shall be affixed to each beaver taken immediately upon removal from trap, and all beaver shall be taken to a designated beaver checking station at the times and dates specified on the beaver permit and, in any case, no later than March 3, 1990.

(f)-(g) (No change.)

7:25-5.10 River otter (Lutra canandensis) trapping

(a) (No change.)

(b) The duration of the trapping season for otter shall be February 1 through February 28, 1990, inclusive.

(c) Special Permit: A special $7.00 permit obtained from the Division of Fish, Game and Wildlife shall be required to trap otter. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders). Beaver permit holders will be given first opportunity for otter permits in their respective zones. Applications shall be received in the Trenton office during the period December 1, 1989-December 26, 1989. Only one application per person may be submitted for trapping otter and applicants shall provide their 1989 trapping license number. Permits will be allotted on a zone basis as follows: Zone 1-5, Zone 2-6, Zone 3-2, Zone 4-4, Zone 5-4, Zone 6-5, Zone 7-3, Zone 8-6, Zone 9-3, Zone 10-7, Zone 11-5, Zone 12-9, Zone 13-14, Zone 14-7, Zone 15-12. Total 92. Successful applicants must trap with a valid, current trapping license.

(d) (No change.)

(e) The "otter transportation tag" provided by the Division must be affixed to each otter taken immediately upon removal from the trap. All otter pelts and carcasses shall be taken to a beaver-otter check station at dates specified on the otter permit and, in any case, no later than March 3, 1990, where a pelt tag will be affixed and the carcass surrendered.

(f)-(i) (No change.)

7:25-5.11 Raccoon (Procyon lotor), red fox (Vulpes vulpes), gray fox (Urocyon cinereoargenteus) and Virginia opossum (Didelphis virginiana), striped skunk (Mephitis mephitis), long-tailed weasel (Mustela frenata), short-tailed weasel (Mustela erminea), and coyote (Canis latrans) trapping only

(a) (No change.)

(b) The duration of the regular raccoon, red fox, gray fox, Virginia opossum, striped skunk, long-tailed weasel, short-tailed weasel and coyote trapping season is 6:00 A.M. on November 15, 1989 to March 15, 1990, inclusive, except on State Fish and Wildlife Management Areas.

(c) The duration for trapping on State Fish and Wildlife Management Areas is 6:00 A.M. on January 1, 1990 to March 15, 1990, inclusive.

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

7:25-5.12 (No change.)

7:25-5.13 Migratory birds

(a) Should any open season on migratory game birds, including waterfowl, be set by Federal regulation which would include the date of November 11, 1989, the starting time on such date will be 8:00 A.M. to coincide with the opening of the small game season on that date. However, this shall not preclude the hunting of migratory game birds, including waterfowl, on the tidal marshes of the State as regularly prescribed throughout the season by Federal regulations.

(b) (No change.)

(c) A person shall not take, attempt to take, hunt for or have in possession, any migratory game birds, including waterfowl, except at the time and in the manner prescribed in the Code of Federal Regulations by the U.S. Department of the Interior, U.S. Fish and Wildlife Service, for the 1989-90 hunting season. The species of migratory game birds, including waterfowl, that may be taken or possessed and, unless otherwise provided, the daily bag limits shall be the same as those prescribed by the U.S. Department of the Interior, U.S. Fish and Wildlife Service for the 1989-90 hunting season.

(d)-(g) (No change.)

(h) Hunting hours for waterfowl shall be those hours that are prescribed by the Department of the Interior, United States Fish and Wildlife Service, for the 1989-90 hunting season.

(i)-(l) (No change.)

(m) A person shall not take or attempt to take migratory game birds:

1.-10. (No change.)

11. Before 8:00 A.M. on November 11, 1989. However this shall not preclude the hunting of migratory game birds on tidal waters or tidal marshes of the State.

12.-13. (No change.)

14. Except at the time and manner prescribed by the State or Federal regulation, or by the 1989-90 Game Code.

15.-19. (No change.)

(n) Seasons and Bag Limits are as follows:

1. Mourning dove (Zenaida macroura) are protected. There will be no open season on these birds during 1989-90.

2. Rail and gallinule season and bag limits are as follows:

i. The duration of the season for hunting clapper rail (Rallus longirostris), Virginia rail (Rallus limicola), sora rail (Porzana carolina) and common gallinule or moorhen (Gallinula chloropus) is September 1 through November 9, 1989, inclusive.

ii. (No change.)

(o) Woodcock zones and hunting hours are as follows:

1.-2. (No change.)

3. Hunting hours for woodcock are sunrise to sunset except on November 11, when the hunting hours are 8:00 A.M. to sunset.

(p)-(r) (No change.)

7:25-5.14 Special regulation limiting use of shotguns and shotgun shells containing lead pellets

(a) No person shall have in possession or use in hunting waterfowl and coot or any snipe, rail or gallinules after the season for hunting waterfowl commences any shotgun shell containing lead shot or lead pellets or have in possession or use any shotgun containing lead shot in the following designated area of New Jersey.

1. The State designated steel shot area for waterfowl hunting includes the counties and adjacent State-owned tidal waters of Atlantic, Cape May, Cumberland, Middlesex, Monmouth, Ocean, Salem, Hudson, Mercer, Gloucester and Burlington.

2. (No change.)

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

7:25-5.15 Crow (Corvus spp.)

(a) Duration for the season for hunting the crow shall be Monday, Thursday, Friday and Saturday from August 14, 1989 through March 24, 1990, inclusive, excluding December 4-9 and December 13, 14 and 15, 1989 and January 19, 20 and 27, 1990 in those deer management zones in which a shotgun permit deer season is authorized.

(b) (No change.)

(c) The hours for hunting crows shall be sunrise to 1/2 hour after sunset, except on November 11, 1989 when the hours are 8:00 A.M. to 1/2 hour after sunset.

(d) (No change.)

7:25-5.16 (No change.)

7:25-5.17 Raccoon (Procyon lotor) and Virginia opossum (Didelphis virginiana) hunting

(a) The duration for the season of hunting raccoons and Virginia opossum is one hour after sunset on October 1, 1989 to one hour before sunrise on March 1, 1990. The hours for hunting are one hour after sunset to one hour before sunrise.

(b) (No change).

(c) A person shall not hunt for raccoon or opossum with dogs and firearms or weapons of any kind on December 4-9 and on December 13, 14 and 15, 1989 and January 19, 20 and 27, 1990 in those deer management zones in which a shotgun permit deer season is authorized and including any extra permit deer season day(s).

(d) A person shall not train a raccoon or opossum dog other than during the period of September 1 to October 1, 1989 and from March 1 to May 1, 1990. The training hours are one hour after sunset to one hour before sunrise.

(e) (No change.)

7:25-5.18 Woodchuck (Marmota monax) hunting

(a) Duration for the hunting of woodchucks with a rifle in this State is March 10-September 22, 1990. Licensed hunters may also take woodchuck with shotgun or long bow and arrow or by means of falconry during the regular woodchuck rifle season and during the upland game season established in N.J.A.C. 7:25-5.3.

(b)-(f) (No change.)

7:25-5.19 Red fox (Vulpes vulpes) and gray fox (Urocyon cinereoargenteus) hunting

(a) The duration of the red fox and gray fox hunting season is as follows:

1. Bow and Arrow Only—September 30 through November 10, 1989.

2. Firearm or Bow and Arrow—November 11, 1989 through February 24, 1990, excluding December 4-9, 13, 14 and 15, 1989 and January 19, 20 and 27, 1990 in those deer management zones in which a shotgun permit deer season is authorized and also excluding any extra permit deer season day(s), if declared open.

(b) The use of dogs shall not be allowed for fox hunting during the Statewide bow and arrow only season of September 30-November 10, 1989. There shall be no fox hunting during the firearm deer season, except that a person hunting deer during the firearm deer season may kill fox if the fox is encountered before said person kills a deer. However, after a person has killed a deer he must cease all hunting immediately.

(c) The hours for hunting fox are 8:00 A.M. to 1/2 hour after sunset on November 11, 1989 and on other days from sunrise to 1/2 hour after sunset.

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

7:25-5.20 Dogs

(a) A person shall not exercise or train dogs on State Fish and Wildlife Management Areas May 1 to August 31, inclusive, except on portions of various wildlife management areas designated as dog training areas, and there shall be no exercising or training of dogs on any Wildlife Management Area on November 10, 1989.

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

7:25-5.21 and 5.22 (No change.)

7:25-5.23 Firearms and missiles, etc.

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

(e) Within the areas described as portions of Passaic, Mercer, Hunterdon, Warren and Sussex Counties lying within a continuous line beginning at the intersection of Rt. 513 and the New York State line; then south along Rt. 513 to its intersection with the Morris-Passaic County line; then west along the Morris-Passaic County line to the Sussex County line; then south along the Morris-Sussex County line to the Warren County line; then southwest along the Morris-Warren County line to the Hunterdon County line; then southeast along the Morris-Hunterdon County line to the Somerset County line; then south along the Somerset-Hunterdon County line to its intersection with the Mercer County line; then west and south along the Hunterdon-Mercer County line to its intersection with Rt. 31 then south along Rt. 31 to its intersection with Rt. 546; then west along Rt. 546 to the Delaware River; then north along the east bank of the Delaware River to the New York State Line; then east along the New York State Line to the point of beginning at Lakeside; and in that portion of Salem, Gloucester, Camden, Burlington, Mercer, Monmouth, Ocean, Atlantic, Cape May and Cumberland counties lying within a continuous line beginning at the intersection of Rt 295 and the Delaware River; then east along Rt. 295 to its intersection with the New Jersey Turnpike; then east along the New Jersey Turnpike to its intersection with Rt. 40; then east along Rt. 40 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Rt. 536; then east along Rt. 536 to its intersection with Rt. 206 then north along Rt. 206 to its intersection with the New Jersey Turnpike; then northeast along the New Jersey Turnpike to its intersection with Rt. 571; then southeast along Rt. 571 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with Rt. 9 at Somers Point; then south along Rt. 9 to its intersection with Rt. 83; then west along Rt. 83 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Dennis Creek; then south along the west bank of Dennis Creek to its intersection with Delaware Bay; then northwest along the east shore of Delaware Bay and the Delaware River to the point of beginning; persons holding a valid and proper rifle permit in addition to their 1990 firearm hunting license may hunt for squirrel

between January 27 and February 19, 1990 using a .36 caliber or smaller muzzleloading rifle loaded with a single projectile.

(f) Except as specifically provided below for waterfowl hunters, semi-wild and commercial preserves, muzzleloader deer hunters and trappers, from December 4-9, 1989 inclusive, it shall be illegal to use any firearm of any kind other than a shotgun. Nothing herein contained shall prohibit the use of a shotgun not smaller than 20 gauge nor larger than 10 gauge with a rifled bore for deer hunting only. Persons hunting deer shall use a shotgun not smaller than 20 gauge or larger than 10 gauge with the lead or lead alloy rifled slug or slug shotgun shell only or a shotgun not smaller than 12 gauge nor larger than 10 gauge with the buckshot shell. It shall be illegal to have in possession any firearm missile except the 20, 16, 12 or 10 gauge lead or lead alloy rifled slug or hollow base slug shotgun shell or the 12 or 10 gauge buckshot shell. (This does not preclude a person legally engaged in hunting on semi-wild or commercial preserves for the species under license from being possessed solely of shotgun(s) and nothing larger than No. 4 fine shot, nor a person engaged in hunting waterfowl only from being possessed solely of shotgun and nothing larger than No. 2 lead fine shot or T (.200 inch) steel shot.) A legally licensed trapper possessing a valid rifle permit may possess and use a .22 rifle and short rimfire cartridge only while tending his trap line.

1. Persons who are properly licensed may hunt for deer with a muzzleloader rifle during the 1989 six day firearm deer season and the permit muzzleloader rifle deer season.

2.-3. (No change.)

(g)-(p) (No change.)

7:25-5.24 Bow and arrow, general provisions

(a) (No change.)

(b) No person shall use a bow and arrow for hunting, on December 13, 14 and 15, 1989 and January 19, 20 and 27, 1990 in those deer management zones in which a permit shotgun deer season is authorized, on any additional permit deer season day(s) if declared open, during the 6-Day Firearm Deer Season, or between 1/2 hour after sunset and sunrise during other seasons. Deer shall not be hunted for or taken on Sunday except on wholly enclosed preserves that are properly licensed for the propagation thereof.

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

7:25-5.25 White-tailed deer (Odocoileus virginianus) fall bow season (either sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from September 30-November 10, 1989, inclusive. Legal hunting hours shall be 1/2 hour before sunrise to 1/2 hour after sunset.

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

7:25-5.26 White-tailed deer winter bow season (either sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from 1/2 hour before sunrise on January 2 to 1/2 hour after sunset on January 26, 1990, inclusive, excluding January 19 and 20, 1990 in those management zones in which a shotgun permit season is authorized. Legal hunting hours shall be 1/2 hour before sunrise to 1/2 hour after sunset.

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

7:25-5.27 White-tailed deer six-day firearm season

(a) Duration for this season will be December 4-9, 1989 inclusive with shotgun or muzzleloader rifle, exclusively.

(b) Bag Limit: Two deer, with antler at least three inches long, except in those areas designated as "hunters choice" indicated in (d) below, where the bag limit is two deer of either sex. Only one deer may be taken in a given day per person on a regular firearm hunting license. Persons awarded Zone 9 or Zone 13 shotgun permits may also take one deer of either sex and any age, per permit, on December 4 and 9, 1989, subject to the provisions of N.J.A.C. 7:25-5.29. Deer shall be tagged immediately with the "transportation tag" appropriate for the season, completely filled in and shall be transported to a checking station before 7:00 P.M. E.S.T. on the day killed. Upon completion of the registration of the first deer, one valid and proper "New Jersey Second Deer Permit and Transportation Tag" (second tag) will be issued which will allow that person to continue hunting and take one additional deer with antler at least three inches long or one additional deer of either sex in the "hunters choice" area, exclusively, during the current, six-day firearm season. The second tag shall not be valid on the day of issuance and all registration requirements apply. Any legally killed deer which is recovered too late to be brought to a check station by closing time shall be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. This deer must be brought to a checking station on the next open day to receive a legal "possession tag". If the season has concluded, this deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag".

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

(e) Hunting Hours: December 4-9, 1989, inclusive, 7:00 A.M. E.S.T. to 5:00 P.M. E.S.T., with shotgun or muzzeloader rifle.

(f)-(g) (No change.)

7:25-5.28 White-tailed deer muzzleloader rifle permit season (either sex)

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

(c) Bag Limit: Two deer of either sex and any age per permit, except in zones: 37, 52 and 53 where the limit shall be one deer with antlers at least three inches long during the first season segment and one deer of either sex and any age during the second season segment. Only one deer may be taken in a given day per permit. Deer shall be tagged immediately with the muzzleloader rifle permit season permit "transportation tag" completely filled in, and shall be transported to a checking station before 7:00 P.M. E.S.T. on the day killed. Upon completion of the registration of the first deer, one valid and proper "New Jersey Second Deer Permit and Transportation Tag" (second tag) will be issued which will allow the person to continue hunting and take one additional deer of either sex during the current muzzleloader rifle permit season. The second tag shall not be valid on the day of issuance and all registration requirements apply. Any legally killed deer which is recovered too late to be brought to a check station by closing time shall be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. Said deer shall be brought to a checking station on the next open day to receive a legal "possession tag". If the season has concluded, said deer shall be taken to a regular deer checking station on the following weekday to receive a legal "possession tag". It is unlawful to attempt to take or continue to hunt for more than the number of deer permitted.

(d) Duration of the muzzleloader rifle permit season is December 11, 12, 16, 18-23, 26-30, 1989 in zones 1-36, 40-51, 55, 57, 58 and 61; November 11-18, 1989 (first segment) and December 11, 16, 18-21, 26-30, 1989 (second segment) in zones 37 and *[51]* **52***; December 11-30, 1989 and January 13 and 27, 1990 in zones 39 and 62; November 25-December 2, 1989 (first segment) and December 18-23 and 26-30, 1989 (second segment) in zone 53; December 11, 12, 14, 15, 18-23 and 26-30, 1989 in zone 54 or any other time as determined by the Director. Legal hunting hours shall be sunrise to 1/2 hour after sunset E.S.T.

(e)-(g) (No change.)

(h) Muzzleloader Rifle Permit Season Permits shall be applied for as follows:

1. Only holders of valid and current firearm hunting licenses may apply by detaching from their hunting license the stub marked "Special Deer Season 1989", signing as provided on the back, and sending the stub, together with a $17.00 permit fee per applicant and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iii. (No change.)

iv. Other Division officers.

2.-3. (No change.)

4. The application form shall be filled in to include: Name, address, current firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August 25-September 10, 1989 inclusive. Applications postmarked after Septem-

ber 10 will not be considered for the initial drawing. Selection of permittees will be made by random selection.

5.-7. (No change.)

(i) Farmer Muzzleloader Rifle Permit Season Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of August 1 to 15, 1989. There is no fee required, and all qualified applicants will receive a farmer muzzleloader rifle permit season permit, delivered by mail.

4.-5. (No change.)

(j) (No change.)

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1989 Muzzleloader Rifle Deer Season Permit Quotas (either sex) are as follows:

1989 MUZZLELOADER RIFLE PERMIT SEASON PERMIT QUOTAS

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest 1989	Permit Quota 1989	Portions of Counties Involved
1	1	150	610	Sussex
2	1	109	455	Sussex
3	1	108	690	Sussex, Passaic, Bergen
4	1	125	523	Sussex, Warren
5	1	355	1350	Sussex, Warren
6	1	132	700	Sussex, Morris, Passaic, Essex
7	1	166	620	Warren, Hunterdon
8	1	329	1425	Warren, Hunterdon, Morris, Somerset
9	1	111	400	Morris, Somerset
10	1	251	850	Warren, Hunterdon
11	1	145	470	Hunterdon
12	1	323	1098	Mercer, Hunterdon, Somerset
13	1	41	200	Morris, Somerset
14	1	90	600	Mercer, Somerset, Middlesex, Burlington
15	1	105	455	Mercer, Monmouth, Middlesex
16	1	90	400	Ocean, Monmouth
17	1	70	236	Ocean, Monmouth, Burlington
18	1	40	220	Ocean
19	1	46	250	Camden, Burlington
20	1	51	300	Burlington
21	1	135	511	Burlington, Ocean
22	1	17	100	Burlington, Ocean
23	1	150	700	Burlington, Camden, Atlantic
24	1	152	460	Burlington, Ocean
25	1	77	400	Gloucester, Camden, Atlantic, Salem
26	1	130	515	Atlantic
27	1	159	468	Salem, Cumberland
28	1	98	338	Salem, Cumberland, Gloucester
29	1	135	549	Salem, Cumberland
30	1	22	108	Cumberland
31	1	11	46	Cumberland
32	1	5	30	Cumberland
33	1	28	115	Cape May, Atlantic
34	1	94	430	Cape May, Cumberland
35	1	87	390	Gloucester, Salem
36	1	14	140	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	2	81	250	Burlington (Fort Dix Military Reservation)
38				Morris (Great Swamp National Wildlife Refuge)
39	3	20	35	Monmouth (Earle Naval Weapons Station)
40	1	9	80	Warren (Allamuchy State Park)
41	1	124	360	Mercer, Hunterdon
42	1	9	40	Atlantic
43	1	19	90	Cumberland
44	1	15	50	Cumberland
45	1	40	200	Cumberland, Atlantic, Cape May
46	1	40	125	Atlantic
47	1	8	50	Atlantic, Cumberland, Gloucester
48	1	37	190	Burlington
49	1	5	20	Burlington, Camden, Gloucester
50	1	23	130	Middlesex, Monmouth
51	1	24	120	Monmouth, Ocean
52	2	22	100	Ocean (Fort Dix Military Reservation)
53	4	7	40	Ocean (Lakehurst Naval Engineering Center)
54	5	1	4	Morris (Picatinny Arsenal-ARRAD Com)

55	1		0	Atlantic (Federal Aviation Administration Technical Center)
56			0	Atlantic (Forsythe National Wildlife Refuge)
57	1	*25*	50	Atlantic (Forsythe National Wildlife Refuge)
58	1	*12*	60	Burlington, Ocean (Forsythe National Wildlife Refuge)
59			0	Salem (Supawna National Wildlife Refuge)
61	1	*24*	105	Atlantic (Atlantic County Parks)
62	3	15	30	Monmouth (Fort Monmouth)
Total		*[4,711]* *4,772*	*[19,281]* *19,261*	

(l) The Season Dates Code referenced in the table in (k) above is as follows:

1. Indicates the season dates will be December 11, 12, 16, 18-23, 26-30, 1989.

2. Indicates the season dates will be November 11-18, 1989 (first segment) and December 11-16, 18-21, 26-30, 1989 (second segment).

3. Indicates the season dates will be December 11-30, 1989 and January 13 and 27, 1990.

4. Indicates the season dates will be November 25-December 2, 1989 (first segment) and December 18-23 and 26-30, 1989 (second segment).

5. Indicates the season dates will be December 11, 12, 14, 15, 18-23 and 26-30, 1989.

(m) Permit quotas in zones 37, 38, 39, 40, 52-59, 61 and 62 are contingent upon approval by appropriate land management agencies for those zones.

(n) Muzzleloader rifle permit season permits not applied for by September 10, 1989 will be reallocated to shotgun and bow permit season applicants.

7:25-5.29 White-tailed deer shotgun permit season (either sex)

(a) (No change.)

(b) If the anticipated harvest of deer has not been accomplished during this season, additional days of shotgun permit deer hunting may be authorized by the Director. Such authorization and date thereof shall be announced by press and radio.

(c) The season bag limit per permit shall be one deer of either sex and any age with a shotgun permit season permit in Zones 1, 3, 4, 18, 20, 21, 23-26, 28, 31-34, 40, 43-47, 52-54; two deer of either sex and any age with a shotgun permit season permit in Zone 2, 5-17, 19, 22, 27, 29, 30, 35-37, 41, 42, 48-51; three deer of either-sex and any age with a shotgun permit season permit in Zones 39, 55-59, 61 and 62; and six deer of either sex and any age in Zone 38. Only one deer may be taken in a given day per permit. Persons awarded Zone 9 and 13 shotgun permits may also take a deer with antler at least three inches long on December 4 or 9, 1989 with a regular firearm license, subject to the provisions of N.J.A.C. 7:25-5.27. It is unlawful to attempt to take or hunt for more than the number of deer permitted.

(d) Duration of the permit shotgun deer season is from sunrise to 1/2 hour after sunset E.S.T. on the following dates:

1. December 13, 1989 in Zones 1, 3, 4, 18, 20, 21, 23-26, 28, 31-34, 40, 43-47;

2. December 13, 14, and 15, 1989 in Zones 6, 16, 19, 22, 27, 30, 42, 56-58, 61;

3. December 13, 14, and 15, 1989 and January 19, 20 and 27, 1990 in zones 2, 5, 7, 8, 10, *11,* 12, 14, 15, 17, 29, 35, 36, 41, 48-51;

4. December 4, 9, 13, 14, and 15, 1989 and January 19, 20 and 27, 1990 in Zones 9 and 13 only;

5. December 22 and 23, 1989 in Zone 37;

6. December 7, 8 and 9, 1989, and January 4, 5 and 6, 1990 in Zone 38;

7. December 16, 1989 and January 13 and 27, 1990 in Zones 39 and 62;

8. December 23, 1989 in Zone 52;

9. December 16, 1989 in Zones 53 and 54;

10. December 16, 1989 and January 6 and 13, 1990 in Zone 55;

11. December 4, 5 and 6, 1989 (first segment); December 13, 14 and 15, 1989 (second segment); and January 19, 20 and 27, 1990 (third segment) in Zone 59; or

12. At other times as determined by the Director.

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

(g) Permits for shotgun permit season consist of back display which includes a "deer transportation tag" or proper and valid second tag. The back display portion of the permit will be conspicuously displayed on the outer clothing in addition to the valid firearm license in the case of a shotgun permit season permit, and without the license in the case of the farmer shotgun permit season permit. The "deer transportation tag" portion of the permit must be completely filled out, and affixed to the deer immediately upon killing. This completely filled in "deer transportation tag" allows legal transportation of the deer of either sex to an authorized check station only. Personnel at the checking station will issue a "possession tag." Any permit holder killing a deer of either sex during this season must transport this deer to an authorized checking station by 7:00 P.M. E.S.T. on the date killed to secure the legal "possession tag." The possession of a deer of either sex after 7:00 P.M. E.S.T. on the date killed without a legal "possession tag" shall be deemed illegal possession. Any legally killed deer which is recovered too late to be brought to the check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. Said deer must be brought to a checking station on the next open day to receive a legal "possession tag". If the season has been concluded said deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag". For deer management zones where the shotgun permit season is more than one day and the bag limit is two deer, a second valid and proper "New Jersey Second Deer Permit and Transportation Tag" (second tag) will be issued upon registration of the first deer. This permit will allow this person to continue hunting and take one additional legal deer during the shotgun permit season, provided the season is open the following day(s) or on any additional days that shotgun permit season hunting is authorized. For deer management zones where the shotgun permit season is three days or more and the bag limit is three deer a third "New Jersey Permit and Transportation Tag" will be issued upon registration of the second deer. This permit will allow this hunter to continue hunting and take one additional legal deer during the shotgun permit season, provided the season is open or on any additional days that shotgun permit season hunting is authorized. For Deer Management Zone 38 (Great Swamp National Wildlife Refuge) where the shotgun permit season is six days and the bag limit is six deer, an additional valid and proper "New Jersey Permit and Transportation Tag" will be issued upon registration of first, second, third, fourth or fifth deer. This permit will allow this hunter to continue hunting on the following designated season date. The second, third, fourth or fifth permit is not valid on the day of issuance, and will only be available from check stations designated to be open for the extended shotgun permit deer season.

(h) Shotgun Permit Season Permits shall be applied for as follows:

1. Only holders of valid and current firearm hunting licenses including juvenile firearm license holders may apply by detaching from the hunting license the stub marked "Special Deer Season 1989", signing as provided on the back, and sending the stub, together with a $17.00 permit fee per applicant and an application form properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2. (No change.)

3. The application form shall be filled in to include: Name, address, current firearm hunting license number, deer management zone applied for, and any other information requested. Only those appli-

cations will be accepted for participation in random selection which are received in the Trenton office during the period of August 25-September 10, 1989. Applications postmarked after September 10 will not be considered for the initial drawing. Selection of permittees will be made by random selection.

4.-6. (No change.)

(i) Farmer Shotgun Permit Season Permits shall be applied for as follows:

1.-2. (No change.)

3. The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of August 1 to 15, 1989. There is no fee required, and all qualified applicants will receive a farmer shotgun permit season permit, delivered by mail.

4. (No change.)

(j) (No change.)

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1989 Shotgun Permit Season Permit Quotas (Either Sex) are as follows:

1989 SHOTGUN PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest 1989	Permit Quota 1989	Portion of Counties Involved
1	1	249	1361	Sussex
2	3	614	1185	Sussex
3	1	90	782	Sussex, Passaic, Bergen
4	1	66	473	Sussex, Warren
5	3	2135	3833	Sussex, Warren
6	2	287	1287	Sussex, Morris, Passaic, Essex
7	3	860	1450	Warren, Hunterdon
8	3	2224	3754	Warren, Hunterdon, Morris, Somerset
9	4	579	965	Morris, Somerset
10	3	1175	1993	Warren, Hunterdon
11	3	624	1262	Hunterdon
12	3	1508	2449	Mercer, Hunterdon, Somerset
13	4	357	750	Morris, Somerset
14	3	793	1736	Mercer, Somerset, Middlesex, Burlington
15	3	451	902	Mercer, Monmouth, Middlesex
16	2	159	694	Ocean, Monmouth
17	3	307	578	Ocean, Monmouth, Burlington
18	1	31	200	Ocean
19	2	130	392	Camden, Burlington
20	1	60	300	Burlington
21	1	59	437	Burlington, Ocean
22	2	38	190	Burlington, Ocean
23	1	75	300	Burlington, Camden, Atlantic
24	1	40	300	Burlington, Ocean
25	1	45	365	Gloucester, Camden, Atlantic, Salem
26	1	0	0	Atlantic
27	2	196	592	Salem, Cumberland
28	1	25	160	Salem, Cumberland, Gloucester
29	3	477	933	Salem, Cumberland
30	2	46	90	Cumberland
31	1	0	0	Cumberland
32	1	0	0	Cumberland
33	1	43	150	Cape May, Atlantic
34	1	24	200	Cape May, Cumberland
35	3	255	500	Gloucester, Salem
36	3	39	140	Bergen, Hudson, Essex, Morris, Union, Somerset, Middlesex
37	5	43	140	Burlington (Fort Dix Military Reservation)
38	6	190	600	Morris (Great Swamp National Wildlife Refuge)
39	7	77	60	Monmouth (Earle Naval Weapons Station)
40	1	7	80	Warren (Allamuchy State Park)
41	3	586	903	Mercer, Hunterdon
42	2	24	60	Atlantic
43	1	0	0	Cumberland
44	1	18	50	Cumberland
45	1	0	0	Cumberland, Atlantic, Cape May
46	1	15	90	Atlantic
47	1	9	90	Atlantic, Cumberland, Gloucester
48	3	181	427	Burlington
49	3	25	60	Burlington, Camden, Gloucester
50	3	110	420	Middlesex, Monmouth
51	3	62	221	Monmouth, Ocean
52	8	15	60	Ocean (Fort Dix Military Reservation)
53	9	10	50	Ocean (Lakehurst Naval Engineering Center)

54	9	12	35	Morris (Picatinny Arsenal-ARRAD Com)
55	10	15	40	Atlantic (Federal Aviation Administration Technical Center)
56	2	28	20	Atlantic (Forsythe National Wildlife Refuge)
57	2	20	40	Atlantic (Forsythe National Wildlife Refuge)
58	2	20	50	Burlington, Ocean (Forsythe National Wildlife Refuge)
59	11	60	60	Salem (Supawna National Wildlife Refuge)
61	2	21	105	Atlantic (Atlantic County Parks)
62	7	19	25	Monmouth (Fort Monmouth)
Total		15,628	34,353	

(l) Shotgun permit season permits not applied for by September 10, 1989 may be reallocated to muzzleloader rifle permit season applicants.

(m) The Season Dates code referenced in the table in (k) above is as follows:

1. Indicates one day shotgun permit season—December 13, 1989.
2. Indicates three-day shotgun permit season—December 13, 14 and 15, 1989.
3. Indicates six-day shotgun permit season—December 13, 14 and 15, 1989 and January 19, 20 and 27, 1990.
4. Indicates eight-day shotgun permit season—December 4, 9, 13, 14, 15, 1989 and January 19, 20 and 27, 1990.
5. Indicates a two-day shotgun permit season—December 22 and 23, 1989.
6. Indicates a six-day shotgun permit season—December 7, 8 and 9, 1989 and January 4, 5 and 6, 1990.
7. Indicates a three-day shotgun permit season—December 16, 1989 and January 13 and 27, 1990.
8. Indicates a one-day shotgun permit season—December 23, 1989.
9. Indicates a one-day shotgun permit season—December 16, 1989.
10. Indicates a three-day shotgun permit season—December 16, 1989 and January 6 and 13, 1990.
11. Indicates three three-day shotgun permit season segments—December 4, 5 and 6, 1989 (first segment); December 13, 14 and 15, 1989 (second segment); and January 19, 20 and 27, 1990 (third segment).

(n) (No change.)

(o) Permit quotas for Zones 37, 38, 39, 40, 52-59, 61 and 62 are contingent upon approval by appropriate land management agencies for those zones.

(p) Deer management zones are located as follows:

1. Zone No. 1: That portion of Sussex County lying within a continuous line beginning at the intersection of Rtes. 206 and 519 at Branchville; than northwest along Rt. 206 to its intersection with Rt. 560; then west along Rt. 560 to its intersection with the Delaware River at Dingman's Ferry; then north along the east branch of the Delaware River to the New York State line; then east along the New York State line to Rt. 519; then south along Rt. 519 to the point of beginning at Branchville. The islands of Namanock, Minisink and Mashipacong lying in the Delaware River are included in this zone.

2.-3. (No change.)

4. Zone No. 4: That portion of Sussex and Warren Counties lying within a continuous line beginning at the intersection of Route 560 (Tuttles Corner—Dingman's Road) and the Delaware River at Dingman's Ferry; then southeast along Route 560 to its intersection with Route 206; then southeast along Route 206 to its intersection with Route 521 at Culvers Inlet; then south along the base of the Kittatinny Ridge at Culvers Inlet; then southwest along the base of the Kittatinny Ridge to the Delaware River at the Delaware Water Gap north of Quarry Road; then north along the east bank of the Delaware to the point of beginning at Dingman's Ferry. Depew, Tocks, Poxono and Labar Islands in the Delaware River are included in this zone.

5. Zone No. 5: That portion of Warren and Sussex Counties lying within a continuous line beginning at the intersection of the base of the Kittatinny Ridge and Rt. 206 at Culvers Inlet; then southeast along Rt. 206 to its intersection with Rt. 519 at Branchville; then south along Rt. 519 to its intersection with Rt. 206 at Newton; then south along Rt. 206 to its intersection with Rt. 517 at Andover; then south along Rt. 517 to its intersection with Rt. 46 at Hackettstown; then west along Rt. 46 to its intersection with the Zone 4 boundary at the Delaware Water Gap north of Quarry Road; then northeast along the base of the Kittatinny Ridge to its intersection with Rt. 206, the point of beginning.

6.-60. (No change.)

61. Zone No. 62: Those portions of Fort Monmouth, designated as open for deer hunting, lying within Monmouth County.

7:25-5.30 White-tailed deer bow permit season, (either sex)

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

(d) Duration of the bow permit season is from November 11-December 2, 1989 in Zones *[1-36, 39-51]* ***1-3, 5-30, 33-36, 39-42, 44-51,*** 54, 55, 58, 59, 61 and 62; November 20 through December 2, 1989 in Zones 37 and 52; November 11-24, 1989 in Zone 53, or any other time as determined by the Director. Legal hunting hours shall be 1/2 hour before sunrise to 1/2 hour after sunset.

(e)-(g) (No change.)

(h) Bow Permit Season Permits shall be applied for as follows:

1. Only holders of valid bow and arrow licenses including juvenile bow license holders may apply by detaching from their bow hunting license the stub marked special deer season 1989, signing as provided on the back, and sending the stub together with a $17.00 permit fee per applicant and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iv. (No change.)

2.-8. (No change.)

(i)-(j) (No change.)

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1989 Bow Permit Season Quotas (Either Sex) are as follows:

1989 BOW PERMIT SEASON PERMIT QUOTAS (EITHER SEX)

Deer Mgt. Zone No.	Season Dates Code	Anticipated Deer Harvest 1989	Permit Quota 1989	Portins of Counties Involved
1	1	72	840	Sussex
2	1	76	725	Sussex
3	1	40	750	Sussex, Passaic, Bergen
4	1	0	0	Sussex, Warren
5	1	262	2430	Sussex, Warren

6	1	81	1000	Sussex, Morris, Passaic, Essex
7	1	127	1150	Warren, Hunterdon
8	1	305	2500	Warren, Hunterdon, Morris, Somerset
9	1	108	1000	Morris, Somerset
10	1	190	1300	Warren, Hunterdon
11	1	77	850	Hunterdon
12	1	221	1800	Mercer, Hunterdon, Somerset
13	1	68	675	Morris, Somerset
14	1	85	1200	Mercer, Somerset, Middlesex, Burlington
15	1	80	750	Mercer, Monmouth, Middlesex
16	1	59	800	Ocean, Monmouth
17	1	44	450	Ocean, Monmouth, Burlington
18	1	24	250	Ocean
19	1	27	265	Camden, Burlington
20	1	21	250	Burlington
21	1	52	500	Burlington, Ocean
22	1	16	190	Burlington, Ocean
23	1	60	600	Burlington, Camden, Atlantic
24	1	52	500	Burlington, Ocean
25	1	42	465	Gloucester, Camden, Atlantic, Salem
26	1	50	495	Atlantic
27	1	62	525	Salem, Cumberland
28	1	21	200	Salem, Cumberland, Gloucester
29	1	68	650	Salem, Cumberland
30	1	11	110	Cumberland
31	1	0	0	Cumberland
32	1	0	0	Cumberland
33	1	21	135	Cape May, Atlantic
34	1	41	400	Cape May, Cumberland
35	1	76	575	Gloucester, Salem
36	1	11	140	Bergen, Hudson, Essex, Morris, Union, Somerset and Middlesex
37	2	12	150	Burlington (Fort Dix Military Reservation)
38		0	0	Morris (Great Swamp National Wildlife Refuge)
39	1	11	50	Monmouth (Earle Naval Weapons Station)
40	1	4	80	Warren (Allamuchy State Park)
41	1	51	650	Mercer, Hunterdon
42	1	14	100	Atlantic
43	1	0	0	Cumberland
44	1	5	50	Cumberland
45	1	8	150	Cumberland, Atlantic, Cape May
46	1	4	100	Atlantic
47	1	8	80	Atlantic, Cumberland, Gloucester
48	1	35	400	Burlington
49	1	4	40	Burlington, Camden, Gloucester
50	1	26	400	Middlesex, Monmouth
51	1	21	300	Monmouth, Ocean
52	2	3	50	Ocean (Fort Dix Military Reservation)
53	3	4	40	Ocean (Lakehurst Naval Engineering Center)
54	1	6	*[23]* ***28***	Morris (Picatinny Arsenal-ARRAD Com)
55	1	5	40	Atlantic (Federal Aviation Administration Technical Center)
56		0	0	Atlantic (Forsythe National Wildlife Refuge)
57		0	0	Atlantic (Forsythe National Wildlife Refuge)
58	1	5	50	Burlington, Ocean (Forsythe National Wildlife Refuge)
59	1	14	30	Salem (Supawna National Wildlife Refuge)
61	1	14	135	Atlantic (Atlantic County Parks)
62	1	6	30	Monmouth (Fort Monmouth)
Total		2,810	*[27,423]* ***27,428***	

(l) The Season Dates Code referred in the table in (k) above is as follows:

1. Indicates the season dates will be November 11-December 2, 1989.

2. Indicates the season dates will be November 20 through December 2, 1989.

3. Indicates the season dates will be November 11 through November 24, 1989.

(m) Permit quotas for Zones 37, 38, 39, 40, 52-59, 61 and 62 are contingent upon approval by the appropriate land management agencies for these zones.

(n) (No change.)

7:25-5.31 White-tailed deer permit shotgun season permit (either sex), Great Swamp National Wildlife Refuge (Zone 38)

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

(c) Duration of the Great Swamp Permit Shotgun Season Permi shall be from 7:00 A.M. E.S.T. to 5:00 P.M. E.S.T. on the followin dates: December 7, 8 and 9, 1989 and January 4, 5 and 6, 1990 o as may otherwise be designated by the U.S. Fish and Wildlife Service

(d) Bag Limit: Six deer of either sex and any age, may be taken with a Great Swamp Permit Shotgun Season Permit. Only one deer may be taken in a given day per permit.

(e)-(i) (No change.)

7:25-5.32 to 5.33 (No change.)

7:25-5.34 Controlled hunting—hunting restrictions on wildlife management areas

(a) No wildlife management areas have been selected for limited hunter density for the 1989-90 season. However, hunting with firearms shall be prohibited on November 10, 1989 on those wildlife management areas designated as pheasant and quail stamp areas in N.J.A.C. 7:25-5.33.

(b) (No change.)

7:25-5.35 to 5.38 (No change.)

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Environmental Cleanup Responsibility Act Rules

Adopted Amendments: N.J.A.C. 7:26B-1.3, 1.5 through 1.9, 3.3, 5.2, 9.2, 10.1 and 13.1

Proposed: February 21, 1989 at 21 N.J.R. 402(a).

Adopted: June 30, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection

Filed: July 3, 1989 as R.1989 d.403, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 13:1D-1 et seq., N.J.S.A. 13:1K-6 et seq., particularly N.J.S.A. 13:1K-10, and N.J.S.A. 58:10-23.11 et seq.

DEP Docket Number: 004-89-01.

Effective Date: August 7, 1989.

Expiration Date: December 21, 1992.

Summary of Public Comments and Agency Responses:

General Comments

1. COMMENT: Three appellants in *In Re: Adoption of N.J.A.C. 7:26B,* Docket Nos. A-2403-87T1, A-2521-87T1, A-2522-87T1, A-2523-87T1, A-2524-87T1, a consolidated appeal from the adopted rules implementing the Environmental Cleanup Responsibility Act ("ECRA" or "Act") pending in the Appellate Division of the Superior Court of New Jersey, and one other commenter submitted comments incorporating by reference the arguments raised in the briefs filed in that appeal.

RESPONSE: Many of the arguments raised in the briefs attacked specific sections of the rules. The Department of Environmental Protection (Department) modified many of those sections in its February 21, 1989 rule proposal. Consequently, to the extent that the arguments raised in the briefs are directed to rules that have since been modified, the Department does not believe there is a need to respond to these particular arguments in this document. The Department, however, has responded to the arguments raised in the briefs filed in the on-going litigation to the extent that these comments go to the proposal of February 21, 1989. For arguments on subjects beyond the scope of this rulemaking procedure, the Department refers the commenters to the adoption published in the New Jersey Register at 19 N.J.R. 2435(a) on December 21, 1987 wherein the Department's responses to most, if not all, arguments are contained. The Department disagrees with the argument that the ECRA rules (rules), N.J.A.C. 7:26B, particularly the applicability sections at N.J.A.C. 7:26B-1.5, violate the Commerce Clause of the U.S. Const. Art. I, Section 8(3), but notes that this argument is also beyond the scope of this rulemaking procedure. Finally, by republishing and soliciting additional public comment on the definition of industrial establishment at N.J.A.C. 7:26B-1.3, and the text of N.J.A.C. 7:26B-1.5(b)10, 3.3 and 7.5(b), the Department has responded to the argument that certain rules, as adopted, violated the Administrative Procedure Act N.J.S.A. 52:14B-1 et seq.

2. COMMENT: A general comment was received suggesting that the Department establish an advisory committee, made up of members of the corporate bar, to assist in conforming the ECRA rules, and applicability provisions to prevailing corporate, partnership and general business law.

RESPONSE: The Department does not presently see the need for creating an advisory committee for the specific purpose of reviewing the legal/regulatory provisions of the program. The Department presently meets with an Industrial Advisory Committee on the implementation of ECRA and within this format legal and regulatory issues may be raised. If, at a future date, as the Department has done in the past, the Department does see a need for additional legal advice regarding the implementation of the ECRA program, the Department will request such advice of the Division of Law pursuant to N.J.S.A. 52:17A-4.

3. COMMENT: General comments were received stating that the rules and the proposed amendments exceed the Department's statutory authority in three respects: (1) the definitions are so broad so as to completely alter the legislative intent of the ECRA applicability provisions; (2) the rules and the proposed amendments use various ambiguous tests and definitions that preserve the Department's flexibility, but do not provide guidance to the regulated community; and (3) the rules, and the proposed amendments disregard express legislative choices.

RESPONSE: The Department will respond to these general comments in this notice of adoption to the extent that the comments go to specific provisions in the proposed amendments. The Department, however, notes at this time that it is not possible to contemplate every conceivable variation of every fact pattern that might raise an ECRA concern, let alone promulgate specific rules addressing each such situation. Accordingly, the Department has adopted rules that specify the standards and criteria that will apply in all cases.

4. COMMENT: A general comment requested that the Department adopt clear procedures, including the right to an administrative hearing, for applicants who seek review of the Department's administrative decisions.

RESPONSE: The Department sees no need to develop any new procedure for review of the Department's administrative decisions. Appeals from the actions of the Department in implementing the Act may be taken as provided by the New Jersey Court Rules, and applicable laws.

5. COMMENT: General comments suggested simplifying procedures as a means by which expenses could be reduced for the regulated community. Specifically, comments suggested that the Department reduce obligations of owners and operators in situations where sites are "in ECRA" and a new trigger occurs. One commenter used the example of sites which have obtained approved negative declarations or cleanup plans in the recent past (for example 12 months).

RESPONSE: Once a complete review of an industrial establishment has occurred, ECRA compliance associated with subsequent transactions should proceed rapidly by referencing the previous submissions. However, the Department recognizes that simpler filing procedures could be developed for certain second sale situations. The Department, therefore, is presently developing a "short form" application to expedite these cases.

6. COMMENT: One general comment questioned why the Department has not proposed timetables for measuring its performance obligations and stated that in light of the Department's failure to bind itself, it was unfair for the Department to impose unreasonable obligations on the regulated community.

RESPONSE: The Department is required to respond to the regulated community within specific time frames with respect to the approval of legative declarations at N.J.S.A. 13:1K-10b and cleanup implementation deferrals at N.J.S.A. 13:1K-11b(1). However, the Legislature did not find it necessary or appropriate to place other specific response times upon the Department and the Department does not believe it should be bound by additional time frames where it believes that the protection of the public health and the environment might be compromised. The Department does issue periodic progress reports on the ECRA program that include process times and the Department's goals for processing various ECRA submittals. Currently, the Industrial Site Evaluation Element processes 84 percent of the submitted ECRA documents in less than 14 days, and 96 percent in less than 180 days. The Department continues to strive to conduct reviews as rapidly as possible; however, it has found that it is the complex submittals associated with contaminated sites that cannot always be expeditiously reviewed. One way parties can avoid any delay associated with an ECRA review is by operating in compliance with the environmental laws of the State of New Jersey and cleaning up any contamination as required by law prior to an ECRA trigger.

7. COMMENT: Since the definitions at N.J.A.C. 7:26B-1.3, and the provisions of N.J.A.C. 7:26B-1.5, 1.6 and 1.8 are interrelated, several commenters incorporated by reference their comments on one provision to all other related provisions.

RESPONSE: In appropriate cases, the Department incorporates by reference responses made to comments on one provision to comments made on interrelated provisions.

8. COMMENT: Several commenters incorporated by reference their comments to N.J.A.C. 7:26B, when the proposal appeared in the New Jersey Register at 19 N.J.R. 681(a) on May 4, 1987.

RESPONSE: To the extent that the comments made to the May 4, 1987 proposal relate directly to the ECRA rule proposal that appeared in the New Jersey Register at 21 N.J.R. 402(a) on February 21, 1989, the Department has responded at the applicable sections in this document. However, for comments that were beyond the scope of this rulemaking procedure, the Department refers the commenters to the adoption published in the New Jersey Register at 19 N.J.R. 2438(a) on December 21, 1987, wherein the Department responded to their comments.

9. COMMENT: One commenter stated that, in light of the existence of a statutory right to void transactions, the Department should not leave any uncertainties in the rules. The commenter noted that the uncertainties will result in the following: (1) an increase in the volume of requests for letters of non-applicability; (2) a high level of uncertainty for the regulated community; and (3) extraordinary levels of due diligence in transactions in the ordinary course of business, such as loans, to ensure that no past violations of ECRA have occurred.

RESPONSE: The Department has proposed these rules with the specific purpose of providing clarity and guidance to the regulated community. If a member of the regulated community is uncertain if its actions will trigger ECRA, the Department, to help guide that person, has made available, pursuant to N.J.A.C. 7:26B-1.9, Applicability determinations, its positions on implementation of the Act and application of these rules. The Department has committed resources to process any increase in volume of requests made pursuant to N.J.A.C. 7:26B-1.9. The due diligence the commenter refers to is required by lenders in response to the Act and these rules and, therefore, the Department does not believe it is appropriate to respond to whether such due diligence is or is not extraordinary in nature.

10. COMMENT: A commenter disagreed with the Department's assertion that liability under ECRA will be found to be joint and several simply because that is the norm under other New Jersey environmental laws.

RESPONSE: The Department acknowledges the commenter's disagreement with the Department's interpretation that liability under ECRA will be found to be joint and several. The Department's position on this issue, however, remains unchanged.

11. COMMENT: A commenter stated that an ECRA review is a burdensome, costly and time consuming process even if there is no contamination at the site. The commenter stated that even clean facilities must file fees, applications and plans, and wait for Department approval.

RESPONSE: The scope of ECRA is broad and the Legislature was aware that non-toxic sites may be covered. For that reason, provisions for compliance through the approval of negative declarations were created by the Legislature. See *In Re Applicability of ECRA to the Robert L. Mitchell Technical Center,* 223 N.J. Super. 166, 173 (App. Div.) *cert den.,* 111 *N.J.* 605 (1988). The Department recognizes that there have been delays in the past in processing ECRA applications. For that reason, the Department has instituted a number of procedures to expedite the process. These procedures have resulted in the Industrial Site Evaluation Element's processing 84 percent of ECRA submittals within 14 days and 96 percent within 180 days.

N.J.A.C. 7:26B-1.3

12. COMMENT: Several comments stated that the Department had no statutory authority to create an obligation to comply with ECRA by reasons of a cessation of less than all operations or for a cessation for a period of less than two years and that in defining "cessation of all or substantially all the operations," the Department went beyond the Legislature's intent.

RESPONSE: If the Department were to interpret the word "all" literally, as the commenters suggest, owners or operators could, as a practical matter, leave hazardous substances and wastes unattended in order to escape or postpone the costs incident to an ECRA cleanup. This result would go against the legislative purpose of the Act: assuring that the closings of operations and transfers of real property subject to the Act will be conducted in a rational and orderly way so as to mitigate potential risks. In fact, the issue of whether the statutory phrase "cessation of all operations" means "cessation of all or substantially all the operations" was addressed in *I/M/O Fabritex Mills, Inc.,* Docket No. A-1541-87T8, (App. Div., February 17, 1989). In that case, the Appellate Division held that the statutory phrase must be construed sensibly and that in order to achieve the legislative purpose, the phrase must be read as meaning the cessation of all or substantially all the operations.

13. COMMENT: Several comments stated that the use of a 90 percent figure as a way of determining a cessation of all or substantially all the operations was inappropriate since the Department gave no basis for that number. One comment suggested using a higher percent figure.

RESPONSE: The Department has chosen to rely on the 90 percent figure as a measurement of a cessation of substantially all the operations since it is an indication of a significant reduction in any of the three areas viz: (1) number of employees; (2) area of operations; or (3) units of product output, and the figure demonstrates a cessation of substantially all operations by the industrial establishment. A significant reduction in any of three areas provides a sound basis for the conclusion that the business conducted on the premises is no longer of the same character and magnitude. Thus, such changes in operation may constitute an ECRA trigger. This test protects the public health, safety and welfare of the citizens of the State from situations where owners or operators have, for all practical purposes ceased yet continue an insubstantial level of activity in order to avoid compliance with ECRA. See response to Comment 16

14. COMMENT: Several comments were received objecting to the use of units of output in the definition of cessation of all or substantially all as being a vague measurement of operations. Comments questioned whether units of output include revenues, or changes in the volume of sales, expenses or pounds.

RESPONSE: Units of product output refers to the quantity of products produced, whether manufactured, assembled or distributed, which ever is applicable or ordinarily used by the business of the industrial establishment. The phrase does not include changes in revenue, as this change by itself does not accurately reflect when an industrial establishment will cease or substantially cease operations.

15. COMMENT: One comment suggested that the three tests for determining a cessation of all or substantially all the operations should not be used in the alternative, and that only if a 90 percent reduction in all three has occurred should the Department consider it to be a cessation of all or substantially all the operations.

RESPONSE: A reduction of 90 percent in any one of three areas is reflective of a significant change in operations of any industrial establishment. Therefore, the Department will continue to evaluate cessations of operation based on any one of these criteria set forth in the definition

16. COMMENT: Comments were received which stated that the definition of cessation of all or substantially all the operations is unreasonable since it does not provide enough guidance to the regulated community as to which cessations are subject to the Act. Commenters suggested that it was therefore appropriate for the regulated community to assume that the Department will use a reasoned balancing process, and consider all of the facts and circumstances when determining if a change in operation fits within this definition. In addition, comments were received stating that the definition was vague and needed further clarification in the following three areas: (1) what is the date to be used in measuring the changes; (2) should average or periodic numbers be used; and (3) which employees, full or part time, are to be included in the test.

RESPONSE: The Department feels that the definition of "cessation of all or substantially all" is clear and provides adequate guidance to the regulated community. A variety of industrial establishments are regulated under ECRA. Therefore, the Department cannot and should not be more precise in defining the three criteria. For example, if the Department were to further define employees as full time employees, that particular criterion would have no relevance for an industrial establishment where the workforce is comprised of seasonal, or part time, employees. The Department recognizes that a reduction in 90 percent of employees, or of operations or units of product output may not be indicative of a cessation that would trigger ECRA for all industrial establishments. For that reason, the Department is allowing an industrial establishment to demonstrate to the Department, pursuant to N.J.A.C. 7:26B-1.9, that even though changes in operation fit within the definition of a cessation of all or substantially all the operations, these changes are not so substantial so as to rise to the level of an ECRA trigger. Pursuant to N.J.A.C. 7:26B-1.9, and as suggested by the comments, the Department will consider all the facts and circumstances and make a reasoned decision as to the nature of the cessation.

17. COMMENT: The Department received comments in support of the inclusion of the language "for a period of not less than two years" at paragraph (1) in the definition of "closing, terminating or transferring operations."

RESPONSE: The Department acknowledges the commenters' concurrence with this change.

18. COMMENT: A comment objected to the inclusion of "substantially all" in paragraph 1 of the definition of "closing, terminating or transferring operations" as beyond the scope of the Act.

RESPONSE: The issue of whether "substantially all" should be included within the definition of "closing, terminating or transferring operations" was not a subject of this rulemaking proposal, and therefore is not an appropriate subject for response to this document. However, see the Department's response to comments concerning the new definition of "cessation of all or substantially all the operations" above at Comments 12-16, for further discussion regarding the Department's position on this matter.

19. COMMENT: Comments suggested that there is no statutory authority for a change in SIC number to one that is not subject to be part of the definition of "closing, terminating or transferring operations" under ECRA.

RESPONSE: This comment is beyond the scope of this rulemaking proceeding. The Department solicited comment on its position that a change in the SIC number of an industrial establishment constitutes "closing, terminating or transferring operations" under ECRA when it proposed N.J.A.C. 7:26B which appeared in the New Jersey Register at 19 N.J.R. 681(a) on May 4, 1987. Comments on this definition were received and responded to in full by the Department in the adoption published in the December 21, 1987 New Jersey Register at 19 N.J.R. 2438(a).

20. COMMENT: Comments were received in support of the deletion of the term "incident" in paragraph 3 of the proposed amendments to the definition of "closing, terminating or transferring operations." However, several commenters stated that the Department's proposed clarification of "transaction or proceeding" exceeds its statutory authority. Commenters stated that the examples included in the definition, "including but not limited to explosions and fires or other similar events," cannot be said to constitute a transaction or proceeding. Some commenters suggested that the definition simply mirror the statutory language.

RESPONSE: The Act, at N.J.S.A. 13:1K-8(b), provides that closing, terminating or transferring operations includes any transaction or proceeding through which an industrial establishment becomes nonoperational for health or safety reasons. Explosions or fires, or other similar events are transactions or proceedings that may have environmental implications. The Random House College Dictionary, Revised Edition (1984), defines the term "proceeding" as "a particular action, or course of action; an activity continuing for some time," and the term "transaction" as "the act of transacting." In fact, transaction and proceeding are broad terms, and can encompass events which have no relation to environmental concerns. By limiting the term "transaction" or "proceeding" to fires, explosions or similar events that may have significant environmental implications, the Department has clarified that an event, such as a worker's injury on the job, that results in a temporary closure, for example, three hours, of the industrial establishment, but which does not have any environmental implications, does not fit within the definition of "closing, terminating or transferring operations." The Department considers its clarification of transaction or proceeding to be necessary and within its statutory authority.

21. COMMENT: One comment suggested that the Department revise proposed paragraph 4 of the definition of "closing, terminating or transferring operations" to read as follows: Termination of a leasehold interest at an industrial establishment by the owner or operator of the industrial establishment unless the lease is renewed or extended by the same tenant without a disruption in operations.

RESPONSE: This comment is beyond the scope of this rulemaking proceeding. The Department solicited comment on the inclusion of a termination of a leasehold interest in the definition of closing, terminating or transferring of operations when it proposed N.J.A.C. 7:26B which appeared in the New Jersey Register at 19 N.J.R. 681(a) on May 4, 1987. Comments on the termination of a leasehold interest were received and responded to by the Department in the adoption published in the December 21, 1987 New Jersey Register at 19 N.J.R. 2437(a). The Department will note, however, that, in connection with N.J.A.C. 7:26B-1.8(a)26, it has no intention of requiring ECRA compliance in situations where a lease is terminated but renewed or extended by the same tenant without a disruption in operations.

22. COMMENT: A comment received supported the revision to the definition of closing, terminating or transferring operations with regard to corporate reorganizations not substantially affecting ownership.

RESPONSE: The Department acknowledges the commenter's concurrence with this change.

23. COMMENT: A comment was received that stated the inclusion of "transfer by any means of shares of a corporation which results in a change in the controlling interest in the owner or operator" in paragraph 5 of the definition of "closing, terminating or transferring operations" is unclear, impracticable and unworkable.

RESPONSE: The Department proposed a new definition of controlling interest and deleted the definition of majority interest and, therefore, changed the wording in paragraph 5 to be consistent with the new definition. For further discussion of the use of the word "controlling," please see the Department's response to comments below on the definition of "controlling interest."

24. COMMENT: Comments were received in support of the new definition of controlling interest.

RESPONSE: The Department acknowledges the commenters' concurrence with this new definition.

25. COMMENT: Several comments stated that the Department should retain the definition of majority interest since the previous definition is better suited to the language of the Act.

RESPONSE: A close reading of the new definition will show that the definition of controlling interest closely parallels the previous definition of majority interest. However, changing the term to controlling interest better conveys the principle that certain shareholders, by virtue of their ownership of a certain percentage of stock of a corporation, have the power to direct or cause the direction of the management and policies of a corporation. The new definition also reflects the Department's practice of looking to the ability to control, as well as to who has a majority of the shares, as an index of ownership in a corporation.

26. COMMENT: One comment suggested that only the sale of 100 percent of the shares of an industrial establishment should be subject to ECRA. The commenter stated, alternatively, that a transfer of 90 percent of the shares should be used as the bright line indicator of a change in ownership since it matches the short form merger or consolidation threshold under N.J.S.A. 14A:10-5.1 and it is the normal level of the first stage of a two-step squeeze out acquisition.

RESPONSE: Transfers of actual control of a corporation occur when percentages of stock, not necessarily 90 percent or more, and frequently less than 50 percent, are sold by the person or those persons holding the controlling interest in the corporation that owns or operates the industrial establishment through stock ownership. The suggestion to use the thresholds of 90 or 100 percent of the shares would exempt many midsize and most large corporations from complying with ECRA. This was not the intent of the Legislature when the statute was enacted. Therefore, the Department will retain the definition as proposed.

27. COMMENT: Comments were received which stated that the part of the new definition of controlling interest, which imposes less than a 50 percent numerical ownership test were such persons "possess directly or indirectly the power to direct or cause a direction of the management and policies of a corporation," is virtually meaningless in the context of corporate law since shareholders usually do not wish to exercise any such powers. One commenter suggested that the Department should define controlling interest as comprised of a single person or "affiliated group" of persons where the shares sold or transferred possess voting rights that are numerically sufficient to guarantee the election and removal of the majority of the directors of the corporation and guarantee the approval by the shareholders of any statutory merger, consolidation or sale of all or substantially all the assets of a corporation other than in the ordinary course of business. The commenter added that whether a "majority" of either the directors or shareholders exists would depend upon the certificate of incorporation or bylaws of each individual corporation. The commenter also suggested that the Department could adopt the definition of the term "affiliate" in the Federal Securities Laws or in the Internal Revenue Code.

RESPONSE: There are cases where shareholders or groups of shareholders possess less than 50 percent of the shares of a corporation yet control the corporation through such powers as the ability to appoint directors of the board, to appoint or remove officers of the corporation, or have the right and power and the management of the corporation. As such, these shareholders possess attributes of ownership sufficiently significant that the sale or transfer of such interests constitute an appropriate ECRA trigger. This definition simply provides guidance for determining when that control exists.

The Department views the definition of controlling interest to be simple, clear, and less confusing than some of the more complex definitions that have been suggested to the Department since the enactment

of ECRA. The Department feels this definition provides sufficient guidance to enable both the Department and the regulated community to identify a change of stock ownership and a change in ownership of an industrial establishment. Any questions regarding complex transactions can be addressed through the request for an applicability determination pursuant to N.J.A.C. 7:26B-1.9. Should the applicant demonstrate to the Department's satisfaction pursuant to N.J.A.C. 7:26B-1.9 that no change in the ability to direct or cause the direction of the management and policies of or corporation will occur as a result of the sale or transfer of corporate stock, the Department will confirm that the transaction is not an ECRA trigger.

28. COMMENT: A comment suggested that the definition of controlling interest is overly broad because ECRA refers to transfers of ownership, not transfers of control.

RESPONSE: The Department uses "controlling interest" as an index of ownership in corporation. Under corporate law, each individual shareholder is an owner of a corporation. The Department recognizes that in large, publicly held corporations a majority of the shareholders are passive investors. It would be impractical for the Department to consider each sale of stock to a new investor a change in ownership sufficient to trigger ECRA. For this reason, the Department has chosen to use the concept of "controlling interest" as an index of ownership in a corporation. The definition of controlling interest is a hybrid; it uses both stock ownership and the ability to control and direct the management and policies of a corporation.

29. COMMENT: A comment suggested that it is inappropriate for the Department to apply the rules to inquire compliance with ECRA in the following situations: (1) transfers of more than 50 percent of the stock of a publicly held corporation through ordinary market transactions over any period of time; (2) transfers of 90 to 100 percent of the stock of publicly held corporations through Federally regulated tender offers; (3) transfers of large blocks of stock of privately held corporations; and (4) transfers of small blocks of stock in public or private corporations by persons who might have some power in the management of the corporation. The commenter indicated that there was no legislative intent to allow the Department to assert an ECRA trigger in any the above transactions.

RESPONSE: The Department would only consider the sale of stock as an ECRA trigger if there is a concurrent change in the controlling interest of the corporation. The Department is using the authority granted to it by the Act in the definition of closing, terminating or transferring operations to require a cleanup of an industrial establishment when there is a change in ownership of the industrial establishment. The commenter did not provide the Department with reasons as to why the above examples should not be viewed as transfers of ownership. The Department does issue letters of non-applicability in those situations where the controlling interest does not change and, therefore, there is no change in ownership of the industrial establishment.

30. COMMENT: Several comments suggested that a "more than 50 percent" rather than "50 percent or more" numerical criteria be used in the definition of controlling interest.

RESPONSE: The Department agrees and has made this change and has also deleted the phrase "less than 50 percent" and replaced it with "50 percent or fewer". It is noted that ownership of 50 percent or less may also be a controlling interest.

31. COMMENT: A comment suggested that voting shares or the number of votes be utilized as a relevant measure of controlling interest rather than the sheer numbers of "issued and outstanding" shares.

RESPONSE: The Act defines "closing, terminating or transferring operations" to include "whenever an industrial establishment . . . undergoes a change in ownership . . ." With respect to stock transfers, the Department implements this provision, in part, where it finds a "[s]ale or transfer of stock in a corporation which results in a change in the person or persons holding a "controlling interest" in a corporation which . . . owns or operates . . . an industrial establishment." N.J.A.C. 7:26B-1.5(b)2. In order to faithfully implement the legislative intent, however, "controlling interest" must be broadly defined. Since issued and outstanding certificates of stock in a corporation, whether voting or non-voting, evidence ownership in a corporation, any interest consisting of more than 50 percent of such stock is deemed a controlling interest. At the same time, as apparently recognized by the commenter, the size of an interest in certificates of voting stock may be a relevant measure of controlling interest. Where an interest in a certain number of voting shares, frequently less than 50 percent of the issued and outstanding stock of a corporation, gives its holder the power to direct the management of a corporation, that interest is also appropriately deemed a controlling interest. Therefore, the Department will use the definition of controlling interest as adopted herein at N.J.A.C. 7:26B-1.3.

32. COMMENT: One comment suggested that when the Legislature drafted ECRA its focus was the transfer of title to the industrial establishment rather than title to legal or equitable interests, such as shares or partnership interests, in entities having direct or indirect interests in the assets which are used at the industrial establishment.

RESPONSE: The Act expressly regulates the transfer of legal and equitable interests as well as the transfer of title. For example, the Act provides that the sale of stock, financial reorganization, or a sale of a controlling share of the assets is a "closing, terminating or transferring operations" at N.J.S.A. 13:1K-8. As stated in the legislative findings at N.J.S.A. 13:1K-7, the legislative focus in drafting ECRA was that there be adequate preparation and implementation of a cleanup plan prior to a change in ownership or a transfer of real property in order to mitigate potential risks to the citizens, property and natural resources of the State. In order to effectuate this goal, the Department ties changes in ownership to transfers of direct or indirect, legal and equitable interests in an industrial establishment. In this way the Department has the ability to monitor the distribution and availability of assets for cleanup to ensure that the closing of operations or the transfer of real property is conducted in a rational and orderly way.

33. COMMENT: Comments suggested that more guidance to the regulated community is necessary in the definition of controlling interest particularly in the following areas: (1) how are different classes of stock to be evaluated; (2) what date will be used to measure the changes in power of the individual; (3) how is the power of the person(s) measured and (4) when are persons deemed to be part of the same group. The commenter suggested that the Department incorporate a test detailing what is reasonable under the circumstances as an appropriate measure of controlling interest.

RESPONSE: Different classes of stock are to be evaluated on the basis of information provided to the Department demonstrating whether ownership of such class provides the owner the power to direct or cause the direction of the corporation. Changes in the power of a person or persons may be measured from the date of acquisition of the security or the right to acquire a security by various means including but not limited to options, warrant or right, or the date that two or more persons agree to act to acquire, hold, vote or dispose of securities. Power is measured by the power to vote, or to direct the vote of pledged securities, or the power to dispose or direct the disposition of pledged securities. Persons can be said to be part of the same group if they act together by virtue of voting or pooling agreements. See N.J.S.A. 14:5-19 to 21.

34. COMMENT: Comments stated that the Department was without statutory authority to utilize criteria, particularly diminishment of assets in determining whether a particular corporate reorganization not substantially affecting ownership is exempt. One commenter stated that diminishment of assets has no bearing on ownership.

RESPONSE: The legislative intent underlying ECRA is that the owner or operator of an industrial establishment conduct an environmental assessment and a cleanup, if warranted, prior to the closing, terminating or transferring of operations. This process provides that the owner or operator, rather than the public, bear the costs of an environmental cleanup of the site. The statute exempts corporate reorganizations not substantially affecting ownership from ECRA, but the legislature did not define this term. When a new corporate entity is created, the ownership of an industrial establishment owned by that corporation changes. The Department has now chosen to allow the applicant the ability to demonstrate that these reorganizations are not appropriated ECRA triggers. The danger to the public inherent in this policy, however, is that corporations by their nature shield shareholders from liability. Therefore, the Department has chosen to look at the availability of assets for any environmental cleanup, the Department's ability to reach these assets and whether the owner or operator's ability to clean up the industrial establishment is otherwise hindered because of the corporate reorganization, as the criteria for determining ECRA applicability. This practice is in accordance with the underlying goals of the Act.

35. COMMENT: One commenter stated that the diminishment of assets test would be difficult to implement since at the time of a restructuring, there would be no way of knowing what assets are available for cleanup. The commenter continued that in these circumstances, it would be necessary to obtain a letter of non-applicability before such a reorganization could proceed, but that the applicant would be unable to demonstrate the availability of assets for an environmental cleanup since the extent of the cleanup required would be unknown. The comment

concluded that the Department would be unable to make the required applicability judgement.

RESPONSE: The Department considers all assets, unless otherwise obligated, to be assets available for an environmental cleanup. This rule does not require a corporation to set aside assets on its balance sheet specifically for an environmental cleanup. The Department's focus was not on the amount of assets but the availability of the corporation's assets for any environmental cleanup, the Department's ability to reach the assets and the owner or operator's ability to effectuate a cleanup of the industrial establishment. The Department sees no reason why an accountant would not be able to inform a corporation that is restructuring its current assets and liabilities so that the corporation's principal executive officer or duly authorized representative would be able to certify what assets are available and will remain available. If the corporation is unable to ensure that the corporate reorganization will not diminish the availability of assets for a cleanup or the Department's ability to reach the assets, the Department will consider the reorganization to be one substantially affecting ownership. The Department recommends, however, that if a corporation expects that a cleanup of its industrial establishment will be necessary, that it not wait for the Department to determine if an ECRA trigger has occurred, but that it begin its cleanup efforts immediately as required by law.

36. COMMENT: One comment stated that the Department should adopt its present practices regarding determinations involving corporate reorganizations not substantially affecting ownership.

REPONSE: The Department has proposed these rules in order to set forth the criteria and standards the Department will use when determining if the corporate reorganization does not substantially affect ownership under ECRA.

37. COMMENT: Comments were received in support of the changes to the definition of corporate reorganization not substantially affecting ownership.

RESPONSE: The Department acknowledges the commenters' concurrence with this change.

38. COMMENT: One comment on the definition of corporate reorganization not substantially affecting ownership stated that it appears that the Department intends to do case by case reviews, with the Department keeping total discretion in these matters, making such a provision arbitrary and capricious. The commenter concluded that it is without statutory authority and fails to meet the requirement of N.J.A.C. 1:30-2.1, which states that a rule be clear, simple and understandable and give interested parties fair notice of its provisions.

RESPONSE: In its proposal, the Department modified the definition of corporate reorganizations not substantially affecting ownership to provide clarity to the regulated community and to allow reorganization now covered to be exempt in the future. The Department has established criteria within the definition to ensure that exemptions for reorganizations are not given in an arbitrary or capricious manner. The Department believes that these criteria are as clear, understandable and simple as practicable given the multitude of corporate reorganizations possible. Interested parties are given fair notice of the appropriate criteria. It is not possible to contemplate every conceivable variation of every fact pattern regarding a corporate reorganization not substantially affecting ownership, let alone promulgate specific rules addressing each situation. Accordingly, the Department, in this definition, has specified the standards and criteria that it will apply when looking at the facts of each case.

39. COMMENT: One comment stated the Department's focus on assets in the definition of corporate reorganization not substantially affecting ownership was appropriate. The commenter stated that this test should be interpreted as exempting the following: upstream and downstream mergers of parent and subsidiary entities; liquidation or dissolutions upstream to controlling entities; mere changes in form of individuals, corporations, partnerships to another where control remains essentially the same and the assets available to the new title holder meet the tests.

RESPONSE: The Department acknowledges the commenter's concurrence with the change. The Department proposed changes to the definition of "corporate reorganization not substantially affecting ownership" in an attempt to prevent corporation manipulations where corporations isolate their environmental liabilities from the profitable areas of their enterprise. The Department, however, does not intend to provide blanket exemptions to certain types of corporate reorganizations. The Department must review the facts in any given case. For example, while a spin-off corporation may for some purposes be considered the result of a corporate reorganization not substantially affecting ownership, it may, in certain circumstances, also involve the diminishment of assets available to the Department for necessary cleanups if the new corporation is a foreign corporation. Another example of diminishment of assets is if there is a merger into a corporation having extensive and identifiable liabilities. The Department has attempted to provide the regulated community with as much guidance as possible in order for them to determine if they have triggered ECRA. Members of the regulated community may elect to obtain an applicability determination pursuant to N.J.A.C. 7:26B-1.9.

40. COMMENT: Several comments were received in support of the deletion of the word "activity" from the definition of industrial establishment.

RESPONSE: The Department acknowledges the commenters' concurrence with this change.

41. COMMENT: Several comments were received that stated that there is no basis in the Act to include contiguous property controlled by the same owner or operator that is vacant land as part of the industrial establishment. One comment stated that the Act does not envision a review of an industrial establishment when a vacant parcel, not used for or by the industrial establishment, is sold. This commenter also stated that the limited conveyance provisions do not give adequate relief to a property owner wishing to transfer vacant land contiguous to the industrial establishment.

RESPONSE: If a company is engaged in a business whose operations may threaten the environment, it is reasonable for the Department to infer that contiguous vacant land controlled by the same owner or operator may also pose a threat to the environment, and should be subject to an ECRA review before being transferred. There is the possibility that although the vacant property may presently appear clean, a historical review of the operations at the site conducted as part of the ECRA review may disclose that the property was at one time used for the refining, transportation, generation, manufacture, treatment, storage, handling, or disposal of hazardous substances or wastes, or that contamination has emanated from the site where the business of the industrial establishment is now conducted, and that the vacant land is thereby contaminated. In addition, defining contiguous property that is vacant land or used in conjunction with the business as part of the industrial establishment, prevents the industrial establishment from selling off valuable, vacant, non-contaminated property, while leaving potentially contaminated areas unchecked. In broadly defining the term industrial establishment, the Department is ensuring that the assets available for the cleanup of the contaminated areas will not be diminished by such sale, and that the public will not have to bear the costs of any eventual cleanup of the remaining property. To the extent that the transfer meets the criteria, a limited conveyance, pursuant to N.J.A.C. 7:26B-13, is available to a property owner; it provides relief to a property owner while providing adequate protection of the public health and environment.

42. COMMENT: Commenters suggested that the word "or" in the phrase "that are vacant land, or that are used in conjunction with such business" be replaced with the word "and" or that only those parts of the industrial establishment affected by the transaction should be subject to the Act.

RESPONSE: As discussed in the response to Comment 41 above, the restriction of the area to be examined pursuant to ECRA to include only the portion of an industrial establishment with ongoing operations is inappropriate. Past operations by the existing industrial establishment or previous operations at the site may have resulted in the contamination of now-vacant portions of the industrial establishment. If the Department were to adopt these commenters' suggestions, these portions would not be subject to examination and potentially-needed remediation under the Act. The purpose of ECRA is either to ensure that the site of an industrial establishment is not contaminated or to ensure that any contamination is remediated to the Department's satisfaction at the expense of the owner or operator, rather than the citizens of the State. Therefore, it is necessary to review the entire industrial establishment, not merely those portions of the site with ongoing operations, for compliance.

43. COMMENT: Comments suggested eliminating the phrase "that are vacant land, or" from the definition of industrial establishment and that the Department treat contiguous blocks and lots on a case by case basis using the applicability process described in N.J.A.C. 7:26B-1.9. One commenter suggested having an applicant, under N.J.A.C. 7:26B-1.9, fill out information regarding the use of hazardous waste on the adjacent property.

RESPONSE: Vacant land contiguous to property where the business of an industrial establishment is operated has been found to be contaminated. The contamination is the result of historical practices on what

is now vacant land, or of contamination emanating from the site where the business of the industrial establishment is now conducted. Based on the Department's experience, the Department does not feel that a case-by-case analysis of the vacant property is warranted prior to a determination as to whether it should be included within the review of the industrial establishment. If appropriate, a limited conveyance pursuant to N.J.A.C. 7:26B-13 is available.

44. COMMENT: A commenter indicated that the definitions of "industrial establishment" and "cleanup plan" are intended to cover only those premises which constitute the site of the industrial establishment. The commenter noted that inclusion of off-site contamination in the cleanup plan is not within the statutory intent and that the Spill Compensation and Control Act addresses off-site contamination.

RESPONSE: The issue of whether the Department can require the cleanup of off-site contamination pursuant to a cleanup plan is beyond the scope of this rulemaking procedure. The Department notes, however, that all provisions of the Act must be read together in order to understand and effectuate the Legislature's intent in enacting ECRA. Often, contamination resulting from a discharge of hazardous substances or wastes does not remain confined to the geographic boundaries of a particular property and migrates off-site either through the soils, air, surface water or the groundwater. In order to implement the legislative mandate to remediate contamination "in a rational and orderly way, so as to mitigate potential risks," off-site contamination resulting from activities at the industrial establishment must also be addressed. The most appropriate time to analyze and plan the cleanup of off-site contamination is at the same time that the industrial establishment is performing an ECRA review. In fact, 20 percent of ECRA's high environmental concern cases involve off-site contamination. If an industrial establishment implements a cleanup, it can obtain an approval for a "negative declaration" from the Department by submitting a written declaration that any discharge of hazardous substances or wastes at the site has been cleaned up in accordance with procedures approved by the Department (see N.J.S.A. 13:1K-8). Where the Department to approve a negative declaration or cleanup plan without requiring the off-site contamination to be cleaned up, it would not effectuate the legislative purpose of the Act. The Department believes that the Legislature did not intend to merely identify contamination emanating from a site during the ECRA review without also fully addressing and remediating that contamination both on and off-site. In the worst case, failure to so address and remediate the contamination poses risks to public health, safety, and the environment.

45. COMMENT: A comment objected to the inclusion of external tanks, surface impoundments, septic systems, or any other structure, vessels, contrivances, or units that provide, or are utilized for, hazardous substances and wastes to or from the leasehold as part of the industrial establishment for leased properties. The commenter added that it was inappropriate to include structures that provide hazardous substances to the entire building, not just the leasehold.

RESPONSE: Even if a hazardous substance or waste traveling to or from the industrial establishment is not stored within the physical boundaries of the leasehold, that service supports, and is an integral part of, the operations of the industrial establishment. These structures, vessels, contrivances or units, therefore, should be properly within the Department's review of the industrial establishment.

46. COMMENT: A comment was received objecting to the continued use of the phrase "or real property at which such business is conducted" in the definition of industrial establishment as being without statutory basis.

RESPONSE: It is clear from the legislative findings of the Act, N.J.S.A. 13:1K-7, that the definition of industrial establishment must logically include the real property at which a place of business is located. One situation where ECRA is triggered is when the industrial establishment undergoes a change in ownership by the conveyance of real property (see N.J.S.A. 13:1K-8b). The phrase the commenter objects to was inserted simply to clarify that the definition of place of business includes the geographical area where the business is conducted.

47. COMMENT: One comment suggested that the Department use terminology identical to that in the SIC Manual if it is the Department's intention to strictly adhere to the "Principles for Review of the Classification" set forth in Appendix D of the SIC Manual. The commenter added that it would be useful for the Department to clarify its position with respect to "central administrative offices" and "auxiliary units," both of which are treated separately in the SIC Manual.

RESPONSE: To insure that SIC numbers are established in a consistent manner, the Department requires that SIC numbers be determined in accordance with the SIC manual. With respect to the Department's position regarding auxiliary units and central administrative offices, the Department refers the commenter to *In Re Applicability of ECRA to the Robert L. Mitchell Technical Center*, 223 N.J. Super. 166 (App. Div.) *certif. den.* 111 *N.J.* 605 (1988) wherein the Appellate Division upheld the Department's determination that where a research facility had an auxilliary relationship with the industrial establishment it fell within an ECRA designated SIC category.

48. COMMENT: A comment was received which stated that the distinctions in the definition of industrial establishment between leased and other properties should not exist.

RESPONSE: The Department has found that it is necessary to distinguish between owners and lessees of an industrial establishment. A tenant cannot control property outside of its leasehold. The distinctions between owner/tenant made in the definition of industrial establishment are made in recognition of the legal limits of a tenant's control over physical property outside of a leasehold. With respect to certain structures that may be outside of a leasehold but provide or are utilized for the management of hazardous substances and wastes in support of the leasehold, the Department has determined that they should properly be considered part of the industrial establishment.

49. COMMENT: One comment suggested that the phrase "sale or transfer of the controlling share of the assets" should be defined as a sale or transfer of "substantially all of the assets" as that term is established under New Jersey statutory or common law.

RESPONSE: The phrase "controlling share of the assets" is used in the definition of closing, terminating or transferring operations at N.J.S.A. 13:1K-8b as an example of a change in ownership. The use of the term "controlling" furthers the legislative purpose of the Act; that the closing of operations be conducted in a rational and orderly way so as to mitigate potential risks, and that a precondition to any closure requires the adequate preparation and implementation of acceptable cleanup procedures. If the Department were to embrace the commenter's suggestion, an owner or operator would be able to sell off up to 90 percent of the assets of a business and disappear without reserving sufficient assets to cover its ECRA obligations. Under such a scenario, there would be no preparation of an acceptable cleanup plan, and the costs of an eventual cleanup would be borne by the taxpayers of New Jersey. By using a 50 percent "bright line", the Department has greater assurance that there will be sufficient assets to cover the costs of any eventual cleanup, and that the owner or operator, not the taxpayer of New Jersey, will pay for the cleanup.

50. COMMENT: A comment suggested that the definition of controlling share of the assets should incorporate the language of the Uniform Commercial Code with respect to bulk sales. The commenter defined bulk sales as a sale or transfer of substantially all the assets of a business.

RESPONSE: The Uniform Commercial Code—Bulk Transfers (Bulk Sales Act), N.J.S.A. 12A:6-101 et seq. provides that a transferee of a bulk transfer must notify the transfer's creditors prior to the sale. The Bulk Sales Act defines bulk transfers as any transfer in bulk, not in the ordinary course of business, of a major part of the materials, supplies, merchandise or other inventory of a subject enterprise, or a transfer of a substantial part of the equipment of such an enterprise, if made in connection with a bulk transfer of inventory (see N.J.S.A. 12A:6-102(1) and (2)). The Department agrees with the commenter that a "sale of the controlling share of the assets" under ECRA has similarities to a bulk sale; the Bulk Sales Act protects creditors against a merchant, owing debts, who sells out his stock in trade to anyone for any price, pockets the proceeds, and disappears leaving his creditors unpaid. Similarly, ECRA, by providing the Department with the authority to require an environmental assessment where there has been a sale of a controlling share of the asset protects the citizens of the State from having to expend public funds to clean up a contaminated piece of property where an owner or operator has sold all the assets of the business without reserving sufficient assets to cover its environmental obligations to the State, or has sold the assets and disappeared. In fact, the Department's definition of a controlling share of assets parallels the Bulk Sales Act. For example, the word "major part" in the definition of bulk transfer, is intended to mean "more than 50 percent of the included property." (see N.J. Study Comment 2., Bulk Sales Act, N.J.S.A. 12A:6-102). However, ECRA is not identical in intent to the Bulk Sales Act and, therefore, the Department has not incorporated all the language of the Bulk Sales Act.

51. COMMENT: Several comments were received regarding the potential impact of the Department's definition of controlling share of the assets on commercial financing transactions. One example cited was how corporations commonly assign more than 50 percent of their accounts receivable to financial institutions and that such sales are not in the

ordinary course of business. Another comment questioned how the Department was going to treat inventory.

RESPONSE: To the extent that a controlling share of the assets of an industrial establishment is used to secure a loan or refinance a debt by mechanisms other than their sale or transfer of title, the transaction is not covered by ECRA as provided in N.J.A.C. 7:26B-1.8(a)17. However, accounts receivable and inventory represent assets available for environmental remediation, if necessary. Their sale or transfer may adversely affect the owner's or operator's ability to finance necessary cleanups. Consequently, such sales or transfers trigger compliance with ECRA.

52. COMMENT: One comment received questioned what the Department meant by "assets . . . of the industrial establishment" in the definition of sale of a controlling share of the assets in terms of companies that have more than one industrial establishment located in New Jersey or elsewhere. The commenter also questioned whether there would be any difference if the accounts receivable or inventory were located at the manufacturing office or at the principal office of the company.

RESPONSE: For purposes of applicability, this definition is site specific. The Department only looks to the assets of the particular industrial establishment. Therefore, the assets at the manufacturing facility would be viewed independently from those at any other physically separate facility.

53. COMMENT: One commenter asked if a bank's repossession of inventory or receivables could be an ECRA trigger.

RESPONSE: If the bank's repossession of inventory or receivables amounts to more than 50 percent of the controlling share of assets, it would be an ECRA trigger, unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9.

54. COMMENT: One comment suggested that the definition of controlling share of the assets is problematical because it would be difficult to determine when the 50 percent cut-off is reached, particularly since fair market value shifts over a period of time.

RESPONSE: The industrial establishment, and upon request, the Department, can determine if an ECRA trigger exists on a case by case basis by reviewing all pertinent information concerning a specific transaction or series of transactions. In such a determination, fair market value will be measured as of the date the asset was sold or transferred.

55. COMMENT: Comments stated that the definition of controlling share of the assets was unclear, particularly regarding the following: what the time period to be used in aggregating sales of assets is; when person(s) are deemed to be part of the same group; and when unrelated actions of related and unrelated persons are aggregated. One commenter suggested that any period of time reasonable under the circumstances should be used, and that if an owner or operator can reasonably conclude that person(s) or event(s) are not related, then those person(s) or event(s) should not be aggregated. Other commenters suggested that sales should not be added together unless they are all part of the same transaction.

RESPONSE: The Department has modified the definition of controlling share of the assets to insert a timeframe for its application. As now defined, ECRA will apply to sales or transfers within any five year period since December 31, 1983, or within any five year period of the current ownership or operation of the industrial establishment. Other elements of this comment deal specifically with the applicability provision at N.J.A.C. 7:26B-1.5(b)3, and the Department refers the commenters to its responses at that section.

N.J.A.C. 7:26B-1.5

56. COMMENT: A commenter stated that the Department should list explicitly all transactions which it believes are subject to ECRA in order to fulfill the requirements of N.J.A.C. 1:30-2.1 that a rule be simple, clear and understandable, and give interested persons notice of its provisions.

RESPONSE: To the best of its ability, the Department has attempted to list the types of transactions which are covered by ECRA. However, many major corporate transactions that trigger ECRA are unique. The list is non-inclusive in order to encompass other transactions of a similar nature without allowing ECRA avoidance based upon overly-technical semantic distinctions.

57. COMMENT: A comment was received that stated that the phrase does not apply to corporate reorganizations not substantially affecting ownership" should be included in this N.J.A.C. 7:26-1.5(b).

RESPONSE: The Act defines closing, terminating or transferring operations as not including corporate reorganizations not substantially affecting ownership. The Department has expressly included this exception at N.J.A.C. 7:26B-1.8(a)4. Therefore, the Department does not feel it is necessary to include this language at N.J.A.C. 7:26B-1.5(b).

58. COMMENT: A comment was received that stated that paragraphs N.J.A.C. 7:26B-1.5(b)(i),(ii),(iii), cloud the ECRA process and should be deleted.

RESPONSE: It is unclear as to what the commenter has intended by this comment. The commenter's citation does not exist and, therefore, the Department is unable to respond.

59. COMMENT: Comments stated that the inclusion of partial condemnations at N.J.A.C. 7:26B-1.5(b)8 as an ECRA trigger is unlawful and beyond the scope of the statute.

RESPONSE: The issue of whether partial condemnations are an ECRA trigger was not a subject of this rulemaking proposal. This issue was addressed in the Department's last rulemaking procedure. The Department refers the commenters to 19 N.J.R. 2443 for its response. For further guidance, the Department refers the commenters to *Warren County v. Estate of Frank Percarpio,* Docket No. L75658-85, (Law Div. 1986), wherein the Law Division of Superior Court held in a letter opinion that ECRA is triggered by a condemnation proceeding and that ECRA applies to an industrial establishment even if only a portion of the industrial establishment was condemned.

60. COMMENT: Several comments objected to the use of the phrase, "unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9" at N.J.A.C. 7:26B-1.5(b)1, 2, 3, 6 and 15 as subjecting each applicability determination to a type of ad hoc rulemaking by the Department. Commenters stated that this procedure is an improper attempt to circumvent the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and that the Department should list the criteria for determining applicability.

RESPONSE: By use of the phrase "unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9", the Department is affording all applicants the opportunity to demonstrate that despite the fact that they otherwise meet certain threshold indicia of ECRA applicability, the Act should not be applicable to their particular circumstances due to case specific factors that could not be anticipated in these rules. The Department continues to view the events described in N.J.A.C. 7:26B-1.5(b)1, 2, 3, 6 and 15 as triggering ECRA. The phrase "unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9" does not apply to situations where the Department can ad hoc determine if ECRA does apply; its use by the Department is limited to determining when ECRA does not apply.

61. COMMENT: A comment suggested that the Department insert the language "unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9" in the introductory language of N.J.A.C. 7:26B-1.5 and thereby apply it to all delineated events. In addition, the commenter suggested that the standards in determining non-applicability should be articulated in a separate paragraph and include the following reasons: (1) the event is not a separate or new event which should be evaluated separately from prior events, and when considered with prior events no trigger occurs; (2) the event is a separate event which when considered alone does not constitute a trigger; (3) the event is not, under all the facts and circumstances, a material enough change to constitute a trigger; or (4) the subject industrial establishment has completed ECRA compliance recently enough to eliminate the necessity of requiring a new event to constitute a trigger.

RESPONSE: The Department did not put the language referring to applicability determination in the introductory paragraph because some events (for example, transfers of real property of an industrial establishment, termination of a leasehold interest, bankruptcy proceedings, etc.) will, in all circumstances, be triggering events unless otherwise exempted at N.J.A.C. 7:26B-1.8. However, the Department recognizes that not all complex transactions or events will be appropriate ECRA triggers. In these circumstances there is room for, and need for, flexibility. By inserting this language, the Department puts the regulated community on notice regarding where, in very limited cases, unique circumstances associated with the transaction in question allow flexibility in applying the Act. The standards suggested by the commenter are so broad, and provide little or no additional guidance to the regulated community, that the Department has not incorporated them.

62. COMMENT: One commenter stated that the proposed revisions to N.J.A.C. 7:26B-1.5(b)1, 2 and 6 which delete the phrase "no matter how remote in a chain of corporate ownership" and insert the phrase directly or indirectly through any of its subsidiaries does not offer any guidance to the regulated community as to how subsidiaries that are not wholly owned will be treated under the Act.

RESPONSE: By removing the phrase "no matter how remote in the chain of corporate ownership" and inserting "any of", the Department has indicated that it will continue to look at all sales or transfers of stock

that may impact directly or indirectly on the ownership of the industrial establishment. Therefore, the Department will continue to look at subsidiaries that are not wholly owned (see also response to Comment 64 below).

63. COMMENT: One comment stated that the Department should provide guidance regarding when an owner or operator would be required to comply with the Act, when events occur which are outside of their control (for example, sales by stockholders).

RESPONSE: When an industrial establishment undergoes a change in ownership, it is an ECRA trigger, as provided for in the Act. The stockholders of a corporation are the owners; therefore, with respect to the commenter's examples, when stockholders sell their controlling interest, such sale is within the control of the owner.

64. COMMENT: Comments were received which stated that N.J.A.C. 7:26B-1.5(b)1 and 2 are overly broad since they do not require direct ownership of the industrial establishment to change for ECRA to apply. Commenters suggested that ECRA should only be applicable in transactions where the entity which itself owns and operates the industrial establishment does not remain the same.

RESPONSE: The sale of the stock of a parent corporation results in a change of ownership not only of industrial establishments owned by that parent corporation but also of those held by any of its subsidiaries. A different result would allow for ECRA avoidance through the establishment of "shell" subsidiary corporations that never transfer an industrial establishment but are, themselves, transferred with the industrial establishment(s) that they own.

65. COMMENT: A comment received suggested that the Department should apply the definition of controlling interest to determine ownership in the chain of corporate subsidiaries as well as to individual ownership of shares or assets.

RESPONSE: The Deparment currently uses "controlling interest" as an index of ownership when evaluating the ownership of an industrial establishment within a corporate chain. These rules do not alter the Department's position.

66. COMMENT: A comment was received which interpreted the removal of the language relating to remote parent corporations from the applicability analysis at N.J.A.C. 7:26B-1.5, 2 and 6 as an indication that the Department will only look to immediate parent corporations in making applicability determinations.

RESPONSE: This would be an incorrect interpretation of N.J.A.C. 7:26B-1.5(b). The Department refers the commenter to the summary section of the proposal at 21 N.J.R. 402 and the responses to comments on N.J.A.C. 7:26B-1.5(b) for the Department's position on this issue.

67. COMMENT: A comment concerning the deletion of the language "no matter how remote in the chain of corporate ownership" stated that since the rules still contain the language "direct or indirect" as a modifier to ownership and fail to indicate when a transaction will be considered subject, the Department has not proposed rules that would be impervious to constitutional attack. The commenter added that the Department does all the citizens of the State of New Jersey a great disservice and that the Department runs the risk that its enforcement will ultimately be confined to New Jersey-based companies.

RESPONSE: The Department does not share the view expressed by this commenter. The Department has proposed these rules for the purpose of providing clarity to the regulated community. Further, it is not clear from the comment what the basis for the referenced "constitutional attack" would be.

68. COMMENT: A comment stated that the inclusion of a sale or transfer of stock which results in a change in the controlling interest is without statutory authority.

RESPONSE: The sale of stock from one or more persons to others, resulting in a change in the controlling interest, results in a change of ownership of the industrial establishment. Coverage under ECRA is, therefore, authorized.

69. COMMENT: One comment stated that the phrase "owns or operates" at N.J.A.C. 7:25B-1.5(b)1, 2 and 6 is ambiguous.

RESPONSE: It is unclear from the commenter what is being termed ambiguous with respect to "owns or operates." To the extent that the commenter feels that the ambiguity is similar to an ambiguity found in the phrase "any of its subsidiaries" or at any other words in N.J.A.C. 7:26B-1.5(b)1, 2 and 6, the Department refers the commenter to the applicable responses in this notice of adoption.

70. COMMENT: Several commenters suggested that N.J.A.C. 7:26B-1.5(b)3 is unworkable and without statutory authority because the definition cumulates different sales, at different times, to different persons, and unless the sale is part of a single, concerted, preconceived plan to sell all or substantially all such assets, the definition becomes overly broad and vague. One commenter suggested that the Department establish a time limit for the period when sales can be aggregated.

RESPONSE: A sale of a controlling share of the assets can occur ove a period of time, but for the sake of administrative ease and clarity, th Department limits the applicable time frame to five years. For purpose of ECRA compliance, therefore, the relevant time period for a series o transactions is within any five year period since December 31, 1983. I is incumbent upon the owner or operator of an industrial establishmen to become familiar with the ECRA requirements and, therefore, b cognizant of when the 50 percent threshold is crossed. The owner o operator of an industrial establishment has the ability to seek a determina tion from the Department pursuant to N.J.A.C. 7:26B-1.9 regardin whether these sales constitute an ECRA trigger.

71. COMMENT: Several comments indicated that N.J.A.C 7:26B-1.5(b)3 will make it almost impossible to transfer good title t assets since documents transferring personal property are not recorde or filed. This could result in a previous sale creating voidable title fo ECRA non-compliance.

RESPONSE: It is not the Department's intention to trace the asset of an industrial establishment once they are sold in a series of trans actions. To the extent that the Department would ever want to trace asse of an industrial establishment and void their sale, the Department wi only look to the sale that put the industrial establishment over its 5 percent threshold, or sales subsequent to the industrial establishmer meeting the 50 percent threshold. N.J.A.C. 7:26B-1.5(b)3 puts the regu lated community on notice that before an industrial establishment sel 50 percent or more of its assets, it must comply with ECRA.

72. COMMENT: Several comments stated that the rule at N.J.A.C 7:26B-1.5(b)3 needs to incorporate criteria and standards for aggregatio

RESPONSE: By modifying the definition of "sale of a controllir share of the assets" and N.J.A.C. 7:26B-1.5(b)3, the Department ha provided criteria for aggregation. Sales to any person or persons withi any five year period of time may be subject.

73. COMMENT: Several comments indicated that N.J.A.C 7:26B-1.5(b)3 would require that each corporation keep track of eve asset it sells and that when the amount conveyed exceeds 50 percen ECRA would be triggered. The commenter indicated that this would b unduly burdensome.

RESPONSE: The Department does not feel that this is undu burdensome since sales of assets not in the ordinary course of busine may have significant federal and local tax implications. The Departme assumes that these records are already maintained by industrial establis ments.

74. COMMENT: A commenter indicated that sales by the owner a operator should not be added together unless the sales are all part the same transaction.

RESPONSE: For purposes of N.J.A.C. 7:26B-1.5(b)3, an owner a operator, unless they are the same, will be treated as separate entiti and, therefore, their separate sales will not be treated as a single sa

75. COMMENT: A comment was received stating that the rules i properly treat partnerships differently than they treat corporations. T same commenter indicated that by treating partnerships and corporatic inequitably the Department greatly extended the scope of the statu

RESPONSE: In a general partnership, except as otherwise provid by the partnership agreement, the partners share the profits and los as well as the management equally, though their capital contributions m vary. Each general partner has an ownership interest in the partnersl and is an owner or operator of the industrial establishment. Such inter subjects each partner personally and fully to ECRA responsibilities up the sale or transfer of the industrial establishment. Generally, while corporation is subject fully to ECRA responsibilities upon the sale transfer of the industrial establishment, the individual stockholder is o liable to the extent of his or her capital contribution in the corporati Partnerships and corporations are different legal entities with differ liabilities in partners and shareholders, respectively and, therefore, Department treats them differently under ECRA.

76. COMMENT: One comment suggested revising the language N.J.A.C. 7:26B-1.5(b)10 to be a better reflection of how partners transactions operate in reality, as follows: Sale or transfer of any inte of a general partner to a third party not a current partner, the en interest of a general partner in a general partnership who owns 50 perc or more of the interest in the partnership, the entire interest of a gen partner owning 50 percent or more of a general partnership interes a limited partnership, or the entire interest of a limited partner in a limi partnership liable for the obligations of a limited partnership as provi

at N.J.S.A. 42:2-9, 42:2-11, and 42:2A-27, such partnership or limited partnership owning or operating an industrial establishment.

RESPONSE: The Act is triggered when there is a change in ownership of the industrial establishment. If a general partnership owns the industrial establishment, the transfer of a general partner's entire interest in the partnership, no matter how small, is an ECRA trigger.

77. COMMENT: One comment regarding N.J.A.C. 7:26B-1.5(b)10 stated that there can be many instances in which a partner can sell his or her interest in a partnership and no change in ownership results under any definition of that term. The commenter noted that this is particularly true with respect to the interest of a limited partner in a limited partnership.

RESPONSE: The Department acknowledges that limited partners in limited partnerships do not have the same ownership interest as general partners. Therefore, as provided for in these rules, in most cases, the transfer of a limited partnership interest would not trigger ECRA. When a general partner transfers his or her entire interest in the partnership, however, the transfer triggers ECRA.

78. COMMENT: One commenter suggested that N.J.A.C. 7:26B-1.5(b)10 suffers because it does not reflect the Department's current determinations of applicability in partnership transactions involving transfers of small percentage partnership interests and assignments from a family partnership to a family corporation in which the stock is held in the same or slightly different proportions as the prior partnership interest. The commenter added that this type of exemption is appropriate for all partnership transactions.

RESPONSE: The Department disagrees with the commenter's assessment that N.J.A.C. 7:26B-1.5(b)10 suffers because it does not make exemptions for other than intra-family transfers of partnership interests. As noted in the response to comment 75 above, partnerships and corporations are different legal entities and, therefore, are appropriately treated differently under ECRA.

79. COMMENT: Comments stated that the Department should apply rules essentially equivalent to those it uses for transfers of shares in a corporation in evaluating transfers of partnership interests. The commenter noted that transfers of general partnership interests, unless they are the controlling interest under all of the circumstances defined, should not be viewed as ECRA triggers.

RESPONSE: The Department has chosen to track ownership in a corporation by using "controlling interest." However, ownership in a partnership is easy to measure; generally, there is a change in ownership when there is a change of partner. Therefore, since personal liability attaches to each general partner in a partnership, the Department has chosen not to rely on any concept of controlling interest at N.J.A.C. 7:26B-1.5(b)10, but rather the Uniform Partnership Law, N.J.S.A. 42:1-1 et seq., and the Uniform Limited Partnership Law (1976), 42:2A-1 et seq.

80. COMMENT: Comments suggested that the Department proposal that ECRA apply to any shutdown for health or safety reasons "whenever the Department determines that there has been a significant discharge or release of hazardous substances or wastes" is beyond the scope of the statute. The commenter added that explosions, fires, or other similar events are not transactions or proceedings.

RESPONSE: In the definition of closing, terminating or transferring operations, the Act includes any other transactions or proceedings through which an industrial establishment becomes non-operational for health or safety reasons (see N.J.S.A. 13:1k-8(b)). Since this language is so broad, the Department, at N.J.A.C. 7:26B-1.5(b)14, has chosen to limit itself in implementing the Act to events where there may be real environmental threats. The discharge(s) or release(s) of hazardous substances or wastes is relevant criteria for triggering an Act that was enacted to ensure that the public health and the environment are protected. Therefore, the Department has decided to link closures for health and safety reasons to significant discharges or releases of hazardous substances and wastes before considering such nonoperational status to be an ECRA trigger.

81. COMMENT: Numerous comments were received objecting to the inclusion of discharge or release of hazardous substances and wastes in the definition of a cessation for public health and safety reasons because it can be considered duplicative of the Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 et seq.

RESPONSE: ECRA provides the Department with the authority to require an ECRA review at the time an industrial establishment becomes nonoperational for health or safety reasons. The availability of other legal authority for the Department to direct a site cleanup under the Spill Act is an alternative means to achieve site remediation; it does not preclude the Department from directing a cleanup under any other statute. In fact, the Act at N.J.S.A. 13:1K-11c specifically allows the Department to direct a site cleanup under any other statute, rule or regulation. The Appellate Division, in *Superior Air Products Co. v. NL Industries, Inc.*, 216 *N.J. Super.* 46, 64 (App. Div. 1987), read ECRA and the Spill Act together and held that where there is a transfer, ECRA is triggered, but that where ECRA proceedings are not initiated because there is no closing, terminating or transferring of operations of an industrial establishment, the Department can commence proceedings under the Spill Act.

82. COMMENT: A comment was received that stated that there is nothing to be gained by an ECRA review of a facility which has a health or safety problem. The comment indicated that an ECRA review would not address the health and safety issues but rather take time and resources from the company and the agencies onsite during the emergency that are there to deal with health and safety problems.

RESPONSE: The Department disagrees with this comment. An ECRA environmental assessment is meant to address all potential environmental concerns regarding public health and safety as intended by the Legislature and embodied in the Act. In appropriate circumstances, particularly where an emergency threatens the public health and safety, deadlines for ECRA submission could be extended by the Department upon request.

83. COMMENT: One comment stated that N.J.A.C. 7:26B-1.5(b)14 would permit the Department to extend ECRA to temporary halts of operations for health and safety reasons.

RESPONSE: By limiting applicability under this section to situations where a significant discharge or release of hazardous substances or wastes has occurred, the Department has clarified that it does not intend to apply ECRA to shutdowns where a worker is injured in an accident not involving discharges or releases of hazardous substances and wastes.

84. COMMENT: A comment was received regarding the determination at N.J.A.C. 7:26B-1.5(b)13 that a termination of a leasehold interest constitutes an ECRA trigger when the operations will continue by the same or by a new tenant without a disruption of operations.

RESPONSE: The comment is beyond the scope of this rulemaking proceeding. The Department, however, refers the commenter to the language at N.J.A.C. 7:26B-1.5(b)13 which requires a cessation of operations and N.J.A.C. 7:26B-1.8(b)26 which exempts terminations of leases where a lease is renewed by the same tenant without a disruption of operations.

85. COMMENT: Several comments suggested the Department delete the phrase "or substantially all" at N.J.A.C. 7:26B-1.5(b)15 as it is without statutory authority.

RESPONSE: The Department refers the commenters to responses to Comments 12 to 16 above.

86. COMMENT: Several comments objected to the incorporation by reference of N.J.A.C. 7:26B-1.8(a)7 at N.J.A.C. 7:26B-1.5(b)15 as violative of the statute.

RESPONSE: The Department refers the commenters to the responses to Comments 114 to 121 below.

87. COMMENT: A commenter stated that N.J.A.C. 7:26B-1.5(b)15 allows two years of cessation of operations before ECRA requirements are mandated. The commenter went on to state that N.J.A.C. 7:26B-15(a)16 requires a departmental determination of whether ECRA is applicable for cessations of operations for under two years.

RESPONSE: The commenter appears to be pointing out the distinctions between N.J.A.C. 7:26B-1.5(b)15 and 1.8(a)7, and the Department refers the commenter to its response to comments in those particular sections. Since neither the existing rules nor the proposal has a provision at N.J.A.C. 7:26B-15(a)16, the Department can only surmise the content of this comment.

88. COMMENT: A comment received concurred with the change in N.J.A.C. 7:26B-1.5(b)18 that clarifies that a change in operations is the operative event for ECRA applicability.

RESPONSE: The Department acknowledges the commenter's concurrence with this change.

89. COMMENT: Comments were received stating that even with the deletion of the phrase "which ceased operations prior to December 31, 1983," there is no statutory basis for N.J.A.C. 7:26B-1.5(c). One commenter added that the Act is not retroactive and there is no authority for the Department to include property on which no operating industrial establishment existed as of December 31, 1983.

RESPONSE: Even though an industrial establishment may have ceased some of its operations prior to December 31, 1983, the facility has not been fully closed or has had operations fully terminated if hazardous substances and wastes remain stored at that industrial establishment. Therefore, it is within the statutory intent of the Act to require compliance with ECRA when the industrial establishment closes or terminates the

storage of hazardous substances and wastes at the industrial establishment on or after December 31, 1983 as well as when a transfer of ownership occurs after that date.

N.J.A.C. 7:26B-1.6

90. COMMENT: A comment was received which suggested that the ECRA rules pertaining to Initial Notice specifically state that time periods of less than seven days refer only to business days, that the day of the event from which the days are counted is not included, and that "submission" means placing in the mail rather than receipt by the Department."

RESPONSE: The subject of this comment was not part of this rulemaking procedure, and therefore not an appropriate subject for response in this document. The Department, however, refers the commenter to 19 N.J.R. 2444 where this comment was responded to in the adoption of N.J.A.C. 7:26B on December 21, 1987.

91. COMMENT: One comment suggested deleting the phrase "or substantially all" at N.J.A.C. 7:26B-1.6(a)3.

RESPONSE: The issue raised in this comment is moot since N.J.A.C. 7:26B-1.6(a)3, as amended, does not include that phrase.

92. COMMENT: One comment stated that N.J.A.C. 7:26B-1.6(a)4, as amended, properly indicates that the Department expects compliance when the change of operations has taken place.

RESPONSE: The Department agrees with this interpretation but notes that the industrial establishment still must file an initial notice within five days from the change in operations.

93. COMMENT: One commenter stated that the provisions of N.J.A.C. 7:26B-1.6(a)8i can be read literally with the definition of "controlling interest" to call for the sale or transfer of people, not their shares.

RESPONSE: The Department has modified the definition of "controlling interest" to clarify that the Department has no intention of regulating sales or transfers of people.

94. COMMENT: A comment suggested that ECRA should not be triggered when an industrial establishment's SIC designation changes from one that is subject to one that is not subject pursuant to N.J.A.C. 7:26B-1.6(a)4. The commenter stated that the statute does not grant the Department the authority for this provision.

RESPONSE: The issue of whether a change from an SIC covered by the Act to an SIC not covered by the Act is an ECRA trigger was not a subject of this rulemaking procedure. The Department republished and amended N.J.A.C. 7:26B-1.6(a)4 to clarify at what point the trigger would occur. The Department notes, however, that changes in operations sufficient to change the primary SIC number of an industrial establishment from an SIC number that is subject to the Act to an SIC number that is not subject to the Act are indicative of a cessation of the primary activity carried on at the facility and, therefore, constitute "closing, terminating, or transferring operations." If the Department did not include this as a trigger, the industrial establishment could change operations so as to no longer have an applicable SIC number and consequently it would no longer be deemed an industrial establishment. Then, the industrial establishment could cease operations or be transferred without being subject to the Act or this chapter. Consequently, the intent of the Legislature to impose, as a precondition on the closure or transfer of operations, the adequate preparation and implementation of acceptable cleanup procedures could be frustrated merely by a change in operation sufficient to change the primary SIC number to one not subject to the Act.

95. COMMENT: A comment was received suggesting a change in the introductory wording of N.J.A.C. 7:26B-1.6(a)8 to "The sale or transfer, or execution of an agreement to sell or transfer, whichever occurs first, of:"

RESPONSE: The Department agrees with this comment and has modified this rule accordingly.

96. COMMENT: Several comments were received which pointed out that N.J.A.C. 7:26B-1.6(a)8iii omitted "the entire interest of a general partner in a limited partnership."

RESPONSE: The phrase "the entire interest of a general partner in a limited partnership" has been added to N.J.A.C. 7:26B-1.6(a)8iii, in accordance with N.J.A.C. 7:26B-1.5(b)10.

97. COMMENT: A comment received suggested the following change to N.J.A.C. 7:26B-1.6(a)8iii: Any interest of a general partner to a third party not a current partner, the entire interest of a general partner in a general partnership who owns 50 percent or more of the interest in the partnership, the entire interest of a general partner owning 50 percent or more of a general partnership interest in a limited partnership, or the entire interest of a limited partner in a limited partnership liable for the obligations of a limited partnership as provided at N.J.S.A. 42:2-9, 42:2-11, 42:2A-27.

RESPONSE: See response to Comments 75 to 79, above.

98. COMMENT: A comment suggested that N.J.A.C. 7:26B-1.6(a)6 be changed to state that the triggering event is "the acceptance for payment of the majority of the voting shares of the stock of a corporation which owns or operates an industrial establishment" since this is the Department's stated position. The commenter added that stock which is tendered can be withdrawn, and until shares of stock are accepted for payment, the new owner does not have control of the corporation.

RESPONSE: The Department agrees with this comment and has deleted the term "tendering" and replaced it with "accepting for payment . . . pursuant to a tender offer."

99. COMMENT: One comment suggested eliminating paragraph 7:26B-1.6(a)6 because paragraph (a)8 covers any transfers of stock the Department believes to be covered.

RESPONSE: Although the Department agrees that N.J.A.C. 7:26B-1.6(a)8 covers tender offers, it has chosen to retain N.J.A.C. 7:26B-1.6(a)6 to clarify that transactions involving tender offers are covered under ECRA.

100. COMMENT: A comment was received that suggested a hearing be granted to an owner or operator of an industrial establishment upon receipt of a determination of the Department pursuant to N.J.A.C. 7:26B-1.6(a)10 that the industrial establishment had become nonoperational and caused a significant discharge or release of hazardous substances and wastes.

RESPONSE: Appeals from a determination of the Department may be taken pursuant to R.2:2-3(a)2 of the N.J. Court Rules and applicable Laws. See also response to Comment 4 above.

101. COMMENT: Several comments stated that requiring an owner or operator to file an initial notice at N.J.A.C. 7:26B-1.6(a)10 is inappropriate because it is beyond the statutory scope of ECRA.

RESPONSE: The Act at N.J.S.A. 13:1K-8b specifically states that when an industrial establishment becomes nonoperational for health and safety reasons, ECRA is triggered. The Department in these rules has clarified this requirement. See response to Comments 20 and 80 above.

102. COMMENT: A comment regarding N.J.A.C. 7:26B-1.6(a)10 stated that a unilateral determination that ECRA is triggered by the Department when there has been a significant discharge or release of hazardous substances and wastes presents unnecessary overlap with the provisions of the Spill Compensation and Control Act.

RESPONSE: There is no unnecessary overlap between this provision and the Spill Compensation and Control Act, since it may be appropriate to conduct a review of the entire industrial establishment pursuant to ECRA after there has been a significant discharge or release of hazardous substances and wastes. For further discussion of this point, see response to Comment 81 above.

103. COMMENT: A comment stated that including a determination by the Department that a transaction or proceeding rendering the industrial establishment nonoperational for health and safety reasons as a triggering event is not authorized by the Act. The commenter stated that ECRA does not obligate an owner or operator to do anything if it reasonably determines that an ECRA triggering event has occurred. The alternatives for the Department, in the event it deems the decision of the owner or operator is in error, are already established by the Act.

RESPONSE: The Act clearly obligates an owner or operator to comply with its provisions if a triggering event has occurred (see N.J.S.A 13:1K-9 and 11). If the owner or operator chooses not to comply with the requirements of the Act, the Department's alternatives are varied and include notifyng the owner or operator that an ECRA triggering event has occurred. The Department has limited its scope of review of transactions or proceedings at N.J.A.C. 7:26B-1.6(a)10 and requires that the event be directly related to discharges of hazardous substances and wastes. The Department is providing a service to owners or operators by notifying them that they must meet their ECRA obligations.

104. COMMENT: A comment was received which requested that the Department insert a definition of a "public release" relative to N.J.A.C. 7:26B-1.6(a)11.

RESPONSE: The Department does not believe that a definition of "public release" is necessary in these rules since the common use of the term is intended; a public release is any non-confidential release of information to the public. In the context of N.J.A.C. 7:26B-1.6(a)11, a "public release" includes the notice of a lease termination or announcement of its decision to close.

105. COMMENT: Several comments were received which objected to the phrase "or substantially all" at N.J.A.C. 7:26B-1.6(a)11.

RESPONSE: The Department refers the commenter to the response to Comments 12 to 16 above.

106. COMMENT: Several comments suggested that the requirement to file an Initial Notice pursuant to N.J.A.C. 7:26B-1.6(a)14 is premature because the industrial establishment may remain open and, therefore, an ECRA triggering event has not occurred. Commenters noted that this provision penalizes those who seek early applicability determinations.

RESPONSE: The Department only requires the filing of an Initial Notice upon receipt of a letter of applicability when requested in accordance with N.J.A.C. 7:26B-1.8(a)7.

107. COMMENT: A comment regarding N.J.A.C. 7:26-1.6(a)14, addressing a cessation of operations exceeding three months, suggested that the receipt of a determination by the Department, pursuant to N.J.A.C. 7:26B-1.9, that the Act is applicable should not be an ECRA trigger.

RESPONSE: The receipt of a letter from the Department to the owner or operator that it is the Department's determination that their cessation is not temporary is an appropriate ECRA trigger requiring the submission of an Initial Notice. It is the type of cessation that is contemplated as an ECRA trigger by the Act (see N.J.S.A. 13:1K-8b).

N.J.A.C. 7:26B-1.7

108. COMMENT: Several comments were received in support of the removal of the phrase "jointly and severally" from N.J.A.C. 7:26B-1.7(a).

RESPONSE: The Department acknowledges the commenters' concurrence with this change. However, the Department reiterates its position that liability under ECRA would be found to be joint and several, consistent with liability under other New Jersey environmental laws.

109. COMMENT: Several comments were received objecting to that portion of N.J.A.C. 7:26B-1.7(a) which holds the owner and operator of the industrial establishment liable. The commenters stated that there is no statutory authority for this provision, particularly in the case of leased property, where the landlord has no control over the day to day operations of its tenants.

RESPONSE: The language and statutory intent of ECRA supports the Department's position that an owner and operator is liable for compliance. The Department notes that landlords have been held responsible as owners for the cleanup and removal costs without regard to fault. See *Tree Realty, Inc., v. Department of Treasury,* 205 *N.J. Super* 346 (App. Div. 1985). If a landlord feels a tenant has not met its obligations under ECRA, the landlord is not precluded by the Department's action under ECRA from pursuing its remedies against the tenant.

110. COMMENT: Comments were received in support of the removal of N.J.A.C. 7:26B-1.7(b) which held the person initiating a hostile takeover strictly liable for compliance with ECRA.

RESPONSE: The Department acknowledges the commenters' concurrence with this change.

111. COMMENT: One comment stated that since the Act at N.J.S.A. 13:1K-13(a) imposes strict liability only with respect to cleanup and removal costs resulting from the failure to implement the cleanup plan, the Department has impermissibly expanded the scope of the Act by imposing strict liability on both the owner and operator for compliance with the Act and these rules.

RESPONSE: The Department is not of the opinion that liability for ECRA non-compliance can only attach to the failure to implement a cleanup plan pursuant to N.J.S.A. 13:1K-13a. The regulatory framework of ECRA is set up to mitigate environmental risks by requiring adequate preparation and implementation of cleanup plans, where necessary. All requirements in the rules go toward cleanup of industrial establishments at the proper time. Consequently, strict liability appropriately attaches to non-compliance with any requirement in the Act or this chapter. The Department also notes that N.J.S.A. 13:K-13c states that "any person ... who fails to comply with the provisions of this Act is liable for a penalty of not more than $25,000.00 for each offense." The Department directs the commenters to *Department of Environmental Protection v. John Lewis,* 215 *N.J.Super* 564 (App. Div. 1987) and *State v. Harris,* 214 *N.J. Super.* 140 (App. Div. 1986) wherein similar civil penalty provisions in other New Jersey environmental statutes were cited as evidencing a legislative intent to impose liability pursuant to those statutes. As with the penalty provisions at issue in the *Lewis* and *Harris* cases, the imposition of civil penalties under ECRA does not require a finding of either willfulness or an intention to violate the Act. The Department is confident that strict liability for violations of the Act and these rules will be found to be strict. Moreover, the Department interprets N.J.S.A. 13:1K-13a as emphasizing the Legislature's intent to have strict liability under ECRA by extending it to certain situations, for example, relations between private parties for consequential damages, where it would not normally apply.

N.J.A.C. 7:26B-1.8

112. COMMENT: A comment proposed an exemption from ECRA for those changes in ownership which involve the retirement or buyout among shareholders of a closely or family held privately owned corporate business since there is no real change in ownership.

RESPONSE: The Department views transfers such as described above as transactions involving a change in ownership of the industrial establishment which are well within the scope of ECRA. As such, unless the transaction fails under an existing exemption, for example, an intra-family transfer as provided for at N.J.A.C. 7:26B-1.8(a)21, no exemption is provided. Note, however, response to Comment 114 below.

113. COMMENT: One comment suggested that the Department clarify that open-market transactions of publicly held stock are not transactions subject to ECRA.

RESPONSE: The definition of controlling interest in the rules provides criteria for determining the applicability of ECRA in such transactions.

114. COMMENT: A comment was received objecting to the exemption by the rules of intra-family transfers. The commenter stated that there is no statutory basis for this exemption.

RESPONSE: The Department elects to continue in the rules its existing policy to exclude these transactions. Although no explicit language exists in the Act, the list of transactions set forth at N.J.S.A. 13:1K-8b implies that the intended transactions subject to the Act were business transactions, not intrafamilial transactions. Thus, these transactions do not include a change in ownership intended by the Legislature to be subject to ECRA.

115. COMMENT: Several comments were received objecting to the requirement pursuant to N.J.A.C. 7:26B-1.8(a)7 that an industrial establishment obtain a letter of non-applicability after announcing a closing which will exceed three months. Many commenters stated that the Department did not have the statutory authority to obligate an owner or operator to request a letter of non-applicability at any time or to determine that a cessation for less than two years is a triggering event.

RESPONSE: The Department has modified the provisions at N.J.A.C. 7:26B-1.8(a)7 to make the requirement for filing a request for an applicability determination from the Department a voluntary act. N.J.A.C. 7:26B-1.8(a)7 provides a mechanism for evaluating temporary cessations. The Department will accept documentation from the owner or operator of the industrial establishment indicating that they intend to resume operations within two years. If the owner or operator of the industrial establishment is unable to provide any such documentation, then the Department is alerted that the cessation may be permanent. The Department realizes that the issue of whether what is termed a temporary cessation is in fact merely the first two years of a permanent cessation will turn on the owner's or operator's reasonable expectation to close or reopen. For purposes of eventual enforcement, the Department will take into account whether the owner or operator has taken advantage of the mechanisms at N.J.A.C. 7:26B-1.8(a)7 and 1.9, and informed the Department of the nature of its cessation. Absent receipt of a letter from the Department that a cessation is temporary, and should the cessation in fact be for a period greater than two years, the Department may notify the owner or operator that they have been in violation of the Act, and seek daily civil penalties, from the first day of the purported temporary cessation.

116. COMMENT: Several comments were received objecting to the use of "all or substantially all the operations" at N.J.A.C. 7:26B-1.8(a)7.

RESPONSE: The Department refers the commenters to *I/M/O Fabritex Mills, Inc.,* Docket No. A-1541-87T8, (App. Div. February 17, 1989), wherein the Appellate Division upheld the Department's position that the statutory phrase "cessation of all operations" means the cessation of all or substantially all operations. For further discussion of this issue, see Comments 12 to 16 above.

117. COMMENT: A comment was received objecting to the phrase "to the Department's satisfaction" at N.J.A.C. 7:26B-1.8(a)7i and iii, since the criteria the Department will use when making that determination are not listed.

RESPONSE: Any cessation of all or substantially all the operations at an industrial establishment is considered subject to the Act unless it is for a period of less than two years. If the Department is not satisfied with the information supporting the statement that the industrial establishment will resume its operations within two years, the Department will consider that the industrial establishment has triggered ECRA. A demonstration of a cessation for a period of less than two years may be specific to the unique set of circumstances affecting the industrial establishment. At a minimum, however, the applicant must show it has a reasonable

expectation to be closed for less than two years and that it will have the ability to recommence operations within that period.

118. COMMENT: Comments were received which suggested extending the time period, where an applicability determination is required in the case of a temporary cessation, from three months to one year.

RESPONSE: The Department has modified N.J.A.C. 7:26B-1.8(a)7 so that applicability determinations are not required. However, the Department has retained three months since it provides a sufficient timeframe to account for a seasonal cessation, yet it allows for the effective monitoring of a temporary cessation.

119. COMMENT: One comment stated that a unilateral determination by the Department to reject a request made by an applicant in accordance with N.J.A.C. 7:26B-1.8(a)7 cannot automatically constitute a triggering event since there is no statutory support for this proposition.

RESPONSE: The Department refers the commenter to the modification made to N.J.A.C. 7:26B-1.8(a)7. If the Department determines that the cessation of operations is not of a temporary nature and that it will exceed a two year period, it is an appropriate ECRA trigger requiring the submission of the initial notice requirement. The Department believes that this is the type of cessation that is contemplated as an ECRA trigger under the Act.

120. COMMENT: A comment stated that should a cessation exceed three months but be less than two years and an applicability determination was not sought at the three month mark, the owner/operator would be in violation of regulations even though it would be exempt under the Act.

RESPONSE: The Department refers the commenter to the modification of N.J.A.C. 7:26B-1.8(a)7.

121. COMMENT: A comment was received indicating that applicability determinations are becoming a mandated process rather than a voluntary one, particularly as they relate to N.J.A.C. 7:26B-1.8(a)7 and that this is inappropriate and unconstitutional.

RESPONSE: The Department has modified N.J.A.C. 7:26B-1.8(a) to clarify that applicability determinations are voluntary procedures.

122. COMMENT: A comment was received indicating that the requirement for filing an applicability determination for a cessation exceeding three months will result in more litigation, since any determination will turn on the intent of the owner or operator. Since litigation would extend beyond two years and an answer regarding the temporary or permanent cessation would be conclusively determined within that timeframe, the new procedure does not gain anything for any party, but simply creates expenses to be borne by the taxpayers.

RESPONSE: The Department has modified N.J.A.C. 7:26B-1.8(a)7, and this should address this commenter's concerns. The filing requirement was added to prevent an industrial establishment from "temporarily ceasing" solely for purposes of evading ECRA review while reasonably anticipating to permanently cease operations.

N.J.A.C. 7:26B-1.9

123. COMMENT: A comment suggested that an applicant for an applicability determination should only be required to provide the information necessary to grant the determination. For example, the commenter stated that an applicant attempting to demonstrate that its SIC number is not subject should not be required to provide a list of hazardous substances at the site.

RESPONSE: The Department has modified N.J.A.C. 7:26B-1.9(a)1 by deleting the term "fully." The Department requires that the applicant must demonstrate to the Department's satisfaction that the Act or this chapter is not applicable. This modification clarifies that the Department only requires applicants to submit that information necessary for the Department to render an informed decision regarding an applicability determination. For example, an applicant wishing to demonstrate only that its SIC number is not subject must support this designation with a description of the operations. The Department recommends, however, that a complete application be submitted in order to preclude the necessity of additional submissions and thus, expedite the applicability determination process.

124. COMMENT: A comment suggested that the required certification in an applicabilty application should be subject to the owner or operator's best knowledge, information and belief.

RESPONSE: The Department requires the owner or operator to execute the applicability determination form so as to have a firsthand representation regarding activities conducted on the site. Personal knowledge as to the truth, accuracy and completeness of the application is required in order for the Department to make an informed determination as to the applicabilty of the Act. The Department cannot be required to provide a determination of nonapplicability for an applicant who is unwilling to take full responsibility for the information provided. Therefore, the Department does not believe it would be appropriate to add such language.

125. COMMENT: Comments were received disagreeing with the Department's proposal restricting the availability of applicability determinations to owners and operators. The commenters noted that there can be interested parties other than owners or operators, such as buyers of assets, direct or indirect parent entities, and those who believe they do not own an industrial establishment, who should not be precluded from requesting a letter of non-applicability.

RESPONSE: The Department did not intend to restrict buyers and other interested parties from seeking determinations pursuant to N.J.A.C. 7:26B-1.9. The Department has modified the language at N.J.A.C. 7:26B-1.9 to clarify that interested parties other than owners or operators of an industrial establishment may request a determination pursuant to this section. However, the owner or operator is still generally required to execute the applicability determination application since only the owner or operator has the knowledge to certify the accuracy of the information contained therein. Due to its limited resources, the Department cannot respond to applicability determinations based on hypothetical situations.

126. COMMENT: A comment was received stating that the addition of the language at N.J.A.C. 7:26B-1.9(a)5, "demonstrate, to the Department's satisfaction," is redundant, unnecessary, and changes the law. The commenter stated that the inclusion of this language turns an applicabilty determination into a discretionary act on the part of the Department when the issue of whether the Act is applicable is a matter of law, not discretion.

RESPONSE: The issue of whether the Act is applicable to a closing, terminating or transferring operations is often fact sensitive, and the Department requires sufficient information in order to make a determination under N.J.A.C. 7:26B-1.9. It is the responsibility of the applicant to fully demonstrate that the Act is not applicable. The additional language makes clear that if the applicant for any reason fails to so demonstrate to the Department's satisfaction, the Department cannot issue a letter of non-applicability.

N.J.A.C. 7:26B-3.3

127. COMMENT: Comments were received with respect to N.J.A.C. 7:26B-3.3(a) that holding the owner and operator, in landlord/tenant situations, both strictly liable without regard to fault is not authorized by the statute and is arbitrary, capricious and unreasonable. One commenter added that the imposition of liability on the landlord who has no control over the day to day operations was clearly unlawful.

RESPONSE: In order that compliance proceed upon the closing, terminating or transferring operations without the delay incident to a determination of liability, it is essential that liability be joint and several. Any right to contribution for the noncomplying party is not impaired by these provisions. Case law has affirmed the Department's position that landlords are responsible for the actions of their tenants. See *Tree Realty, Inc., v. Department of Treasury,*, 205 *N.J.Super.* 346 (App. Div. 1985).

128. COMMENT: One comment noted that in most instances, the owner of an industrial establishment should be considered to be the tenant, as the owner of the business, rather than the landlord.

RESPONSE: The Department has defined owner, for the purposes of these rules, to be any person who owns the real property of an industrial establishment or who owns the industrial establishment. This definition takes into account the instances described in the comment and is not the subject of the February 21, 1989 proposal for which the Department is responding to commenters.

129. COMMENT: One commenter suggested that since parties generally determine in their lease who should be responsible for ECRA compliance, only in the absence of a lease provision should the rules specify who is required to file the initial notice.

RESPONSE: Although private parties may enter an agreement and apportion responsibilities for ECRA compliance among themselves, the Department will continue to hold the owner/landlord or operator/tenant liable in accordance with the Act and these rules. ECRA was intended to avoid the delay in cleanup inherent in the determination of liability through litigation. See *Superior Air Products Co. v. NL Industries, Inc.* 216 *N.J. Super.* 46, 63 (App. Div. 1987). Requiring the Department to look to an underlying lease agreement before determining responsibility for ECRA compliance could only promote delay in the cleanup. The Department has no intention of delaying cleanups in order to interpret contracts to which it was not a party, and it will continue to hold the

landlord and tenant responsible in accordance with the provisions set forth in the rules.

N.J.A.C. 7:26B-5.2

130. COMMENT: The Department received numerous comments in support of the change to the rules eliminating the requirement that the purchaser/transferee provide the Department with a letter accepting ownership of and liability for hazardous substances and wastes which are to remain at an industrial establishment which is continuing operations.

RESPONSE: The Department acknowleges the commenters' concurrence with this change.

131. COMMENT: One comment recommended the addition of language clarifying that either a letter to the purchaser/transferee or notice within the purchase agreement would satisfy the notification requirement.

RESPONSE: The notification requirement can be satisfied through various alternatives, including a letter to the purchaser or transferee, or by language within the purchase agreement. The Department does not choose to limit, by rule, the legitimate alternatives available to the transferor and transferee. Whatever avenue is pursued, however, the documentation must evidence that the purchaser/transferee has been notified. For example, there must be evidence that a letter to the purchaser/transferee was received by that party, and if the notice is contained within the purchase agreement, the agreement must be executed by the purchaser/transferee.

N.J.A.C. 7:26B-7.5

132. COMMENT: Several comments suggested removing references to joint and several liability in order to be consistent with other sections of the rules. Many commenters stated that the Department is without statutory authority in incorporating joint and several liability in this section.

RESPONSE: The execution of an Administrative Consent Order (ACO) by the Department is a discretionary act allowing the triggering transaction to occur prior to the Department's obtaining full information on the environmental conditions at the industrial establishment. All reasonable measures to ensure adequate cleanup, such as express imposition upon and assumption of joint and several liability by the parties entering into an ACO with the Department, are appropriate to ensure remediation of the site.

133. COMMENT: A comment was received suggesting that the Department allow parties, other than the owner or operator, to assume liability for compliance under the ACO, without maintaining the liability of the owner and operator.

RESPONSE: Although an interested party may opt to accept full responsibility and liability for compliance, the Act provides for compliance by the owner or operator. Again, the execution of an ACO by the Department is a discretionary act. The Department is willing to enter into an ACO with any party that will guarantee compliance with ECRA. Howevever, it would be inappropriate and contrary to public policy to release any statutorily designated parties from liability under ECRA. This conservative approach remains necessary to ensure that public funds will not be utilized in an ECRA case that proceeds under an ACO.

134. COMMENT: A comment was received stating that there is no statutory authority to hold the owner liable for compliance with an ACO if an operator signs an ACO and the owner does not, or vice versa.

RESPONSE: The statute provides that the owner or operator is liable for compliance with ECRA. The non-signing party is not being held liable for compliance with the ACO but, rather, the underlying Act and this chapter.

135. COMMENT: A comment received stated that as long as one signatory complies with the terms of an ACO, the other signatory(ies) should have no further obligation.

RESPONSE: The Department concurs that once one signatory to an ACO completes the ECRA requirements and complies with the Act, there is no further obligation on behalf of the other party(ies) unless the ACO provides otherwise. However, until compliance is achieved by one of the responsible parties, all signatories to an ACO, and the owner and the operator, remain strictly liable.

136. COMMENT: A comment stated that the term "operator" should be clarified and suggested the addition of the following sentence to N.J.A.C. 7:26B-7.5(b): "For the purposes of this subsection, operator means the operator at the time of the occurrence of the initial notice trigger pursuant to N.J.A.C. 7:26B-1.6."

RESPONSE: The Department disagrees with this suggestion as the term operator, as now defined, includes applicable businesses that are on-site up until the consummation of the transaction as well as on-site at the time of the initial trigger. During the period between the signing of a sales agreement, the initial ECRA trigger, and the consummation of the sale, new operators could move onto the site, and under the suggested language they would not be bound by the terms of an ACO.

137. COMMENT: A comment stated that the regulated community must be able to predict the timing, expense and availability of ACOs with certainty. The rules should be revised to clearly establish that: (1) ACO's will be available, as of right, under certain conditions; (2) there will be only one entity or ordered party with primary responsibility to comply with the ACO; (3) compliance by the ordered party should expressly protect others from possible enforcement actions or penalties; and (4) the Department waives the right to void under every ACO since it serves no purpose once the financial assurance is posted and the transaction proceeds.

RESPONSE: Entry into an ACO is discretionary with the Department. The Act does not expressly provide for ACOs and, therefore, the Department believes it essential to continue to exercise is discretion to ensure the meeting of the statutory objectives before entry into an ACO. Although each ACO usually designates one entity that has primary responsibility for compliance, cases may arise where it is appropriate to designate several parties, each strictly liable, jointly and severally, for compliance with the ACO. Compliance by a party to an ACO will not shield others from enforcement if those others have violated ECRA. In addition, there is no statutory basis nor sound environmental reason for the Department to waive its right to void a transaction under an ACO. Indeed, there is a greater public policy reason for retaining this right where a transfer occurs pursuant to an ACO rather than pursuant to a negative declaration or a cleanup plan, again, because the Department has not yet obtained full information on the site.

N.J.A.C. 7:26B-9.2

138. COMMENT: The Department received several comments in support of the deletion of the phrase "jointly and severally" from N.J.A.C. 7:26B-9.2(b).

RESPONSE: The Department acknowledges the commenters' concurrence with this change. However, the Department reiterates its position that liability under ECRA would be found to be joint and several, consistent with liability under other New Jersey environmental laws.

139. COMMENT: A comment received on this section addressed the Department's position that a cleanup plan shall encompass remediation of off-site contamination. The commenter stated that the Department's position was not provided for under the Act.

RESPONSE: ECRA clearly requires that an owner or operator of an industrial establishment must clean up the hazardous substances and wastes discharged at the site. The rules require no more than this, but recognize that hazardous substances and wastes discharged at a site may have migrated off the site. For further discussion of this issue, see response to Comment 44 above.

N.J.A.C. 7:26B-10.1

140. COMMENT: A comment suggested that requiring the owner or operator to submit a sampling plan at N.J.A.C. 7:26B-10.1(e) would, in effect, force a facility to undergo an ECRA review in order to demonstrate that it may be entitled to a de minimus quantity exemption.

RESPONSE: The Department has provided for a de minimus quantity exemption to allow a subject industrial establishment to comply with the Act without undergoing a full ECRA review in cases where there is a minimal amount of hazardous substances or wastes at the industrial establishment. Before the exemption is granted, however, the Department must be assured that no contamination exists at the industrial establishment. The Department may require the owner or operator to submit a sampling plan if it has reason to believe that contamination may exist. (see response to Comment 143 below). The requirement of a sampling plan does not constitute a full ECRA review. For example, other program requirements, such as the Initial Notice filing at N.J.A.C. 7:26B-3.1, would not be required when a de minimus exemption will be granted.

141. COMMENT: Several comments addressed concern over the conditions to be met in order to successfully petition for a de minimus quantity exemption. The conditions were considered to be restrictive, complex and burdensome, as well as costly and time consuming for both the applicant and the Department.

RESPONSE: The rules reflect the Department's intention to be cautious in the granting of de minimus quantity exceptions. These exemptions are provided for by the Department as relief from ECRA requirements solely for those facilities that, due to their limited use of hazardous materials, are presumed to be environmentally clean and, therefore, do not pose a threat to public health and the environment.

142. COMMENT: A comment was received that the requirement for individuals to certify to events relating to a period prior to their involvement at the site for a de minimus quantity exemption is unreasonable.

RESPONSE: The Department feels that the restrictions in this subsection are warranted. Without these conditions, an industrial establishment experiencing and potentially continuing to cause unremediated environmental damage stemming from the acts or omissions of previous owners or operators would not receive a complete review pursuant to ECRA. The Department cannot provide an exemption for an industrial establishment from full ECRA review and cleanup requirements unless the applicant party provides complete and reliable information.

143. COMMENT: Comments stated that the Department should outline and be bound by standards as to when a sampling plan would be required for a de minimus quantity exemption and what its nature and extent would be.

RESPONSE: Since even the smallest amounts of hazardous substances or wastes can cause environmental degradation, the rules reflect the Department's intention to be cautious in granting de minimus quantity exemptions. The Department may require a sampling plan for an industrial establishment when contamination is suspected based on such information as that represented in the de minimus quantity exemption application and/or information gathered from a Department investigation. Since fact patterns vary, it is important for the Department to maintain flexibility in evaluating information provided in connection with a de minimus quantity exemption application so as to adequately address a wide variety of factual situations.

144. COMMENT: A comment was received that stated that the term "current satisfaction of the Department" promotes inconsistencies and delays in the review of de minimus quantity exemption applications. The commenter also stated that the word "Department" was unclear in this context; did it mean the Division of Water Resources or Division of Hazardous Waste Management.

RESPONSE: It is the responsibility of the owner or operator of the industrial establishment to fully demonstrate that there has been no discharge of hazardous substances or wastes on or from the industrial establishment or that any discharge of hazardous substances or wastes has been remediated. The Act does not expressly provide for de minimus exemptions; however, if petitioned by an applicant, the Department may grant the exemption after conducting a full review of all relevant facts of each particular case. That information could include data compiled pursuant to a cleanup conducted under the direction of another Division of the Department. Since only the Division of Hazardous Waste Management issues de minimus exemptions, "Department," in this context, means the Division of Hazardous Waste Management.

N.J.A.C. 7:26B-13.1

145. COMMENT: One comment suggested that since the Act, at N.J.S.A. 13:1K-8(f), creates a single basis for administrative exemptions, and since limited conveyances do not fit within this basis, N.J.A.C. 7:26B-13 should be deleted since it goes beyond the statutory authority of the Department.

RESPONSE: The changes to N.J.A.C. 7:26B-13.1(b)1 do not address whether the Department should allow limited conveyances; this section was published merely to correct a typographical error. Therefore, this issue was not a subject of this rulemaking proceeding. Please see the Department's response to comments on December 21, 1987 at 19 N.J.R. 2469. Certificates of Limited Conveyance do not provide for an exemption from the Act. Instead they provide an alternate form of compliance, from the generally required negative declaration or cleanup plan approval for the entire industrial establishment, that allows for the transfer of small parcels of the real property under the specific conditions listed at N.J.A.C. 7:26B-13.1(b).

146. COMMENT: A comment stated that appraisals should not be included in the limited conveyance criteria, as they are subjective, expensive, time consuming and do not address environmental degradation. The commenter suggested using environmental criteria in that any acreage that has not been utilized for operations involving hazardous substances or wastes should be given a limited conveyance. The commenter concluded that any further limitations should be based upon a fixed percentage or quantity of acreage which would not be subject to varying expert opinions or manipulation.

RESPONSE: This comment is beyond the scope of this rulemaking procedure. See response to Comment 145 above.

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

SUBCHAPTER 1. GENERAL PROVISIONS

7:26B-1.3 Definitions

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

. . .

"Cessation of all or substantially all the operations" means the cessation of operations that involve the generation, manufacturing, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes resulting in at least a 90 percent reduction at the industrial establishment in any one of the following:

1. Number of employees;
2. Area of operations; or
3. Units of product output.

. . .

"Closing, terminating or transferring operations" means any one of the following:

1. The cessation of all or substantially all the operations of an industrial establishment, for a period of not less than two years, which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances and wastes;
2. Any changes in operations sufficient to change the primary SIC number of the industrial establishment from an SIC number that is subject to the Act to one that is not subject to the Act;
3. Any transaction or proceeding, including but not limited to explosions, fires or other similar events, through which an industrial establishment becomes non-operational for health or safety reasons;
4. Termination of a leasehold interest at an industrial establishment by the owner or operator of the industrial establishment unless the lease is renewed by the same tenant without a disruption in operations;
5. Except for any corporate reorganization not substantially affecting ownership, any change in ownership of the industrial establishment including, but not limited to, transfer by any means of shares of a corporation which results in a change in the controlling interest in the owner or operator, the sale of stock in the form of a statutory merger or consolidation, sale of the controlling share of the assets, conveyance of the real property, transfer of real property through condemnation proceedings, dissolution of corporate identity, financial reorganization, and liquidation in bankruptcy or insolvency proceedings. See also N.J.A.C. 7:26B-1.5 and N.J.A.C. 7:26B-1.8.

. . .

"Controlling interest" means the ***interest held by the*** person or persons who own ***more than*** 50 percent *[or more]* of the issued and outstanding stock of a corporation; it also means the ***interest held by the*** person or persons who own *[less than]* 50 percent ***or fewer*** of the issued and outstanding stock of a corporation and ***who*** possess, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation.

"Corporate reorganization not substantially affecting ownership" means the restructuring or reincorporation by the board of directors or the shareholders of a corporation, which does not diminish the availability of assets for any environmental cleanup, diminish the Department's ability to reach the assets, or otherwise hinder the owner's or operator's ability to cleanup the industrial establishment, and where the purpose is merely as set forth in 1. to 3. below.

1. To correct illegalities or defects in the original incorporation;
2. To broaden the scope of the powers of the organization including the amendment as well as extension or revival of charters or;
3. To reorganize for any other reason related to financial, administrative, or managerial convenience, or for any other legitimate business purpose.

. . .

"Industrial establishment" means any place of business or real property at which such business is conducted, having the primary SIC major group number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in, and determined in accordance with, the procedures described in the SIC manual and engaged in operations on or after December 31, 1983, which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or dis-

posal of hazardous substances and wastes on-site, above or below ground unless otherwise provided at N.J.A.C. 7:26B-1.8. Except as provided below for leased properties, the industrial establishment includes all of the block(s) and lot(s) upon which the business is conducted and those contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land, or that are used in conjunction with such business. For leased properties, the industrial establishment includes the leasehold and any external tanks, surface impoundments, septic systems, or any other structures, vessels, contrivances, or units that provide, or are utilized for, hazardous substances and wastes to or from the leasehold.

. . .

"Sale or transfer of the controlling share of the assets" means a transfer or sale not in the ordinary course of business, ***within any five year period since December 31, 1983*** by *[the]* ***an*** owner or operator of the industrial establishment, of more than 50 percent of the fair market value ***during the period of their respective ownership,*** of the assets of the industrial establishment excluding real property. The term does not include the sale or transfer of equipment or machinery in order to replace, modify, or retool existing equipment or machinery.

. . .

7:26B-1.5 Applicability

(a) (No change.)

(b) Unless otherwise provided in this chapter, closing, terminating, or transferring operations includes, but is not limited to, the following events:

1. Sale or transfer of stock in a corporation which directly owns or operates, or indirectly through any of its subsidiaries, owns or operates, an industrial establishment that results in any form of a merger or consolidation, unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9;

2. Sale or transfer of stock in a corporation which results in a change in the ***person or persons holding the*** controlling interest of a corporation which directly owns or operates, or indirectly through any of its subsidiaries, owns or operates an industrial establishment, unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9;

3. Sale or transfer of the controlling share of the assets of an industrial establishment, whether in one or several independent transactions, at the same or different times ***within a five year period***, to one person or to different persons, unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9;

4.-5. (No change.)

6. Dissolution of a corporation which directly owns or operates, or indirectly through any of its subsidiaries, owns or operates an industrial establishment, unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9;

7.-9. (No change.)

10. Sale or transfer of the entire interest of any partner in a general partnership, the entire interest of a general partner in a limited partnership, or the entire interest of a limited partner in a limited partnership liable for the obligations of a limited partnership as provided at N.J.S.A. 42:2-9, 42:2-11, and 42:2A-27, such partnership or limited partnership owning or operating an industrial establishment;

11.-13. (No change.)

14. Any transaction or proceeding, including but not limited to explosions, fires or other similar events, as a result of which an industrial establishment becomes non-operational for health or safety reasons, whenever the Department determines that there has been a significant discharge or release of hazardous substances and wastes;

15. Cessation of all or substantially all the operations at an industrial establishment that is for a period of two years or longer (see N.J.A.C. 7:26B-1.8(a)7), unless the Department determines otherwise pursuant to N.J.A.C. 7:26B-1.9;

16.-17. (No change in text.)

18. Any changes in operations sufficient to change the primary SIC number of an industrial establishment from an SIC number that is subject to the Act or this chapter to one that is not subject to the Act or this chapter.

(c) Any industrial establishment which remains under the same ownership as prior to December 31, 1983, and upon or at which remain containers, tanks, surface impoundments, or other types of storage facilities containing hazardous substances and wastes after December 31, 1983 shall be subject to the Act and this chapter upon the closing, terminating, or transferring of operations of the industrial establishment.

7:26B-1.6 Initial Notice triggers

(a) The owner or operator of an industrial establishment shall submit the GIS of the Initial Notice required by N.J.A.C. 7:26B-3 no more than five days subsequent to any of the following events:

1.-2. (No change.)

3. (No change in text.)

4. The change in operations sufficient to change the primary SIC number of an industrial establishment from a primary SIC number that is subject to the Act or this chapter to one that is not subject to the Act or this chapter.

5. (No change in text.)

6. The *[tendering]* ***acceptance for payment*** of the majority of stock of a corporation which directly owns or operates, or indirectly through any of its subsidiaries*[,]* owns or operates, an industrial establishment ***pursuant to a tender offer***;

7. Merger or consolidation, or the execution of a merger or consolidation agreement, whichever occurs first, by a corporation which directly owns or operates, or indirectly through any of its subsidiaries*[,]* owns or operates, an industrial establishment *[pursuant to a tender offer]*;

8. The sale or transfer, or execution of an agreement *[selling or transferring]* ***to sell or transfer***, whichever occurs first, of:

i. Stock resulting in a change in the controlling interest of the industrial establishment;

ii. The controlling share of assets of an industrial establishment; or

iii. The entire interest of any partner in a general partnership, ***the entire interest of a general partner in a limited partnership,*** or the entire interest of a limited partner in a limited partnership liable for the obligations of a limited partnership as provided at N.J.S.A. 42:2-9, 42:2-11 and 42:2A-27.

9. (No change in text.)

10. Receipt by the owner or operator of the determination by the Department that the transaction or proceeding, including but not limited to explosions, fires or other similar events, rendering the industrial establishment non-operational for health and safety reasons as described at N.J.A.C. 7:26B-1.5(b)14 has caused a significant discharge or release of hazardous substances and wastes;

11. The public release of the decision to cease all or substantially all operations or upon the cessation of all or substantially all the operations at the industrial establishment, whichever occurs first, except as otherwise provided at N.J.A.C. 7:26B-1.5(b)14;

12.-13. (No change in text.)

14. Receipt by the owner or operator of the determination by the Department, that the Act is applicable to an industrial establishment pursuant to N.J.A.C. 7:26B-1.9, when the applicability determination is requested by the owner or operator in accordance with N.J.A.C. 7:26B-1.8(a)7.

(b) (No change.)

7:26B-1.7 Liability for ECRA compliance

(a) Notwithstanding the provisions of N.J.A.C. 7:26B-3.3 and 7:26B-5.5(d), both the owner and operator of the industrial establishment shall be strictly liable without regard to fault for compliance with the Act and this chapter.

7:26B-1.8 Operations and transactions not subject to ECRA

(a) Operations or transactions not subject to the provisions of this chapter include, but are not limited to, the following:

1.-4. (No change.)

5. Any individual stock transaction that does not, or series of stock transactions that do not, change the controlling interest in the stock of a corporation that directly owns or operates, or indirectly through any of its subsidiaries, owns or operates, an industrial establishment;

6. (No change.)

7. A cessation, except as provided at N.J.A.C. 7:26B-1.5(b)14, for a period of less than two years of all or substantially all the operations at an industrial establishment*[; provided, however that if]**. **If*** such cessation will exceed three months, the owner or operator of the industrial establishment *[shall]* ***may***, within five days of the public release of the decision to cease all or substantially all the operations, or upon the cessation, whichever occurs first, request an applicability determination from the Department pursuant to N.J.A.C. 7:26B-1.9.

i. In order to receive a letter of non-applicability, the owner or operator shall demonstrate to the satisfaction of the Department that such cessation will be for a period of less than two years.

ii. If the owner or operator fails to demonstrate, to the Department's satisfaction, that the cessation will be for a period of less than two years, the Department may deny the letter of non-applicability, and deem the cessation to be a cessation pursuant to N.J.A.C. 7:26B-1.6(a)12.

iii. If the owner or operator receives a letter of non-applicability in accordance with this subsection, and thereafter, if the conditions in the affidavit supporting such letter of non-applicability change, the owner or operator shall notify the Department in writing of such changes. If the conditions change so as to render the cessation a cessation for more than two years, the owner or operator shall comply with N.J.A.C. 7:26B-1.6(a) and obtain a negative declaration or a cleanup plan approval.

8.-26. (No change.)

(b) (No change.)

7:26B-1.9 Applicability determinations

(a) In order to obtain a determination from the Department concerning the applicability of the Act or this chapter to a specific site *[an owner or operator]* ***a person*** shall:

1. Submit a *[fully]* completed*[, executed,]* and notarized applicability determination form available from the Department, ***executed by the owner or operator,*** to the address specified at N.J.A.C. 7:26B-1.11;

[2. Execute the applicability determination form;]

*[3.]***2.*** Submit the fee set forth at N.J.A.C. 7:26B-1.10 required for applicability determinations;

*[4.]***3.*** Grant written permission allowing the Department to enter and inspect the site and operations for which the applicability determination is requested pursuant to N.J.A.C. 7:26B-1.12; and

*[5.]***4.*** Demonstrate, to the Department's satisfaction that the Act or this chapter is not applicable.

7:26B-3.3 Landlord-tenant responsibility for Initial Notice compliance

(a) Where the owner of an industrial establishment is a landlord and the operator of an industrial establishment is a tenant, both parties shall be strictly liable, without regard to fault, for compliance with the Act and this chapter. Notwithstanding retention by the Department of the right to compel any liable party to comply with the Act and this chapter, as between the landlord and tenant, the Department shall require compliance with the Initial Notice provisions in accordance with the following:

1. Except as provided below at (a)2, the landlord shall be responsible for the submittal of Initial Notice, provided the tenant shall be responsible for providing all information, to the extent available from diligent inquiry by the tenant, that is requested by the landlord, but not available from diligent inquiry by the landlord, or all information requested by the Department for the purpose of satisfying the Initial Notice requirements.

2. Where the tenant plans to close, terminate or transfer its operations at an industrial establishment, gives written notice of termination of a lease agreement, files a petition in bankruptcy or brings a receivership action, or if a bankruptcy petition or receivership action is filed against the tenant, the tenant shall be responsible for the submittal of the Initial Notice, provided the landlord shall be responsible for providing all information, to the extent available from diligent inquiry by the landlord, that is requested by the tenant, but not available from diligent inquiry by the tenant, or all information requested by the Department for the purpose of satisfying the Initial Notice requirements.

7:26B-5.2 Requirements for proposed negative declaration submission; approval

(a) A proposed negative declaration shall be an affidavit executed and certified in accordance with the provisions at N.J.A.C. 7:26B-1.13 indicating the location, and tax block and lot number of the industrial establishment, transaction, and buyer and seller, if applicable, and stating that there has been no discharge of hazardous substances and wastes on or from the industrial establishment or that any such discharge on or from the industrial establishment has been cleaned up to the current satisfaction of the Department. In the case of a sale or transfer of an industrial establishment, if any hazardous substances and wastes are to remain at the industrial establishment in any containers, tanks, surface impoundments, or any other structures, vessels, contrivances, or units, the seller or transferor of the industrial establishment shall provide documentation to the Department which evidences that the purchaser or transferee has been notified that these hazardous substances and wastes are to remain at the site.

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

7:26B-7.5 ACO signatories and liability

(a) (No change.)

(b) In the Department's discretion, a purchaser, transferee, mortgagee, or other party to the transaction may sign an ACO with the Department and the owner or operator; however, the owner or operator, as well as any other non-Department signatories, shall be strictly liable, jointly and severally, for compliance with this chapter, the Act, and the ACO. If the operator signs an ACO and the owner does not, or if the owner signs an ACO and the operator does not, the owner and the operator remain strictly liable, jointly and severally, with the signatories to the ACO, for compliance with ECRA and this chapter.

(c) (No change.)

7:26B-9.2 Recovery of damages; liability for cleanup and removal costs and damages

(a) (No change.)

(b) Failure to comply with any provisions of the Act or this chapter shall render the owner and operator of an industrial establishment strictly liable, without regard to fault, for all cleanup and removal costs and for all direct and indirect damages resulting from the failure to implement any cleanup plan necessary.

7:26B-10.1 De minimus quantity exemption

(a) (No change.)

(b) The de minimus quantity exemption shall be granted by the Department subject to (e) below only if (c) and (d) below and all of the following criteria of this subsection are met:

1.-6. (No change.)

(c) (No change.)

(d) To apply for a de minimus quantity exemption, the owner or operator of the industrial establishment shall submit the following to the Department:

i. An affidavit stating that there has been no discharge(s) of hazardous substances and wastes on site or that any discharge(s) of hazardous substances and wastes on or from the industrial establishment has been cleaned up to the current satisfaction of the Department; and

ii. The appropriate fee specified in N.J.A.C. 7:26B-1.10.

(e) The Department may require the owner or operator to submit a sampling plan for the industrial establishment when it has reason to believe that contamination may exist. In cases where a sampling plan has been required, the Department may issue a de minimus quantity exemption only where the owner or operator has complied with all applicable provisions of this section and where the results of an approved sampling plan indicate that there is no contamination from hazardous substances and wastes or where the Department has made a determination that no sampling plan is necessary.

7:26B-13.1 Certificate of Limited Conveyance

(a) (No change.)

(b) The Certificate of Limited Conveyance shall be granted only where:

1. The sale price of the real property to be conveyed, together with the diminution in value to the remaining property, is not more than 20 percent of the total appraised value of the real property of the industrial establishment;

2.-3. (No change.)

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

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual, Medically Needy Manual, New Jersey Care . . . Special Medicaid Programs Manual

Adopted Amendments: N.J.A.C. 10:49-1.1, 10:70-3.4 and 10:72-3.4

Proposed: April 17, 1989 at 21 N.J.R. 965(a).

Adopted: Drew Altman, Commissioner, Department of Human Services.

Filed: June 27, 1989 as R.1989 d.397, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4D-3, 6a(1)(5)b(3); 30:4D-12.

Effective Date: August 7, 1989.

Expiration Date: N.J.A.C. 10:49, August 12, 1990; N.J.A.C. 10:70, June 16, 1991; N.J.A.C. 10:72, August 27, 1992.

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

Summary of Changes Between Proposal and Adoption:
The Division, on its own initiative, is making minor technical changes upon adoption. N.J.A.C. 10:49-1.1 is being changed by adding a slash between county welfare agency/board of social services, deleting a comma, and adding the word "form" next to the entry entitled 1500 N.J. (Health Insurance claim "form.") (see N.J.A.C. 10:49-1.1(d)). N.J.A.C. 10:72-3.4 is being changed by appropriate closing of the parenthesis. (see N.J.A.C. 10:72-3.4(a)3). A comma is added at N.J.A.C. 10:70-3.4(b)1i.
These changes are non-substantive in nature. The changes do not enlarge or curtail who or what will be affected by the proposed rule, nor do they impose any burden on those persons affected by the rule.

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

10:49-1.1 Who is eligible for Medicaid

(a) (No change.)

(b) The following groups are eligible for medical and health services covered under the New Jersey Medicaid Program when provided in conjunction with program requirements specifically outlined in the second chapter of each service manual. The groups are not all inclusive:

1.-2. (No change.)

3. Children and caretaker relatives eligible for and receiving Aid to Families with Dependent Children (AFDC);

4. Deemed recipients of AFDC including;

i. Persons denied AFDC solely because the payment would be less than $10.00;

ii. Persons whose AFDC payment is reduced to zero ($0.00) because of over payment recovery;

iii. For a period of four months, persons losing AFDC because of the receipt of child or spousal support; and

iv. For up to 15 months, persons losing AFDC as the result of the expiration of certain income disregards;

5. For a period of 12 months from the first month of ineligibility, persons losing eligibility for AFDC as a result of earnings or hours of employment, or the receipt of New Jersey Unemployment or Temporary Disability Insurance Benefits;

6. Persons ineligible for AFDC because of requirements that do not apply under Medicaid;

7. For a period of one year, the child born to a Medicaid eligible woman, so long as the woman remains eligible for Medicaid;

8. Persons for whom adoption assistance agreements are in effect pursuant to Section 473 of the Social Security Act (42 U.S.C. §673) or for whom foster or adoption assistance is paid under Title IV-E of the Act;

9. Persons eligible for Supplemental Security Income (SSI) because of requirements that do not apply under Medicaid;

10. Persons receiving only mandatory State supplemental payments administered by the Social Security Administration;

11. Certain former recipients of Supplemental Security Income (SSI) who would still be eligible for SSI except for entitlement to or increase in the amount of Social Security benefits;

12. Persons eligible for, but not receiving*[,]* AFDC or an optional State supplement.

13. Children under the age of 21 years who meet the income and resource requirements for AFDC but do not qualify as dependent children;

14. Persons who require and are eligible for institutional care, but also are eligible and have chosen home and community-based health care services under an approved waiver pursuant to Section 1915(c) of the Social Security Act (42 U.S.C. 1396 n.);

15. Persons who are in institutions for at least 30 consecutive days and who are eligible under a special income level (the Medicaid "cap") that is higher than the income level for a non-institutionalized SSI or State supplement recipient;

16. Pregnant women whose income is below 100 percent of the federal poverty level as fixed by 42 U.S.C. 990 2(2);

17. For a period of 60 days, women who have applied for Medicaid benefits before the last day of pregnancy and who are eligible for Medicaid on the last day of pregnancy;

18. Children under the age of two, as well as aged, blind and disabled persons whose income is below 100 percent of the Federal poverty level, as fixed by 42 U.S.C. 990 2(2), and whose resources are below the standards applicable for the medically needy;

19. Persons 65 years of age or older who do not meet the eligibility standards of the categorically needy or medically needy and who are eligible for the Medical Assistance to the Aged Continuance (MAA) program. (No new applications are accepted for this coverage);

20. Certain persons between 22 and 65 years of age in governmental psychiatric institutions; and

21. Refugees who are eligible under the Refugee Resettlement Program.

(c) (No change.)

(d) Exceptions to eligibility: The following are exceptions to the eligibility process:

1. Newborn: Although both the mother and newborn infant may be eligible recipients on the date of delivery, the newborn infant is not immediately assigned a Person Number. In order to expedite payment to providers before this number is assigned, the provider is permitted to bill for services provided to the newborn using the mother's Person Number on the claim form. The period for which newborn services may be billed under the mother's Person Number extends from the date of birth until the last day of the month in which a 60 day time frame ends, or until the newborn is assigned his or her own Person Number, whichever happens first. For example, if a newborn's date of birth is January 5th, the 60 day period ends March 6th, and claims may be submitted through March 31st using the mother's Person Number provided the newborn has not been assigned his or her own Person Number in the meantime. Claims for services provided to the newborn after March 31st would be processed only if the required information about the newborn is used (Person Number, name, age, sex, etc.). To facilitate the assignment of a Person Number for the purpose of adding the name of the newborn to the Medicaid eligibility file, the hospital should complete and submit to the county welfare agency*/*board of social services, the Public Assistance Inquiry Form (PA-1C) that includes the date

of the birth of the newborn and the signature of the mother. The newborn's Person Number shall be used as soon as it is available to the provider. The practitioner or any other type of provider should request the newborn's Person Number from the mother at each encounter.

2. Billing Instructions: The following procedures must be used when submitting claims for services provided to a newborn under the mother's Person Number, as described in (d)1 above.

i. Hospitals: Claims for services to the newborn may be submitted through the EMC processing system under the mother's Person Number but only within the time frame specified in (d)1 above or until the newborn is assigned his or her own Person Number, whichever happens first. If the claim is denied during the time when the newborn is still eligible, resubmit the claim "hard copy" with the date of birth of the newborn and the notation "NEWBORN PLUS SIXTY" in the "REMARKS" line, location 94 on the UB-82 claim form.

ii. Practitioners and other providers: Claims submitted for services provided to the newborn must be on a separate claim form and not combined for services provided to the mother. Claims for services provided the newborn must be submitted on hard copy under the mother's Person Number but only within the time frame as specified in (d)1 above or until the newborn is assigned his or her own Person Number, whichever happens first. In the "patient information" section of the claim form, give the mother's name, age, sex and HSP (Medicaid) Case/Person Number. The date of birth of the newborn and the words "NEWBORN PLUS SIXTY"† must be marked on the respective claim forms as indicated below.

†NOTE: The phrase "NEWBORN PLUS SIXTY" distinguishes the newborn from the mother for claims submitted under the mother's HSP (Medicaid) Case Number/Person Number.

iii. The designated location on the claim forms for the DATE OF BIRTH and the phrase "NEWBORN PLUS SIXTY" is as follows:

1500 N.J. (Health Insurance Claim ***Form***) ..... Use area 24
MC-3 (Home Health Claim) ..... Use area 22
MC-6 (Prescription Claim Form) Use area in the left hand corner, under the words "CASE NUMBER"
MC-12 (Transportation Claim Form) ..... Use area 12D
MC-14 (Independent Outpatient Health Facility) Use area 13D

3. (No change in text.)

(e)-(g) (No change.)

10:70-3.4 Eligibility group criteria

(a) (No change.)

(b) AFDC-related: The following eligibility groups are within the AFDC-related eligibility category:

1. Pregnant women: Needy women of any age during the term of a medically verified pregnancy, through the end of the month during which the 60th day from delivery occurs.

i. A child born to a woman eligible as a pregnant woman under the provisions of this chapter shall remain eligible for a period not less than 60 days from his or her birth (and up to one year so long as the mother remains eligible for Medicaid)*,* whether or not application has been made, if the child lives with his or her mother. Eligibility of the newborn will be determined without regard to income for the 60-day period following the child's birth.

2. (No change.)

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

10:72-3.4 Eligible persons

(a) The following persons who meet all eligibility criteria of this chapter are eligible for Medicaid benefits:

1.-2. (No change.)

3. The child born to a woman eligible for Medicaid under the provisions of this chapter shall remain eligible for a period of not less than 60 days from his or her birth, (and up to a period of one year, so long as the mother remains eligible for Medicaid*)* whether or not application has been made, if the child lives with his or her mother. Eligibility of the newborn will be determined without regard to income for the 60-day period following the child's birth.

4.-8. (No change.)

(a)

DIVISION OF ECONOMIC ASSISTANCE

General Assistance Program
Determination of Municipal Responsibility
Adopted Amendment: N.J.A.C. 10:85-3.2

Proposed: April 3, 1989 at 21 N.J.R. 835(a).
Adopted: June 26, 1989 by Drew Altman, Commissioner, Department of Human Services.
Filed: June 27, 1989 as R.1989 d.398, **without change.**

Authority: N.J.S.A. 44:8-111(d).

Effective Date: August 7, 1989.
Expiration Date: January 30, 1990.

Summary of Public Comments and Agency Responses:

COMMENTS: Comments were received from five municipal welfare agencies. Two of the agencies opposed the revision without stating any reasons. One agency indicated that the amendment may encourage fraudulent public aid claims but did not specify how this would occur. The balance of agencies asserted that the proposed amendment would increase the number of individuals applying for public assistance in their respective municipalities. The reason for such an increase, as characterized by one municipality, was an abundance of motels willing to accommodate welfare clients. The other municipality predicated its opposition to the proposal on its geographic proximity to a penal institution, thus causing former inmates to seek assistance from its welfare department.

RESPONSE: The Department initially observes that the commenters did not address themselves to the plain language or the intent of the amendment at N.J.A.C. 10:85-3.2(f)5; that amendment was designed solely to correct an internal procedure which directed the review activity of the Division of Public Welfare in the resolution of intermunicipal payment responsibility disputes. The time frame employed in that review process had been inappropriately predicated on a durational time factor. Consequently, the objective of the amended text was to remove an ambiguity rather than alter any existing regulatory language dealing with municipal payment responsibility associated with residency factors. Only in medical facility admission instances does the current statute provide for an ultimate assumption of payment responsibility by the municipality of a patient's customary place of abode. Although several of the comments submitted may have validity in terms of a possible creation of an inappropriate burden on those municipalities in which homeless shelters or other non-medical institutions are located, the objections voiced by the commenters are inapplicable to this rulemaking since they deal with issues of durational residence and municipal settlement; residence and settlement requirements were, with the exception for admissions to medical facilities, abolished through legislative action, effective February 23, 1978.

Full text of the adoption follows.

10:85-3.2 Application process

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

(f) Resident defined: A resident of a municipality is a person who maintains a permanent customary home in the municipality, a person who is in the municipality with intention to remain, a person who did maintain such a home prior to entering a medical facility, or a person who enters a New Jersey medical facility from out of State and qualifies as resident in accordance with (f)1iii below. No time intervals are relevant so long as the home is not established for a temporary purpose such as for a visit or vacation. A resident may live in his or her own home, a rented home or apartment, the home of a friend or relative, in a boarding home or, in accordance with (f)1iii below, in a residential medical facility.

1.-4. (No change.)

5. Determination of municipal responsibility: Municipal welfare directors will attempt to resolve matters of payment responsibility among themselves. Any agreement reached between municipalities will be promptly reduced to written form. In event of dispute or unresolved question, the MWD of the servicing municipality will help the client complete an affidavit showing the recent residence history of the client in sufficient detail to establish municipal responsibility. The client will, as a condition of eligibility, sign under oath, thre

copies of the affidavit. Form GA-9 is available for that purpose. The MWD of the servicing municipality will, within 30 days of the identification of an unresolved question, send one copy of the affidavit with any appropriate documentation to the alleged chargeable municipality, send one copy, with documentation, to DPW/BLO for determination and retain one copy. The alleged chargeable (respondent) municipality may, within the next subsequent 15 days, supply to DPW/BLO such information and/or documentation as it deems appropriate. Promptly thereafter, the BLO will render a decision designating as responsible that municipality in which the client most recently lived or that municipality which most recently granted assistance to the client as a resident, whichever represents the more recent municipality of residence. The municipality so designated may, within 30 days of the BLO decision, request a hearing by the Bureau of Administrative Review and Appeals, decision of which shall be final.

(g)-(i) (No change.)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Administrative Correction
Manual of Standards for Child Care Centers
Center Records; Staff Training and Development
N.J.A.C. 10:122-3.3 and 4.7

Take notice that the Division of Youth and Family Services (DYFS) has discovered erroneous internal cross-references in N.J.A.C. 10:122-3.3(b)3ix and 4.7(a)6. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7(a)3.

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

10:122-3.3 Center records

(a) (No change.)

(b) Requirements for administrative records are as follows:

1.-2. (No change.)

3. The following records shall be maintained in files located at the center:

i.-viii. (No change.)

ix. Signed blanket permission slips for walks and signed individual permission slips for field trips, outings or special events involving transportation of children away from the center, as specified in N.J.A.C. 10:122-6.8[(e) to (g)] **(f) to (h)**;

x.-xvi. (No change.)

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

10:122-4.7 Staff training and development

(a) The director shall ensure that all staff members are trained in the following:

1.-5. (No change.)

6. Evacuating the center, as specified in N.J.A.C. 10:122-[5.3]**5.2** (l)1;

7.-9. (No change.)

CORRECTIONS

(b)

THE COMMISSIONER

Municipal and County Correctional Facilities
Minimum Standards for Municipal Detention Facilities
Supervision and Care of Detainees; Reporting Deaths.
Adopted Amendment: N.J.A.C. 10A:34-2.16
Adopted New Rule: N.J.A.C. 10A:34-2.20

Proposed: April 17, 1989 at 21 N.J.R. 969(b).

Adopted: June 29, 1989 by William H. Fauver, Commissioner, Department of Corrections.

Filed: June 30, 1989 as R.1989 d.401, **without change.**

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

Effective Date: August 7, 1989.

Expiration Date: April 6, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10A:34-2.16 Supervision and care of detainees

(a) (No change.)

(b) Physical cell checks of detainees shall be made every 30 minutes.

(c) Closer surveillance, which includes cell checks at least every 15 minutes, shall be made for detainees who are:

1. Security risks;
2. Suicidal risks;
3. Demonstrating unusual or bizarre behavior; and/or
4. Exhibiting signs of mental illness.

Recodify existing (c) through (g) as (d) through (h) (No change in text.)

10A:34-2.20 Reporting deaths

(a) At the death of a detainee, notification shall be given by the Chief of Police to the Chief, Bureau of County Services, Department of Corrections, within three working days.

(b) Following this notification and within two weeks, a written report shall be submitted by the Chief of Police to the Chief, Bureau of County Services, Department of Corrections. This report shall contain, at minimum, the following information:

1. Detainee's name, age and sex;
2. Date and time of admission into the cell or holding room;
3. Reason for placement in cell or holding room;
4. Logbook entries noting the times of each physical cell check;
5. Circumstances surrounding the death; and
6. Findings of the investigating officer.

LAW AND PUBLIC SAFETY

(c)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Notice of Administrative Correction
Transportation by Retail Licensee; Delivery Slip
N.J.A.C. 13:2-20.2

Take notice that the Office of Administrative Law has discovered an error in the text of N.J.A.C. 13:2-20.2(a) as proposed for amendment and adopted at 21 N.J.R. 1300(a) and 2045(a), respectively. The phrase "in any vehicle" following the words "State of New Jersey", appearing in the rule prior to proposal, was inadvertently omitted from both the proposed and adopted text. As this phrase is necessary to qualify the later reference to vehicle in the phrase, "unless the driver of the vehicle . . .," the retention of "in any vehicle" in the rule is accomplished by this notice of administrative correction, pursuant to N.J.A.C. 1:30-2.7(a)3.

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

13:2-20.2 Transportation by retail licensee; delivery slip

(a) No retail licensee shall deliver or transport any alcoholic beverages into, out of, or within the State of New Jersey **in any vehicle** unless the driver of the vehicle has in his or her possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill, or similar document stating the date of delivery, the bona fide name and address of the purchaser or consignee, and the brand, size of container, and quantity and price of each item of the alcoholic beverages being delivered or transported. The original or true copy of such delivery slip, invoice, manifest, waybill or similar document

shall be retained by the licensee at his licensed premises for a period of one year from the date of delivery, and shall be available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., unless the Director shall have granted to the licensee written permission to keep such documents at another designated place.

(b) (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF DENTISTRY

Notice of Administrative Correction Board of Dentistry Rules

N.J.A.C. 13:30

Take notice that the Office of Administrative Law has discovered errors in the text of several rules in N.J.A.C. 13:30, New Jersey Board of Dentistry, in which the current Code text varies from that adopted by the State Board of Dentistry.

In N.J.A.C. 13:30-1.5, Professional education, the word "American" appearing before "dental colleges" was proposed and adopted for deletion at 5 N.J.R. 154(c) and 291(c), respectively. The words "or" was changed to "and" and "employees" to "employers" in N.J.A.C. 13:30-2.11(c)4 and 5 respectively, as adopted at 13 N.J.R. 442(a).

In addition, technical errors, such as those typographic in nature, are also corrected by their notice, which is published in accordance with N.J.A.C. 1:30-2.7(a).

Full text of the corrected rules follow (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:30-1.5 Professional education

(a) (No change.)

(b) Graduates of foreign colleges must present evidence of satisfactory completion of preliminary education equivalent to that required for entrance by approved [American] dental colleges and may be accepted as candidates for examination after having been graduated in course with a dental degree from said approved dental school.

13:30-1.15 Intern and resident permits

(a) (No change.)

(b) The intern permit and resident permit authorize the supervised practice of dentistry in an approved hospital dental clinic, or the dental clinic [or] **of** any other public or private institution in the State, that has been approved by the Board.

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

13:30-1.16 Advertising

(a) The following shall not be deemed to be unlawful advertising within the meaning of N.J.S.A. 45:6-7(g):

1. (No change.)

2. A formal card sent through the mail announcing the opening of an office, removal of an office, change of address, return to practice, limiting of practice or any other change in the nature of location or association of practice. The card may carry only the announcement, name, address and telephone number of the dentist and may be sent to patients of record only. New licensees may send **such** announcements to relatives, friends and neighbors. Only one mailing is permitted.

3.-5. (No change.)

13:30-2.11 Qualifications of registered dental assistants

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

(c) The Board may grant registration to a dental assistant who submits:

1.-2. (No change.)

3. Proof of the successful completion of the Certification Examination administered by the Dental Assisting National Board within 10 years of making application for registration or Proof of Currently Certified status; [and]

4. Proof of the successful completion of an approved education program in dental assisting within 10 years of making application for registration; [or] **and**

5. A list of all [employees] **employers** for whom registrant has been employed during the two years of work as a dental assistant. A signed affidavit from those employers who can verify the registrant's employment shall accompany the application.

13:30-2.12 Professional education

(a) A candidate for registration shall have graduated from an educational program in dental assisting approved by the Board. An approved educational program in dental assisting must have sufficient fiscal, facility, faculty and curriculum resources to support its [education] **educational** objective. A list of the approved educational programs shall be maintained on file in the principal office of the Board, which shall include but not be limited to: dental schools[;], four-year colleges and universities[;], two-year colleges[;], technical institutions[;], vocational schools[;], private schools[;], and Federal service training centers.

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

13:30-2.13 Duties of a registered dental assistant

(a) A registered dental assistant may perform the following duties under the direct supervision of a licensed dentist:

1.-9. (No change.)

10. Perform bite registration procedures to determine occulusal relationships **of** diagnostic models only;

11.-15. (No change.)

13:30-6.9 Entrance requirements

(a) (No change.)

(b) A total of 16 units must have been completed in fields as specified below:

1.-4. (No change.)

5. Electives, eight units. (Four of these shall be in approved fields of mathematics, history, social studies, or a foreign language. In selecting the additional four units, it should be noted that full credit will be allowed for courses in typing and stenography.)

13:30-6.10 Curriculum

(a) The curriculum shall include satisfactory courses in the subjects here outlined, or comparable subjects or combinations of subjects so as to provide 68 hours of study in the two years.

(b) (No change.)

(b)

DIVISION OF CONSUMER AFFAIRS ADVISORY BOARD OF PUBLIC MOVERS AND WAREHOUSEMEN

Public Movers and Warehousemen Definitions; License Generally; Tariff; General Provisions; Forms

Adopted New Rules: N.J.A.C. 13:44D

Proposed: September 19,1988 at 20 N.J.R. 2364(a).

Adopted: June 21, 1988, by James J. Barry, Jr., Director, Division of Consumer Affairs.

Filed: June 27, 1989 as R.1989 d.400, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:14D-6.

Effective Date: August 7, 1989.

Expiration Date: August 7, 1994.

The Division of Consumer Affairs afforded all interested parties an opportunity to comment on the proposed new rules, N.J.A.C. 13:44I Announcemnt of the opportunity to respond to the Advisory Board Public Movers and Warehousemen appeared in the New Jersey Regist on September 19, 1988 at 20 N.J.R. 2364(a). Thereafter, the comme period was extended to November 22, 1988, the date of the Public Hea ing. Notice of the Public Hearing and comment period extension a peared in the New Jersey Register on November 7, 1988 at 20 N.J. 2681(a). Announcements were also forwarded to the New Jersey Wa housemen & Movers Association, the New Jersey Movers Tariff Burea Inc., the American Movers Conference, the Movers & Warehousemer

Association of America, the National Moving & Storage Association, the Metropolitan Moving & Storage Association, the Household Goods Forwarding Tariff Bureau, the Household Goods Carrier's Bureau, various industry newsletters and publications, and the Star Ledger and Trenton Times, newspapers of general circulation.

A full record of this opportunity to be heard can be inspected by contacting the Director of the Division of Consumer Affairs, Room 504, 1100 Raymond Boulevard, Newark, N.J. 07102.

Summary of Public Comments and Agency Responses

In response to requests for a public hearing on the proposal of the Director of the Division of Consumer Affairs set forth at 20 N.J.R. 2364(a) (September 19, 1988), a hearing was held on November 22, 1988. Prior to that date, two written comments had been received, from the presidents of Ideal Way Movers, Inc., and Allstate Moving & Transfer Co., Inc. Pursuant to an agreement reached at the hearing, the record remained open until January 22 for the submission of additional written comments. None having been submitted, the record was closed on March 1, 1989. Testimonial comments were received from 10 licensed movers or warehousemen as well as from representatives from the Division of Criminal Justice, the Federal Trade Commission (FTC) and individuals commenting on behalf of the New Jersey Movers Tariff Bureau.

Comments received focused on the following issues, the first one of which is directly related to the proposal with the others being tangentially related. The issues are:

1. Should joint tariff filings continue to be permitted?
2. Should binding estimates be permitted?
3. Should discounts, other than those for "senior citizens" as envisioned by N.J.S.A. 45:14D-14(b) be permitted?

The comments and agency's response are as follows:

Joint Tariff Filings

COMMENTS: The comments received from individual movers, all of whom were members of the New Jersey Movers Tariff Bureau ("Bureau"), asserted that the vast majority of the 445 currently licensed movers and warehousemen are small businesses who, if required to submit tariffs individually, would be unable to do so because of the complexity of the task and the financial impact of retaining professional preparation. Joint tariffs, as currently prepared and submitted by the Bureau, provide an efficient mechanism for both the movers and the Division, which would be required to employ substantial numbers of new staff in order to properly review and file individually submitted tariffs. Further, a joint tariff allows for a degree of self-policing within the industry in that a single document may be easily referred to by licensees in order to determine the propriety of competitors' prices. Finally, any modification of the existing joint tariff system would encourage predatory pricing practices, shoddy consumer service and a general dimunition of industry respect among the consuming public. In short, the current system is working well and should not be disturbed.

Comments received from the Antitrust Section of the Division of Criminal Justice urged the abolition of joint tariff filings arguing that such filings are both per se unlawful as horizontal price restraints under State and Federal antitrust statutes and foster anticompetitive pricing policies reflecting primarily in price structure rigidity. Comments received from the FTC were generally supportive of the same position, but did not specifically address the issue of legality of the joint filing mechanism as implemented by the Bureau.

RESPONSE: On November 27, 1985, in response to the Division's initial rulemaking proposal, the Attorney General advised that the filing of joint tariffs was unlawful under both State and Federal antitrust statutes and the Public Movers and Warehousemen Licensing Act, N.J.S.A. 45:14D-1 et seq. The Director is bound by that advice and is not free to disregard it, although parenthetically it may be noted that nothing was submitted at the hearing which would cause the advice or the conclusion reached therein to be altered in any way. Similarly it is not at all clear why individual tariffs could not be prepared in view of the fact that approximately 186 licensees now do so and the testimony indicating that licensees provided the basic information to the Bureau for tariff preparation. Based upon the Attorney General's advice, the proposal herein was initiated, and all licensees were notified that individual tariff filings would be required. Although the directive to file independent tariffs has been stayed on the Bureau's application to the Superior Court, Appellate Division, the Division of Consumer Affairs, while acknowledging the obvious administrative benefits conferred by joint tariff filings, concludes that it is obligated to follow the legal advice previously received, and until such time as the issue of the legality of such filings is finally resolved by the Court, the rules in N.J.A.C. 13:44D-3 shall be construed to permit only those tariffs which are individually prepared and presented (that is, not collectively prepared by or through the Bureau or any similar entity) for individual licensees. Language clarifying the Division's position in this regard has been added to N.J.A.C. 13:44D-3.1(a).

Binding Estimates and Discounts

RESPONSE: The questions of whether binding estimates and/or discounts other than those expressly authorized by N.J.S.A. 45:14D-14(b) for "senior citizens" should be permitted are not expresssly addressed by the proposal, but rather involve the Division's policy and enforcement position in implementing the proposed rules and the Division's enabling legislation. Since the proposal does not specifically address these issues, and since substantial legal and policy questions are engendered, they will continue to be considered by the Division and the Attorney General on an ongoing basis.

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

CHAPTER 44D
PUBLIC MOVERS AND WAREHOUSEMEN

SUBCHAPTER 1. DEFINITIONS

13:44D-1.1 Words and phrases defined

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

"Agent" means the appointee of the public mover or warehousemen who shall be a party upon whom notice may be served along with the principal public mover or warehouseman.

"Bill of lading" means a contract of carriage and a receipt given to the shipper by the public mover for all of the cargo picked up from the shipper by the public mover and moved to another point.

"Brochure" means a printed, pamphlet-type informational bulletin to be provided to each prospective shipper by the public mover and/or warehouseman.

"Estimate" means an approximation made by the public mover and/or warehouseman of the cost of the shipment and/or storage.

"Order for service" means a form which a public mover and/or warehouseman shall give to the shipper at the time of the initial contact.

"Owner/operator" means a person who owns his or her own vehicle and leases his or her services to a second person or company for compensation to perform moving services for and using the forms and bill of lading of the second person or company.

"Shipment" means property tendered by one shipper, and accepted by the carrier, at one place of origin and at one time, for one consignee at one destination, and covered by one bill of lading.

"Shipper" means the person or company contracting with a public mover and/or warehouseman for moving and/or storage services.

"Subcontracting" means the transfer by a public mover, with the prior approval of the shipper, of any bill of lading to another licensed public mover to perform services initially contracted by the original public mover.

"Tariff" means a statement of the rates, charges, classification ratings and regulations of the public mover and/or warehouseman.

"Warehouse receipt" means a receipt given to the shipper by a warehouseman for all of the shipper's goods stored in the warehouseman's facility.

SUBCHAPTER 2. LICENSE GENERALLY

13:44D-2.1 License to engage in the business of public moving and/or storage

(a) No license to engage in the business of public moving and/or storage shall be issued or remain in effect unless there shall be on file with the Director of the Division of Consumer Affairs:

1. A properly completed application for licensure accompanied by the required fee;

2. Certificates of insurance covering the motor vehicle equipment, cargo, storage facilities and property being held in storage conditioned or providing for the payment of all judgments recovered against a public mover and/or warehouseman;

3. A designation of agent; and
4. A properly executed, filed tariff.

(b) The initial license shall be issued to a qualified applicant if it is found that the applicant is fit, willing and able to perform the service of a public mover and/or warehouseman, to conform to the provisions of the Public Movers and Warehousemen Licensing Act, N.J.S.A. 45:14D-1 et seq., and pays the required fee. Requests for the renewal of a license shall be on such forms as may be specified by the Director and accompanied by the required renewal fee.

(c) All licenses issued by the Director shall expire on September 30 of each year or such other date as may from time to time be designated.

(d) The original license shall be prominently displayed by the public mover or warehouseman at his principal place of business with copies displayed at all other such offices, warehouses and/or facilities maintained by the licensee within this State.

(e) A duly certified copy of the license issued by the Director shall be carried on each truck, tractor, trailer or semitrailer or combination thereof at all times when the vehicle is being used in the performance of moving and/or storage services.

(f) A decal issued by the Director indicating that the public mover and/or warehouseman is licensed in this State shall be displayed on the driver's side door of each power unit registered and performing intrastate moving and/or storage services, including all vehicles used by an owner/operator on contract to a public mover.

13:44D-2.2 Change of address, business name or telephone number

(a) A licensed public mover and/or warehouseman shall notify the Director of the Division of Consumer Affairs in writing of any change of address or business name from that currently registered with the Director and shown on the most recently issued license. Such notice shall be given not later than 30 days following the change of address or business name.

(b) A licensed public mover and/or warehouseman shall notify the Director of the Division of Consumer Affairs in writing of any change of business telephone number from that currently registered with the Director. Such notice shall be given not later than 30 days following the change of telephone number.

13:44D-2.3 Designation of agent

(a) No public mover and/or warehouseman shall operate under a license unless and until there has been filed with the Director of the Division of Consumer Affairs, on the specified form, a designation of agent, street address and municipality upon whom service of process, notices and/or orders may be made pursuant to N.J.S.A. 45:14D-1 et seq.

(b) The designated agent shall be an individual, resident of the State of New Jersey, and such designee may, from time to time, be changed by filing the specified form.

(c) The Director shall be notified immediately upon change of designated agent.

SUBCHAPTER 3. TARIFFS

13:44D-3.1 Tariffs

(a) Every public mover and/or warehouseman shall file with the Director of the Division of Consumer Affairs, through the State Board of Public Movers and Warehousemen, a tariff or tariffs indicating the rates, charges, classification ratings, and terms and conditions of the public mover and/or warehouseman. ***The tariff shall be independently prepared and filed and shall not be prepared or filed through a common or joint agent or entity unless otherwise permitted by law and found appropriate by the Director.*** A copy of the tariff filed with the Director shall be kept open for public inspection in all offices and facilities of Board licensees where a request for moving and/or storage services may be made. The tariff shall be readily accessible to the public at all times during normal business hours and whenever requested by any person the tariff shall be produced for immediate inspection. No regulated services shall be rendered unless specifically provided for in the tariff.

(b) The tariff shall be filed with the Director semiannually. The first filing must be received by the Board no later than April 1 and the second no later than October 1. Filings made promptly and accepted by the Board will become effective as of May 1 and November 1 respectively. All tariffs shall conform to the following requirements:

1. Tariffs shall be printed on sheets of hard finish durable paper and eight and one-half inches wide and eleven inches long with the left side pre-punched in the normal loose-leaf positions;
2. There shall be a one and one-half inch margin on the left-hand side;
3. The tariff may be permanently bound or of a loose-leaf style;
4. The printing shall be of a legible size not less than eight points and must be of a permanent quality;
5. The printing shall be ink, typewritten or reproduced by a photographic process;
6. No officially filed sheets or other sheets to be submitted to the Board or used by the licensee shall contain any corrections or erasures;
7. The name of the company shall appear on the top of each page officially filed or submitted to the Board as well as any page to be used by the licensee. Page numbers shall appear in the upper right-hand corner and the issue date and effective date shall appear in the upper left-hand corner of the page;
8. No exception to these requirements shall be permitted without prior written approval of the Director.

(c) Each tariff shall consist of the following minimums:

1. A standard title page showing the complete name and address of the company, the type of service for which the tariff is being submitted (that is, public moving and warehousing, public moving only, warehousing only), the issue date and the effective date of the tariff, and the officer or publishing agent using the tariff;
2. Each tariff shall have an index giving the page number, item number, and any other identifying reference for each subject found in the tariff. If any specific commodities for which special rates are indicated are contained in the tariff, they shall also be properly indexed, giving the page number and item numbers for each;
3. Each tariff shall contain explanations, in plain concise language, of all abbreviations and reference marks and how they relate to the tariff;
4. Standard terms and conditions shall indicate in clear and concise language all services and privileges covered by the rates. These standard terms and conditions shall be a separate and distinct part of the tariff;
5. Rate schedule shall include but not be limited to the following

i. For public movers: combination weight and mileage rates, hourly rates, and any other rates charged.

ii. For warehousemen: storage fees, warehouse fees, dock fees access fees, and any other rates and fees as may be charged.

iii. The rates for each separate and distinct class of service rendered shall be filed as a separate schedule and shall begin on a separate sheet. The schedule of rates for each class of service shall have assigned to it a page or section number to facilitate any reference to the schedule.

6. The bill of lading regularly used by the public mover and/or warehousemen;
7. The warehouse receipt regularly used by the warehouseman.

(d) Corrections in the filed tariff shall only be permitted during the period between the filing date and the effective date and shall be subject to the written approval of the Director.

(e) No licensee shall charge, demand, collect or receive a greater or lesser compensation for his or her service than specified in the tariff, except for discounts and rebates provided in connection with the furnishing of moving, storage or accessorial services to any person 62 years or older. In order to be permissible, any such discount or rebate must be clearly provided for in the licensee's filed tariff.

(f) All bills of lading employed in intrastate moves shall be audited by the licensee within seven days of the move's completion. Likewise all bills employed in the permanent storage of any property shall be audited by the licensee within seven days of release of the goods or property.

SUBCHAPTER 4. GENERAL PROVISIONS

13:44D-4.1 Bill of lading, brochure, estimated cost of services form, order for service form, warehouse receipt; issuance

(a) Prior to entering into an agreement to render services, every public mover and/or warehouseman shall issue the following to each shipper:

1. A brochure which shall contain detailed explanations of the following:

i. Estimates;

ii. The public mover's and/or warehouseman's responsibility for loss and/or damage;

iii. Accessorial services including, but not limited, to packing, payment, delivery, exclusive use of vehicles, expedited services, small shipments and other services rendered by the public mover and/or warehouseman; and

iv. The shipper's rights to and procedures for filing a claim for any articles lost or damaged while in transit or storage;

2. An estimated cost of services form which shall not serve as the actual contract between the shipper and the public mover and/or warehouseman but shall be given as an educated prediction of the cost for the services to be rendered. The estimate for all services provided by the public mover and/or warehouseman shall be in writing and shall be fully completed in all respects, and shall be rendered only after a physical inspection by the public mover and/or warehouseman. A sample estimated cost of services form is provided at Appendix A, incorporated herein by reference. The public mover and/or warehouseman may adopt any form substantially similar to the suggested form outlined herein and in the sample; said form shall contain all of the information outlined herein. This form shall also include a statement, in bold face type, indicating that the tariff in effect at the time of the shipment shall govern the final charges for the shipment; and

3. An order for services form which shall include, but not be limited to, all pertinent information such as the date of shipment, storage arrangements, points of origin and destination, the date of delivery, a notice indicating that the shipper acknowledges receipt of the public mover's and/or warehouseman's brochure and the order for insurance. The form shall be fully completed in all respects. No charges shall be affixed to this form. A sample order for service form is provided at Appendix B, incorporated herein by reference. The public mover and/or warehouseman may adopt any form substantially similar to the suggested form outlined herein and in the sample; said form shall contain all of the information outlined in this paragraph.

(b) Every public mover shall also issue to each shipper, in addition to the brochure, estimated cost of services form and order for services form, a bill of lading which shall indicate the date of shipment, the names and addresses of the public mover and shipper, the license number of the public mover, an address or telephone number where the public mover and shipper can be contacted during shipment, the points of origin and destination and the released or declared value of the shipment. The bill of lading issued to the shipper shall be fully completed in all respects. A sample bill of lading is provided at Appendix C, incorporated herein by reference. The public mover may adopt any form substantially similar to the suggested form outlined herein and in the sample; said form shall contain all of the information outlined. The bill of lading shall be included in the tariff of the public mover.

(c) Every warehouseman shall also issue to each shipper, in addition to the brochure, estimated cost of services form and order for services form, a warehouse receipt which shall indicate the date of issue, the names and addresses of the warehouseman and shipper, the license number of the warehouseman, an address or telephone number where the warehouseman and shipper can be contacted during the storage period, a description of the goods and location of the warehouse where the goods are to be stored. The warehouse receipt issued to the shipper shall be fully completed in all respects. A sample warehouse receipt is provided at Appendix D, incorporated herein by reference. The warehouseman may adopt any form substantially similar to the suggested form outlined in this subsection and in the sample; said form shall contain all of the information outlined herein. The warehouse receipt shall be included in the tariff of the warehouseman.

13:44D-4.2 Legal liability and insurance

(a) The minimum legal liability of a public mover and/or warehouseman shall be 60 cents ($.60) per pound per article.

(b) Every licensed public mover and/or warehouseman transporting and/or storing property for compensation shall secure, maintain and file with the Director a certificate of insurance from an insurance company authorized and licensed to do business in this State covering the motor vehicle equipment, cargo, storage facilities and property being held in storage for the amount set forth below, conditioned or providing for payment of all judgments recovered against such public mover and/or warehouseman.

(c) The minimum amounts of insurance for public movers are as follows:

1. Legal liability coverage at the rate of 60 cents ($.60) per pound per article.

2. Bodily injury liability, property damage liability:

i. Limit for bodily injuries to or death of one person: $25,000;

ii. Limit for bodily injuries to or death of all persons injured or killed in any one accident: $100,000, subject to a maximum of $25,000 for bodily injuries or death of one person;

iii. Limit for loss or damage in any one accident to property of others (excluding cargo): $10,000.

3. Cargo liability:

i. For loss or damage to property being transported (cargo liability insurance) on any one vehicle: $5,000 per accident;

ii. For loss or damage to or aggregate of losses or damages of or to property occurring at any one time and place: $10,000.

(d) The minimum amounts of insurance for warehousemen are hereby prescribed as follows:

1. Legal liability coverage at the rate of 60 cents ($.60) per pound per article.

(e) All filings shall be executed in triplicate on forms substantially similar to those determined by the National Association of Regulatory and Utilities Commissioners (NARUC) and promulgated by the Interstate Commerce Commission (ICC). Said filings shall include the following:

1. Bodily injury and property damage liability on Form E;

2. Cargo Insurance on Form H; and

3. Notice of Cancellation of insurance policies on Form K.

(f) Every certificate of insurance shall contain a provision for continuing liability and shall provide that cancellation thereof shall not be effective unless and until at least 30 days' notice of intention to cancel in writing has been received by the Director.

(g) All required insurance filings shall be made at the Office of the Advisory Board of Public Movers and Warehousemen, 1100 Raymond Boulevard, Newark, New Jersey 07102.

(h) Where a shipper requests the public mover or warehouseman to obtain additional insurance and the shipper thereafter pays the additional premium, the public mover or warehouseman shall furnish the shipper with a certificate of insurance. Such certificate shall include the following:

1. The name of the insurance company issuing the additional coverage;

2. The policy number;

3. The certificate number;

4. The date;

5. The valuation amount;

6. The premium amount; and

7. The amount, if any, of any deductible for which the shipper would be liable.

13:44D-4.3 Estimates; inspection of premises

(a) No public mover and/or warehouseman shall provide a shipper with an estimate for moving and/or storage services without first having conducted a physical inspection of the premises and goods to be moved and/or stored.

(b) All estimates for moving services shall be in writing and based upon the public mover's tariff.

(c) No public mover and/or warehouseman shall be permitted to employ an estimator or broker who also represents any other public mover and/or warehouseman.

13:44D-4.4 Subcontracting

A public mover shall not subcontract or assign an obligation to provide moving services except where the shipper elects, pursuant to N.J.A.C. 13:44D-4.6(a)2ii, to permit a public mover to subcontract with another licensed carrier because the original public mover is unable to perform the move on the promised date due to forces and circumstances beyond his control. In such situations, the original public mover shall remain ultimately responsible for the services provided by the subcontracting licensee.

13:44D-4.5 Use or employment of owner/operator

(a) If a public mover intends to use or employ the services of an owner/operator, the shipper shall be so advised. In such instances, the public mover shall, in advance and in writing, provide the shipper with the following information:

1. The definition of an owner/operator; and

2. The nature of the relationship between the public mover and the owner/operator.

(b) Any public mover who uses or employs the services of an owner/operator shall remain responsible for the services provided by the owner/operator.

13:44D-4.6 Failure to perform moving services

(a) A public mover shall be deemed to have engaged in occupational misconduct if, on the promised date of service, said public mover fails to:

1. Arrive at the shipper's premises and perform all contracted-for services; or

2. Notify the shipper of the impossibility of meeting the promised date of service by written notice or by telephone no later than 12:00 o'clock noon on the promised date, or, if impractical under the circumstances, at the earliest possible time, and offer the shipper the option of:

i. Accepting service at a specified later time;

ii. Allowing a subcontractor to perform the moving services;

iii. Accepting substituted service by another licensed carrier. In the event this option is accepted the shipper shall be charged according to the filed tariff of the public mover performing the substituted service; or

iv. Cancelling the moving contract and receiving a refund of all monies paid on account for the contract less any reasonable charges for services already rendered based solely on the rates and charges set forth in the public mover's tariff.

(b) For the purposes of this section, "impossibility of meeting the promised date of service" shall refer to forces beyond the control of the public mover including, but not limited to, such things as acts of nature and labor stoppage.

13:44D-4.7 Labor and equipment

A public mover shall supply only such labor and equipment which would reasonably be expected to be necessary to properly perform the moving services indicated on the original estimated cost of services form. Any changes in the number of men and/or amount or type of equipment to be employed or utilized must be approved in writing and in advance by the shipper and the public mover.

13:44D-4.8 Warehousing

(a) The exact address of the warehouse where the shipper's goods are to be stored shall be indicated on the estimated cost of services form, bill of lading, if any, and warehouse receipt. In the event the shipper's goods are to be moved, in whole or in part, to another warehouse, the public mover and/or warehouseman shall, 30 days in advance of the transfer, notify the shipper by registered mail and provide him or her with the address of the proposed warehouse and any differences in insurance coverage between the contracted-for warehouse and the new proposed warehouse. The public mover and/or warehouseman shall also in advance of any intended transfer secure the shipper's written approval or grant the shipper the option of removing his or her possessions without penalty.

(b) Any public mover and/or warehouseman utilizing a self-storage facility shall so notify the shipper before entering into a contract for storage.

(c) A public mover and/or warehouseman shall give the shipper no less than 30 days written notice by registered mail before increasing the fees to be charged for storage and shall provide the shipper the option of removing goods from storage without penalty prior to increasing such fees.

(d) A public mover and/or warehouseman shall provide the shipper access to his or her possessions and goods upon 48 hours notice to the public mover and/or warehouseman. The public mover and/or warehouseman may require payment of all outstanding charges and access fees, as provided by his or her tariffs, before allowing the shipper access.

13:44D-4.9 Collection of tariff charges where the shipment has been destroyed

The public mover shall not collect, or require a shipper to pay, any tariff charges on any shipment that is totally lost or destroyed. The shipper will, however, remain liable for any and all insurance premiums agreed upon by the shipper and the mover.

13:44D-4.10 Liability for damage to shipper's goods

(a) The public mover or warehouseman shall be liable for physical loss, destruction or damage to any articles of the shipper during transit or storage, except when:

1. The damage was caused by the shipper or was the result of the shipper's negligence;

2. The damage was caused by a defect in the article, including any susceptibility to damage because of exposure to any changes in temperature or humidity which were not caused by the public mover or warehouseman;

3. The damage was caused by a hostile or warlike action occurring in a time of peace or war;

4. After warning the shipper of the possibility or likelihood of damage, because of strikes, lockouts, labor disturbances, riots, or civil commotions, the shipper in a signed writing instructs the public mover or warehouseman to proceed with the transportation or storage notwithstanding such risks; or

5. The damage was caused by an act of God.

(b) Where the basis for excusing the liability of any public mover or warehouseman is based upon any portion of (a) above, the burden shall rest with the public mover or warehouseman to prove the truth of allegations to the satisfaction of the Board unless the shipper, in a signed and notarized writing, agrees to the public mover's or warehouseman's claims.

(c) The public mover or warehouseman shall not be liable for any loss or damage occurring after the property has been delivered to the shipper or the shipper's authorized agent.

13:44D-4.11 Claims procedures

(a) All claims for loss, damage or overcharge shall be made in writing and within 90 days of the shipper's receipt of his or her goods. All claims shall be accompanied by the original paid bill of lading. If the original of this document has been surrendered to the public mover, then copies of the front and back of this document will be acceptable.

(c) Where the claim involves either overcharging or partial loss, damage or destruction of a shipper's goods, the shipper shall pay in full the amount appearing on the original bill and present a paid bill or the original paid bill of lading prior to entering a claim.

(c) Where the claim involves the loss, damage or destruction of the entire shipment, the shipper is liable for only the insurance premiums agreed upon in accordance with N.J.A.C. 13:44D-4.9.

(d) A public mover or warehouseman shall present the shipper with the appropriate claim forms no later than seven days after receiving written or verbal notification that the shipper wishes to make a claim.

(e) The public mover or warehouseman must settle all claims within 90 days of the receipt of the completed claim form. This time period may be extended by the Board upon a showing of good cause by either party. Under no circumstances may the 90 day period be

extended by an agreement between the public mover or warehouseman and the shipper or any third party.

SUBCHAPTER 5. FORMS

13:44-5.1 Forms

The forms set forth in Appendices A through D are samples only, intended to demonstrate the information that is required to be included on the front page of each document. All forms and contracts, however, used by licensees in transactions for the personal, family or household purposes of a consumer shall comply with the Plain Language Law, N.J.S.A. 56:12-1 et seq.

APPENDIX A
ESTIMATED COST OF SERVICES

LICENSE NO.

IMPORTANT NOTICE: The charges indicated herein are estimated charges only. All charges are subject to actual time plus travel or actual weight, whichever is applicable. Unless a greater value is declared by shipper, goods are released to the carrier at a valuation of 60 cents per pound per article. Charges are payable by cash, money order or certified check upon delivery of goods. Credit extended only to Commercial Accounts. Purchase Order or letter authorizing charge must accompany the order.

DATE OF ESTIMATE____ REQUESTED PACKING DATE____ REQUESTED MOVING DATE____ PHONE____

NAME____ TO____

FROM____ FLOOR____ ADDRESS____ FLOOR____

CITY____ APT.____ CITY____ APT.____

OTHER STOPS

TIME BASIS (APPLY WHEN SHIPMENTS MOVE 25 MILES OR LESS)	FURNISH____ VAN AND____ MEN @____ PER HOUR (ESTIMATED____ HOURS) TRAVEL TIME PACKING AND UNPACKING (SEE BELOW) LABOR CHARGES____ MEN FOR____ HOURS @____ PER MAN PER HOUR HOISTING OR LOWERING OTHER TRANSIT INSURANCE $____ @____ PER HUNDRED DOLLARS ESTIMATED TOTAL CHARGES	
WEIGHT BASIS (APPLY WHEN SHIPMENTS MOVE MORE THAN 25 MILES)	ESTIMATED WEIGHT____ MILES____ RATE PER 100 LBS. ADDITIONAL TRANSPORTATION EXTRA PICK UP OR DELIVERY AT PACKING AND UNPACKING (SEE BELOW) LABOR CHARGES____ MEN FOR____ HOURS @____ PER MAN PER HOUR ELEVATOR OR STAIR CARRY CHARGES OVERTIME LOADING OR UNLOADING PIANO HANDLING HOISTING OR LOWERING OTHER TRANSIT INSURANCE $____ @____ PER HUNDRED DOLLARS ESTIMATED TOTAL CHARGES	

ESTIMATED COST OF PACKING AND UNPACKING SERVICES

QTY.	PACKED BY	UNPACK BY	CU. FT.	RATE	EXTENSION
	BARRELS – DISH PAKS		5		
	BOXES, WOODEN				
	CARTONS		1 1/2		
	CARTONS		3		
	CARTONS		4 1/2		
	CARTONS		6		
	MIRROR CARTONS				
	MIRROR CARTONS				
	WARDROBES				
	MATTRESS CARTON OR COVERS				
	CRATES				
	TOTAL ESTIMATED PACKING CHARGES				

SPECIAL INSTRUCTIONS

(THIS ESTIMATED COST OF SERVICES IS NOT TO BE SIGNED BY SHIPPER)

SIGNATURE AND TITLE OF ESTIMATOR

Articles Not to Be Shipped	ARTICLE	Cu. Ft. Per Pc.	No. of Pieces	Cu. Ft.
	LIVING ROOM			
	Bench, Fireside or Piano	5		
	Bookcase	20		
	Bookshelves, Sectional	5		
	Chair, Arm	10		
	Chair, Occasional	15		
	Chair, Overstuffed	25		
	Chair, Rocker	12		
	Chair, Straight	5		
	Clock, Grandfather	20		
	Davenport, 2 Cushions	35		
	Davenport, 3 Cushions, Hideabed or Stud. Couch	50		
	Day Bed	30		
	Desk, Small or Winthrop	22		
	Desk, Secretary	35		
	Fireplace Equipment	5		
	Foot Stool	2		
	Lamp, Floor	3		
	Magazine Rack	2		
	Music Cabinet	10		
	Piano, Baby, Gr. or Upr.	70		
	Parlor Grand	80		
	Spinet	60		
	Radio, Table or Phono.	2		
	Rugs, Large Roll or Pad	10		
	Rugs, Small Roll or Pad	3		
	Tables, Drop'l or Occas.	12		
	" Coffee, End or Nest	5		
	Tables, Library	20		
	Telephone Stand & Chair	5		
	Television Combination	25		
	" or Radio Console	15		
	Television Table Model	10		
	DINING ROOM			
	Bar Portable	15		
	Buffet	30		
	Cabinet, Corner	20		
	Chair	5		
	China Closet	25		
	Server	15		
	Table, Extension	30		
	Tea Cart	10		
	Rugs, Large or Pad	10		
	Rugs, Small or Pad	3		
	BEDROOM			
	Bed, Incl. Spring & Mattr.s			
	Double	60		
	Single or Hollywood	40		
	Bunk (Set of 2)	70		
	King Size	70		
	Bureau, Dresser, Chest of Dr'w'rs, Chifrb. or Chifnr.	25		
	Cedar Chest	15		
	Chair, Boudoir	10		
	Chair, Straight or Rocker	5		
	Chaise Lounge	25		
	Dresser or Vanity Bench	3		
	" Double (Mr. & Mrs.)	50		
	Night Table	5		
	Rug, Large or Pad	10		
	Rugs, Small or Pad	3		
	Vanity Dresser	20		
	Wardrobe, Small	20		
	Wardrobe, Large	40		
	Sub Total Col. 1			

Articles Not to Be Shipped	ARTICLE	Cu. Ft. Per Pc.	No. of Pieces	Cu. Ft.
	NURSERY			
	Bathinette	5		
	Bed, Youth	30		
	Chair, Child's	3		
	Chair, High	5		
	Chest	12		
	Chest, Toy	5		
	Crib, Baby	10		
	Table, Child's	5		
	Pen, Play	10		
	Rug, Large or Pad	10		
	Rug, Small or Pad	3		
	KITCHEN			
	Breakfast Suite Chairs	5		
	Breakfast Table	10		
	Ironing Board	2		
	Kitchen Cabinet	30		
	Roaster	5		
	Stool	3		
	Table	5		
	Utility Cabinet	10		
	Vegetable Bin	3		
	APPLIANCES (LARGE)			
	Air Conditioner, Window	30		
	Dehumidifier	10		
	Dishwasher	20		
	Dryer, Electric or Gas	25		
	Freezer: (Cu. Capacity)			
	10 or less	30		
	11 to 15	45		
	16 and over	60		
	Mangle	12		
	Range, Electric or Gas	30		
	Refrig'tor: (Cu. Capacity)			
	6 cu. ft. or less	30		
	7 to 10 cu. ft.	45		
	11 cu. ft. and over	60		
	Washing Machine	25		
	PORCH, OUTDOOR FURNIT. and EQUIPM'T			
	Bath, Bird	5		
	Garden Hose and Tools	10		
	Glider	20		
	Ladder, Extension	10		
	Lawn Chairs	5		
	Lawn Mower (Hand)	5		
	Power Mower	15		
	Umbrella	5		
	Settee or Glider	30		
	Picnic Table	20		
	Picnic Bench	5		
	Outdoor Child's Slide	10		
	Outdoor Child's Gym	20		
	Outdoor Dryer Racks	5		
	Outdoor Swings	30		
	Port. Grill or Barbecue	10		
	Porch Chair	10		
	Rocker, Swing	15		
	Rug, Large	7		
	Rug, Small	3		
	Settee	20		
	Table	10		
	Sand Box	10		
	Wheelbarrow	8		
	Sub Total Col. 2			

Articles Not to Be Shipped	ARTICLE	Cu. Ft. Per Pc.	No. of Pieces	Cu. Ft.
	MISCELLANEOUS			
	Ash or Trash Can	7		
	Basket (Clothes)	5		
	Bicycle	10		
	Bird Cage and Stand	5		
	Card Table	1		
	Cabinet, Filing	20		
	Carriage, Baby	20		
	Clothes, Hamper	5		
	Cot, Folding	10		
	Fan	5		
	Fernery or Plant. Stands	10		
	Foot Lockers	5		
	Golf Bag	2		
	Heater, Gas or Electric	5		
	Incinerator	10		
	Rollaway Bed	20		
	Sled	2		
	Step Ladder	5		
	Tool Chest	10		
	Tricycle	5		
	Vacuum Cleaner	5		
	Wagon, Child's	5		
	Work Bench	20		
	Carriage, Doll or Folding	5		
	OTHER ITEMS (specify)			
	CONTAINERS			
	Barrels	10		
	Boxes, Wooden	3		
	" "	5		
	" "	10		
	" "	15		
	" "	20		
	Carton	3		
	"	5		
	"	10		
	Crates	5		
	"	10		
	"	15		
	"	20		
	"	25		
	Wardrobe furnished by carrier	15		
	Sub Total Col. 3			
	Total Col. 1			
	Total Col. 2			
	Total Col. 3			
	Grand Total			

Summary

_____cu. ft. @ 7 lbs. per cu. ft._____lbs.

Estimated Total Weight _____lbs.

APPENDIX B

LICENSE NO.

ORDER FOR SERVICE

DATE OF ORDER ORDER NO.

The shipper hereby orders the services specified below, subject to all conditions printed on this page and the reverse including agreed or declared value, and subject to the tariffs of the carrier in effect on the day the services are rendered and the attached bill of lading which is signed together with this order for service by the shipper.

SHIPPER TEL. NO.	TO APT.
FROM APT.	CITY COUNTY STATE
CITY COUNTY STATE	OTHER STOPS
REQUESTED PACKING DATE / REQUESTED LOADING DATE	REQUESTED DELIVERY DATE

VALUATION

The agreed or declared value of the property is hereby specifically stated by the customer (shipper) and confirmed by their signature hereon to be NOT exceeding 60 ( ) cents per pound per article unless specifically excepted. The Customer (Shipper) hereby declares valuations in excess of the above limits on the following articles:

Article	Value

SPECIAL SERVICES

- ☐ EXPEDITED SERVICE ORDERED BY SHIPPER DELIVERED ON OR BEFORE _____
- ☐ SHIPMENT COMPLETELY OCCUPIED A _____ CU. FT. VEHICLE
- ☐ EXCLUSIVE USE OF A _____ CU. FT. VEHICLE ORDERED
- ☐ SPACE RESERVATION _____ CU. FT. ORDERED
- ☐ AIR COND. ☐ WASHER
- ☐ _____ ☐ _____

PAYMENT OF CHARGES

ALL CHARGES TO BE PAID IN CASH, MONEY ORDER OR CERTIFIED CHECK BEFORE PROPERTY IS RELINQUISHED BY CARRIER OR CARRIER SHALL BILL:

NAME

ADDRESS

CITY & STATE

ATTENTION OF

CITY & STATE

(CREDIT EXTENDED ONLY TO COMMERCIAL ACCOUNTS. PURCHASE ORDER OR LETTER AUTHORIZING CHARGE TO ACCOMPANY THIS ORDER.)

IMPORTANT NOTICE

ANY ESTIMATE OF CHARGES PREVIOUSLY FURNISHED BY THE CARRIER IS NOT A GUARANTEE OR REPRESENTATION THAT THE ACTUAL CHARGES WILL NOT BE MORE THAN THE AMOUNT OF THE ESTIMATE.

THE SHIPPER ACKNOWLEDGES RECEIPT OF BROCHURE ENTITLED "IMPORTANT NOTICE TO CONSUMERS UTILIZING PUBLIC MOVERS" AS ORDERED BY THE BOARD OF PUBLIC MOVERS AND WAREHOUSEMEN, STATE OF NEW JERSEY.

ORDER FOR INSURANCE

THE SHIPPER HEREBY ORDERS TRANSIT OR DEPOSITORY INSURANCE $_____ WHICH AMOUNT FOR THE PURPOSE OF INSURANCE IS DECLARED TO BE THE FULL VALUE OF THE SHIPMENT.

(PROPERTY IS NOT INSURED AGAINST FIRE OR ANY OTHER PERIL UNLESS AMOUNT OF INSURANCE IS STATED ABOVE.)

SIGNATURE OF CARRIER OR AUTHORIZED AGENT	SHIPPER'S SIGNATURE

ORIGINAL ORDER FOR SERVICE

APPENDIX C

COMBINED UNIFORM HOUSEHOLD GOODS BILL OF LADING AND FREIGHT BILL

LICENSE NO.

DATE OF ORDER ORDER NO.

RECEIVED, SUBJECT TO TARIFFS, RULES AND REGULATIONS, INCLUDING ALL TERMS AND CONDITIONS PRINTED OR STAMPED HEREON OR ON THE REVERSE SIDE HEREOF IN EFFECT ON THE DATE OF ISSUE OF THIS BILL OF LADING.

SHIPPER TEL. NO. | TO APT.

FROM APT. | CITY COUNTY STATE

CITY COUNTY STATE | OTHER STOPS

REQUESTED PACKING DATE | REQUESTED LOADING DATE | REQUESTED DELIVERY DATE

VALUATION

The agreed or declared value of the property is hereby specifically stated by the customer (shipper) and confirmed by their signature hereon to be NOT exceeding 60 ( ) cents per pound per article unless specifically excepted. The Customer (Shipper) hereby declares valuations in excess of the above limits on the following articles:

Article	*Value*

SPECIAL SERVICES

- ☐ EXPEDITED SERVICE ORDERED BY SHIPPER DELIVERED ON OR BEFORE _____
- ☐ SHIPMENT COMPLETELY OCCUPIED A _____ CU. FT. VEHICLE
- ☐ EXCLUSIVE USE OF A _____ CU. FT. VEHICLE ORDERED
- ☐ SPACE RESERVATION _____ CU. FT. ORDERED
- ☐ AIR COND. ☐ WASHER
- ☐ _____ ☐ _____

PAYMENT OF CHARGES

ALL CHARGES TO BE PAID IN CASH, MONEY ORDER OR CERTIFIED CHECK BEFORE PROPERTY IS RELINQUISHED BY CARRIER OR CARRIER SHALL BILL:

NAME

ADDRESS

CITY & STATE

ATTENTION OF

CITY & STATE

(CREDIT EXTENDED ONLY TO COMMERCIAL ACCOUNTS. PURCHASE ORDER OR LETTER AUTHORIZING CHARGE TO ACCOMPANY THIS ORDER.)

THE ABOVE SERVICES WERE RENDERED AND ALL GOODS DELIVERED, IN GOOD ORDER, EXCEPT AS NOTED:

SIGNED _____
TO BE SIGNED BY SHIPPER AFTER SERVICES ARE COMPLETED

SIGNATURE OF CARRIER OR AUTHORIZED AGENT

TIME BASIS AND SERVICES

MOVING RATE: VANS MEN @ $ PER HOUR

TIME RECORD (WORKING TIME)

START _____ A.M. P.M. _____ SHIPPER'S INITIALS

FINISH _____ A.M. P.M. _____ SHIPPER'S INITIALS

TIME OFF _____

TOTAL WORKING HOURS

MOVING _____ HOURS @ $ _____ PER HOUR

OVERTIME _____ HOURS @ $ _____ PER HOUR

TRAVEL TIME _____ HOURS @ $ _____ PER HOUR

WEIGHT BASIS AND SERVICES

GROSS _____ TARE _____ NET _____ RATE

TRANSPORTATION _____ MILES

ADD'TL TRANSPORTATION CHARGE _____

EXTRA PICKUPS OR DELIVERIES; NO. _____

ELEVATOR OR STAIRS CARRY _____

PIANO HANDLING: _____ LOWER OR HOIST _____

ADD'TL LABOR: _____ MEN FOR _____ MAN HOURS

OTHER _____

QTY.	PACKING & UNPACKING	CU. FT.	RATE	EXTENSION
	BARRELS OR DISH PACKS	5		
	BOXES, WOODEN			
	CARTONS	1½		
	CARTONS	3		
	CARTONS	4½		
	CARTONS	6		
	CARTONS			
	MIRROR OR PICTURE CARTONS			
	MIRROR OR PICTURE CARTONS			
	WARDROBES			
	MATTRESS CARTON OR COVERS			
	CRATES			
	TOTAL PACKING CHARGES →			

OTHER CHARGES

TRANSIT OR DEPOSITORY INSURANCE $ @ PER $100.00

TOTAL CHARGES

DEPOSIT _____

BALANCE DUE

SHIPPER'S SIGNATURE

ORIGINAL BILL OF LADING

APPENDIX D

NON-NEGOTIABLE WAREHOUSE RECEIPT AND INVENTORY

Date of Issue _____

Lot No. _____ No. of Pages _____

Consecutive No. _____

Wt. of HHG _____

Wt. of Books _____

TOTAL WEIGHT _____

Basic Agreement No. _____

Service Order No. _____

Received for the Account of _____
whose latest known address is _____
the following goods and chattels enumerated and described in schedule below, in condition described herein, to be stored at warehouse at _____
upon the Terms and Conditions on the back of this Receipt. Rate of Storage per Month or fraction thereof _____ Cartage _____
Warehouse Labor _____ Other _____ Packing _____
By _____ for

DESCRIPTIVE SYMBOLS

B/W - BLACK & WHITE TV
C - COLOR TV
CP - CARRIER PACKED
PBO - PACKED BY OWNER
CD - CARRIER DISASSEMBLED
DBO - DISASSEMBLED BY OWNER
PB - PROFESSIONAL BOOKS
PE - PROFESSIONAL EQUIPMENT
PP - PROFESSIONAL PAPERS

EXCEPTION SYMBOLS

BE - BENT
BR - BROKEN
BU - BURNED
CH - CHIPPED
CU - CONTENTS & CONDITION UNKNOWN
D - DENTED
F - FADED
G - GOUGED
L - LOOSE
M - MARRED
MI - MILDEW
MO - MOTHEATEN
R - RUBBED
RU - RUSTED
SC - SCRATCHED
SH - SHORT
SO - SOILED
T - TORN
W - BADLY WORN
Z - CRACKED

LOCATION SYMBOLS

1. ARM
2. BOTTOM
3. CORNER
4. FRONT
5. LEFT
6. LEGS
7. REAR
8. RIGHT
9. SIDE
10. TOP
11. VENEER
12. EDGE

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR.

ITEM NO.	CR.REF.	ARTICLE	CONDITION
1			
2			
3			
4			
5			
6			
7			
8			
9			
0			
1			
2			
3			
4			
5			
6			
7			
8			
9			
0			
1			
2			
3			
4			
5			
6			
7			

I have checked all the items listed and numbered _____ to _____ inclusive and acknowledge that this is a true and complete list of the goods tendered and of the state of the goods received.
Driver Date

I acknowledge that the condition of the goods at the time of the loading is as noted on this inventory and that I have received a copy of this inventory.
Owner or Authorized Agent Sign. and Date

ORDER FOR DELIVERY

Kindly deliver goods on this warehouse receipt to

.....

..... on.....

In case goods are delivered to truckmen other than the Company's Trucks, the responsibility of the Warehouse ceases when goods are delivered to said truckmen.

Goods for places where receipts are customarily refused or where no authorized person is present to sign for them, may be left at my risk.

If goods cannot be delivered in the ordinary way by the stairs or elevator, I agree to pay for any and all extra charges for hoisting or other necessary labor.

Date..... Signed .....
CUSTOMER OR AGENT'S SIGNATURE

DELIVERY RECEIPT

The undersigned hereby acknowledges the delivery and receipt of all property as listed and described in this warehouse receipt and/or any supplemental list attached hereto and certifies that the same has been received on the above date in good condition and order unless otherwise indicated hereon in writing.

I further certify that all property so delivered is owned by me and the said delivery to me includes all property stored by the undersigned except as otherwise indicated hereon in writing.

Date..... Signed.....
CUSTOMER OR AGENT'S SIGNATURE

Form 360-1

(a)

DIVISION OF CONSUMER AFFAIRS
LEGALIZED GAMES OF CHANCE CONTROL COMMISSION

Automatic Revocation

Adopted Repeal: N.J.A.C. 13:47-2.8

Proposed: March 20, 1989 at 21 N.J.R. 698(a).
Adopted: June 14, 1989 by the Legalized Games of Chance Control Commission, Robert J. Whelan, Chairperson.
Filed: June 27, 1989 as R.1989 d.399, **without change.**

Authority: N.J.S.A. 5:8-1 et seq., specifically N.J.S.A. 5:8-6.

Effective Date: August 7, 1989.
Expiration Date: February 2, 1992.

The Legalized Games of Chance Control Commission afforded all interested parties an opportunity to comment on the proposed repeal of N.J.A.C. 13:47-2.8, relating to the automatic revocation of identification numbers. The official comment period ended on April 19, 1989. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on March 20, 1989 at 21 N.J.R. 698(a). Announcements were also forwarded to the Star Ledger and Trenton Times, newspapers of general circulation; Unico National; the New Jersey Fireman's Association; the New Jersey Catholic Conference, as well as various dioceses; the New Jersey Area Council of Boys Clubs; the New Jersey Elks Association; various veterans associations; the New Jersey Jaycees; the Deborah Hospital Foundation; and a number of interested individuals.

A full record of this opportunity to be heard can be inspected by contacting the Legalized Games of Chance Control Commission, Room 518, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

One comment in favor of the proposed repeal was received during the 30-day comment period.

The Commission acknowledges this comment with appreciation.

Full text of the adopted repeal may be found, pending its deletion pursuant to this adoption, in the New Jersey Administrative Code at N.J.A.C. 13:47-2.8.

13:47-2.8 (Reserved)

EMERGENCY ADOPTIONS

BANKING

(a)

DIVISIONS OF BANKING, SAVINGS AND LOAN

Application Fees

Adopted Emergency New Rules: N.J.A.C. 3:1-2.25, 2.26 and 3:6-14.2

Adopted Emergency Amendments: N.J.A.C. 3:6-13.3, 13.5; 3:6-14.1; 3:11-5.1 and 11.9

Emergency Amendments Adopted: June 26, 1989 by Mary Little Parell, Commissioner, Department of Banking

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): July 1, 1989.

Authority: N.J.S.A. 17:9A-333, -334, 17:12B-226.

Emergency New Rules and Amendments Filed: July 3, 1989 as R.1989 d.406.

Emergency New Rules and Amendments Effective Date: July 3, 1989.

Emergency New Rules and Amendments Expiration Date: September 1, 1989.

These new rules and amendments were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). The emergency new rules and amendments are identical to those proposed in the June 19, 1989 New Jersey Register at 21 N.J.R. 1601(b), the adoption of which the Department intends to publish to be effective August 21, 1989. The emergency new rules and amendments were not, therefore, concurrently proposed.

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

3:1-2.25 Fees; banks and savings banks

(a) A bank or savings bank shall pay to the Commissioner for use of the State the following fees:

1. For filing an application for charter $15,000
2. For filing an application for approval of the establishment of a full branch office $1,500
3. For filing an application for approval of the establishment of a mini-branch office $1,000
4. For filing an application for approval of the establishment of a communication terminal branch office $500.00
5. For filing an application for approval of a change in location of principal office or full branch office $500.00
6. For filing an application for approval of the cost of the establishment of an auxiliary office $500.00
7. For filing an application for approval of an interchange between principal office and full branch office $500.00
8. For filing an agreement of merger, per bank $3,000
9. For filing plans of acquisition, per company, per bank or savings bank $3,000
10. For filing an application for conversion from a mutual to stock savings bank $3,500
11. For filing a copy of a plan of reorganization $1,000
12. For the issuance by the Commissioner of a certificate of authority $500.00
13. For filing a certificate of amendment of a certificate of incorporation, or an amended certificate of incorporation $200.00
14. For filing any other certificate $50.00
15. For filing a required report $100.00
16. For filing a required affidavit $50.00
17. For filing proof of publication, or other required proof $50.00
18. For the issuance of a certified copy of any certificate of incorporation or merger or plan of reorganization or any other certificate or affidavit filed in the Department, plus $2.00 per page $25.00
19. For filing a pension plan $500.00
20. For filing an amendment or alteration to a pension plan $200.00
21. For the issuance of any other approval by the Commissioner, plus per diem charges where applicable $100.00
22. For the issuance of any extension by the Commissioner, plus per diem charges where applicable $50.00

(b) In addition to the fees in (a) above, a per diem charge may be assessed when a special investigation of a filing is required.

3:1-2.26 Fees; State associations

(a) Every State association shall pay to the Commissioner the following fees:

1. Application to establish a mutual association $7,500;
2. Application to establish a stock association $15,000;
3. Application for a bulk sale, pursuant to N.J.S.A. 17:12B-204 ..... $500.00;
4. Application for a conversion $3,500;
5. Application for a merger:
i. Per insured association $3,000;
ii. Per institution when one or more is an uninsured association $1,500;
6. Application to establish a branch office, not pursuant to a merger or bulk purchase $1,500;
7. Application to interchange a principal and branch office when such interchange involves two separate municipalities $500.00;
8. Application to interchange a principal and branch office within the same municipality $500.00;
9. Application to change location of a principal office to another municipality $500.00;
10. Application to change location of branch office beyond 1,500 feet but within same municipality $500.00;
11. Application to change location of branch office to another municipality $500.00;
12. Application to share facilities $100.00;
13. Application for approval of a savings and loan holding company where the resulting holding company will own 100 percent of the insured association as its only capital through an exchange of stock $2,000;
14. Filing plans of acquisition, stock savings and loan and existing holding companies $3,000;
15. Application for change of name $50.00;
16. Certifications by the Commissioner of papers or records on file with the Department, plus $2.00 per page for each certification $25.00;
17. Annual report or certificate $50.00;
18. Dissolution $250.00;
19. Filing of any other certificate $50.00;
20. Issuance of any other approval by the Commissioner, plus a per diem ..... $100.00.

(b) In addition to the fees in (a) above, a per diem charge may be assessed when a special investigation of a filing is required.

3:6-13.3 Off-site location

(a) (No change.)

(b) The following items must accompany each application:

1. A filing fee of [$250.00] **$500.00** plus an additional $50.00 if one or more other financial institutions will share access to the automated teller machine(s).

2. A certified copy of a resolution of the board of the applying bank authorizing the application.

(c) (No change.)

3:6-13.5 Additional access

(a) (No change.)

(b) A filing fee of [$25.00] **$50.00** shall accompany each such notice regardless of the number of institutions or networks added or eliminated.

(c) **A fee of $200.00 shall accompany each request to the Commissioner to require an institution to share access to its communication terminal branch office.**

3:6-14.1 Biennial fee

[The biennial fee for the insurance of a certificate of authority or a certificate of renewal of a certificate of authority for a foreign bank shall be $800.00.] The certificate **of authority or certificate of renewal of a certificate of authority for a foreign bank** shall run from the date of issuance to the end of the biennial period. When the initial certificate is issued in the second year of the biennial certificate period, the certificate fee shall be an amount equal to one half of the fee for the biennial certificate period. The first biennial period shall commence as of April 1, 1983. Certificates issued during the period April 1, 1982 to April 1, 1983 will bear a fee equal to one half of the $800 biennial fee. **For the biennial period commencing April 1, 1991, the biennial fee will be $1,000. Certificates issued during the period April 1, 1990 to April 1, 1991 will bear a fee equal to one half of the $1,000 biennial fee.**

3:6-14.2 Miscellaneous fees

(a) A foreign bank shall pay to the Commissioner the following fees:

1. For filing a copy of its certificate of incorporation, or an amendment or change to the certificate $50.00;

2. For filing a statement of its financial condition $50.00;

3. For filing a power of attorney $25.00;

4. For each substitution of securities, pursuant to N.J.S.A. 17:9A-320B ..... $50.00.

3:11-5.1 Operational subsidiaries

(a) With the prior approval of the Commissioner of Banking, a bank may engage in activities, which are a part of the business of banking or incidental thereto, by means of an operating subsidiary corporation. In order to qualify as an operating subsidiary hereunder, at least 80 percent of the voting stock of the subsidiary must be owned by the bank. **An application to conduct business as an operating subsidiary shall be accompanied by a $100.00 application fee. In addition, the Department shall impose a per diem charge, as required.**

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

3:11-11.9 Approval procedures for other investments

(a) A bank which seeks to make an investment or engage in any activity requiring the specific approval of the Commissioner shall submit a written application, **accompanied by a $100.00 application fee. In addition, the Department shall impose a per diem charge, as required.** Within 30 days of the filing of such application, the Commissioner shall notify the applicant in writing either that all information required by this section has been filed or that additional specified information must be filed. The Commissioner shall, within 60 days of the date of written notice that all required information has been filed, endorse thereon his approval or disapproval.

(b) (No change.)

(a)

DIVISIONS OF BANKING, SAVINGS AND LOAN, AND CONSUMER COMPLAINTS, LEGAL AND ECONOMIC RESEARCH

Assessments; Change of Name, Address or Employer; Home Mortgage Disclosure

Adopted Emergency New Rules and Concurrent Proposed New Rules: 3:1-7.4; 3:19-1.7

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 3:1-6.1, -6.2, 3:1-7.1, 7.2, 7.5 and 9.6; 3:13-3.2 and 3:38-1.8

Emergency Amendments Adopted: June 26, 1989 by Mary Little Parell, Commissioner, Department of Banking

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): July 1, 1989.

Authority: N.J.S.A. 17:1-8, 17:16F-11

Emergency New Rules and Amendments Filed: July 3, 1989 as R.1989 d.407.

Emergency New Rules and Amendments Effective Date: July 3, 1989.

Emergency New Rules and Amendments Expiration Date: September 1, 1989.

Concurrent Proposal Number: PRN 1989-384.

Submit written comments by August 30, 1989 to:

Robert M. Jaworski, Deputy Commissioner
Department of Banking
CN 040
Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the notice of proposal for these new rules and amendments published in the July 17, 1989 New Jersey Register at 21 N.J.R. 1986(a) is republished as a concurrent proposal, and the comment period for such proposal is hereby extended to August 30, 1989. The readopted rule becomes effective upon acceptance of the notice of adoption for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.5(d)), prior to the expiration of the emergency period.

The agency emergency adoption and concurrent proposal follows:

Summary

The Department of Banking amends and supplements its rules regarding the charging of fees to reflect increasing administrative costs.

In particular, N.J.A.C. 3:1-6.2 is amended to increase the assessment imposed on banks, savings banks and savings and loan associations. The current assessment is 0.30 of one cent per $100.00 of total assets, and the proposal increases this to 0.36 of one cent. This is the first increase in the assessment since the first half of calendar year 1978.

The fees the Department imposes when a licensee changes its name are increased from $20.00, $25.00 or $50.00 to a uniform charge of $75.00. In addition, a charge is imposed for the first time on mortgage bankers or brokers for this service. These fees were imposed on May 14, 1975, and have not been increased since. A licensee with more than one office which changes its name will be assessed an additional fee of $25.00 per additional office affected by the change to reimburse the Department for its administrative costs.

The adoption and new rules and amendments standardize at $25.00 the fee the Department charges for issuing duplicate licenses. Similarly, the charge imposed on all licensees for changing an address is set at $75.00.

The fee imposed by the Department for reviewing home mortgage disclosure statements is increased from $25.00 to $50.00 and the per diem examination charge for the examination of a company which controls a bank is increased from $200.00 to $260.00. Finally, a home repair salesman changing his or her employer according to new rule N.J.A.C. 3:19-1.7 must now submit a request form with the Department along with a $25.00 fee.

Social Impact

This adoption and new rules and amendments will set the fees charged banks, savings banks and savings and loan associations and other licensees for various services performed by the Department of Banking. To the extent that fees are increased, a beneficial social impact will result from the shift of financial responsibility for the regulation of state chartered financial institutions from the general taxpaying public to those who benefit financially from conducting these businesses in New Jersey. These fees have not been modified for several years and their increase reflects a corresponding increase in the administrative costs of the Department.

Economic Impact

The increase of these fees will marginally increase the cost to the licensee of doing business in this State. Most of these charges are no for recurring services, so their economic impact will be minimal. The exception is the assessment on banks, savings banks, and savings and loan associations. This assessment has not been increased for about 12 years

Regulatory Flexibility Analysis

Many licensees affected by this adoption and proposal are small businesses. In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this adoption and proposal imposes the following reporting requirements. A licensee changing its location must submit a request form with the Commissioner. Similarly a home repair salesman must submit a change of employer request form when changing his affiliation. This information is necessary for the Department to maintain current records of its licensees and to ensure compliance. Accordingly, differentiation may not be made for small businesses.

In addition, the adoption and proposal marginally increases costs to all licensees, including small businesses. The costs of these services are dependent on the type of applicant and the service provided, not on the size of the business. The increases are necessary to reimburse the State for the costs associated with the services provided. Accordingly, the Department does not differentiate the fees based on the size of the business. There should be no significant economic impact on any applicant or licensee.

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

3:1-6.1 Institutions to be assessed

Every bank as defined in N.J.S.A. 17:9A-1(1), every savings bank as defined in N.J.S.A. 17:9A-1(13) and every State association as defined in N.J.S.A. 17:12B-5(1) shall be assessed a yearly fee of [0.30] **0.36** of one cent per $100.00 of total assets.

3:1-6.2 Assessed semiannually

The fee shall be assessed at a rate of [0.15] **0.18** of one cent per $100.00 of total assets as of December 31 and a rate of [0.15] **0.18** of one cent per $100.00 of total assets as of June 30 of each calendar year.

3:1-7.1 Name change

(a) Every licensee who shall change its name [within a license period] **at any time** shall, within 30 days of such change, submit proof of the name change to the commissioner, shall surrender its license or licenses for endorsement of such change and pay to the Department of Banking the fee or fees provided in schedule A of this subchapter.

1. Schedule A:
i. Motor vehicle installment seller [$20.00] **$75.00**
ii. Sales finance company [50.00] **$75.00**
iii. Home repair contractor [20.00] **$75.00**
iv. Home financing agency [50.00] **$75.00**
v. [Small] **Consumer** loan licensee [50.00] **$75.00**
vi. Pawnbroker [50.00] **$75.00**
vii. Foreign money remitter [50.00] **$75.00**
viii. Licensed casher of checks [50.00] **$75.00**
i[v]x. Foreign banks [25.00] **$75.00**
x. Secondary mortgage loan licensee [50.00] **$75.00**
xi. Insurance premium finance company [50.00] **$75.00**
xii. Licensed seller of checks [50.00] **$75.00**
xiii. Mortgage banker or broker $75.00

(b) For all licensees with more than one office, the Department shall impose a $25.00 fee for each license at a branch office affected by the name change.

3:1-7.2 Duplicate licenses and certificates

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

(c) The licensee shall pay to the Department of Banking the fee, or fees provided in Schedule B of this subchapter for such licenses or certificates.

1. Schedule B:
i. Motor vehicle installment seller—[$15.00] **$25.00**
ii. Sales finance company—[15.00] **$25.00**
iii. Home repair contractor—[15.00] **$25.00**
iv. Home financing agency—[15.00] **$25.00**
v. [Small] **Consumer** loan licensee—[15.00] **$25.00**
vi. Pawnbroker—[15.00] **$25.00**
vii. Foreign money remitter—[15.00] **$25.00**
viii. Licensed casher of checks—[15.00] **$25.00**
ix. Foreign banks—[15.00] **$25.00**
x. Secondary mortgage loan licensee—[15.00] **$25.00**
xi. Home repair salesmen—[5.00] **$25.00**
xii. Insurance premium finance company—[15.00] **$25.00**
xiii. Licensed seller of checks—[15.00] **$25.00**
xiv. Mortgage banker or mortgage broker—$25.00

3:1-7.4 Address change

Every licensee referenced in Schedule A or B which changes a licensed business address at any time shall, within 10 days of this change, submit information relative to the address change to the Commissioner; surrender the affected license or licenses for endorsement of the change; and pay to the Department an address change fee of $75.00.

3:1-[7.4]**7.5** (No change in text.)

3:1-9.6 Filing requirements; processing fee

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

(c) A processing fee of [$25.00] **$50.00** shall accompany each quarterly report. The fee shall be made payable to the Treasurer, State of New Jersey.

(d) (No change.)

3:13-3.2 Per diem per person examination charge

The individual per diem per person examination charge for an examination of a company which controls a bank shall be [$200.00] **$260.00**.

3:19-1.7 Home repair salesmen; change of affiliation

A licensed home repair salesman must be employed by a licensed home repair contractor and may represent only that employer in the transaction of home repair financing business. A licensed home repair salesman who changes his or her employer shall, within 10 days of this change, submit to the Department a change of employer request form along with a $25.00 fee. When submitting this form, the salesman shall surrender the license indicating the affiliation with his or her prior employer.

3:38-1.8 Office requirements

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

(e) A licensee changing its name or the address of one or more of its offices shall file the appropriate form with the Department in accordance with the requirements set forth in N.J.A.C. 3:1-7.

(a)

DIVISION OF BANKING

Consumer Loan Act Rules

Adopted Emergency Repeals and New Rules and Concurrent Proposed Repeals and New Rules: N.J.A.C. 3:17-2.1 and 6.10

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 3:17-2.2, 6.1, 6.2, 6.6 and 7.1

Adopted Emergency New Rule and Concurrent Proposed New Rule: N.J.A.C. 3:17-3.9

Emergency Amendments Adopted: June 26, 1989 by Mary Little Parell, Commissioner, Department of Banking

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): July 1, 1989.

Emergency Amendments and New Rules Filed: July 3, 1989 as R.1989 d.408.

Authority: N.J.S.A. 17:10-23

Emergency Amendments and New Rules Effective Date: July 3, 1989.

Emergency Amendments and New Rules Operative Date: July 7, 1989.

Emergency Amendments and New Rules Expiration Date: September 1, 1989.

Concurrent Proposal Number: PRN 1989-383.

Submit comments by August 30, 1989 to:
Robert M. Jaworski, Deputy Commissioner
Department of Banking
CN 040
Trenton, New Jersey 08625

These new rules and amendments were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). They do not become operative until the authorizing legislation becomes effective on July 7, 1989. Concurrently, the notice of proposal for these new rules and amendments published in the July 17, 1989 New Jersey Register at 21 N.J.R. 1983(a) is republished as a concurrent proposal, and the comment period for such proposal is hereby extended to August 30, 1989. The readopted rules become effective upon acceptance of the notice of adoption for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.5(d)), prior to the expiration of the emergency period.

The agency emergency adoption and concurrent proposal follows:

Summary

The Department of Banking amends and supplements its rules regarding small loan lenders. These amendments are necessary to comply with recent amendments to the Small Loan Law, N.J.S.A. 17:10-1 et seq. P.L. 1989, c. 38, approved March 9, 1989 (the "Act"). The Act changes the name of this law to the "Consumer Loan Act."

Section 3 of the Act permits the Department to charge by regulation (1) an application fee not to exceed $500.00; (2) an initial investigation fee not to exceed $1,000; and (3) a fee not to exceed $1,000 for investigating additional locations of licensees. By these new rules and amendments, the Department sets the application fee at $250.00 and the investigation fees at $300.00. The Act also explicitly authorizes the Department to charge for examinations, and the new rules and amendments indicate that licensees will be charged for examinations on a per diem basis. The Department will set license fees as authorized in a separate rule setting fees for all licensees.

The Act increases the dollar amount of a loan that licensees are permitted to make from $5,000 to $15,000. In accordance with this increase, the amendments make corresponding changes in the rules. Consumer loan lenders will now be able to make loans under the Act for up to $15,000 at an interest rate agreed to by the lender and the borrower. This means that the usury rate on loans made by licensees to include between $5,000 and $15,000 increases to 30 percent, pursuant to N.J.S.A. 2C:21-19. This change will cause a corresponding increase in the availability of credit.

The Act changes the factors the Department is to consider when evaluating an application. Pursuant to these changes, the Department is no longer directed to consider whether allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted. Instead, the Department shall consider (1) whether the applicant has adequate financial responsibility, experience, character and general fitness; and (2) whether the applicant has a net worth of at least $100,000.

Consistent with these changes, the emergency adoption and proposal removes the regulatory provision which allows an applicant who is denied a license to refile within six months after rejection when the application is accompanied by figures or statistics indicating considerable growth in the area. Since promoting the convenience and advantage of the community is no longer a criteria for licensure, this data is not pertinent. Accordingly, the adoption and proposal provides that a person whose application is rejected may not refile for six months.

The other changes reflected in the adoption and proposal are intended to bring the regulation into conformity with existing statutory law.

Social Impact

This emergency adoption and proposal sets the fees charged applicants and licensees. To the extent that fees are increased, a beneficial social impact will result from the shift of financial responsibility for the regulation of these institutions from the general taxpaying public to those who benefit financially from conducting these businesses in New Jersey.

The Act removes the "convenience and advantage" standard for evaluating applications, and the rules make corresponding changes consistent therewith. Removal of this standard is intended to encourage applicants to enter this field and increase the number of facilities available to the public.

Economic Impact

Pursuant to the emergency adoption and proposal, the fees charged applicants and licensees will increase. The investigation fee increases from $150.00 to $300.00 and an application fee of $250.00 is imposed. The Department has determined that these increases will have minor economic impact. To the extent that these increased costs exclude persons from entering the industry, this impact is consistent with the Legislature's mandate of restricting licensure to those persons with more liquid assets.

Regulatory Flexibility Analysis

Most consumer lenders are small businesses. However, the emergency adoption and proposal will impose no additional reporting, recording or compliance requirements on applicants or licensees. The new rules and amendments will have an economic impact on small businesses by increasing the cost of applying for and maintaining a license. The Department deems these fees necessary to reimburse the State for the cost of reviewing each application and regulating and examining each licensee. To the extent that small businesses require less time to examine, the per diem examination fee will correspondingly be less.

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

CHAPTER 17
[SMALL LOAN LAW]
CONSUMER LOAN ACT REGULATIONS

3:17-2.1 Requirements

(a) **An applicant for a consumer loan license shall include with the completed application form a non-refundable application fee of $250.00** [An application for a small loan license will not be accepted for filing within a six-month period following the rejection of a small loan application for the same municipality unless the application can be supported by official figures or statistics which indicate considerable growth in population, retail sales or demand for service.]

(b) **In addition to the application fee, the applicant shall pay to the Department an investigation fee of $300.00. The applicant shall also pay this investigation fee when applying to change location of a place of business within the same municipality in accordance with N.J.S.A. 17:10-8.** [The word "official", as used in this Section, means figures or statistics prepared and published by the Federal Government, the State of New Jersey or recognized national organization engaged in the business of estimating population or retail sales.]

3:17-2.2 Number of applications allowed

(a) The Department will not accept for filing more than one application for a license by any applicant or affiliated applicants for a original or newly created location within a single 90-day period.

(b) When the Commissioner denies an application, the applicant may not reapply for at least six months from the date of the denial.

3:17-3.9 Examinations

The Department may, at any time and as often as the Commissioner deems necessary, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person, copartnership, association, and corporation engaged in the consumer loan business. The entity examined shall pay to the Commissioner the actual cost of the examination on a per diem basis.

3:17-6.1 Maximum term of loan

(a) No loan in an amount of $1,000 or less shall be made for greater period of time than 36 months and 15 days.

(b) No loan in an amount in excess of $1,000, **but not exceeding $2,500,** shall be made for a greater period of time than 48 months and 15 days.

(c) No loan in an amount in excess of $2,500, shall be made for greater period of time than 60 months and 15 days.

3:17-6.2 Monthly installments

All loans, **except variable rate loans permitted pursuant to N.J.S.A. 17:10-14,** shall be repaid in substantially equal monthly installments of principal and interest computed on unpaid balances sufficient to liquidate the principal thereof, except as provided in [section 3 of this subchapter] **N.J.A.C. 3:17-6.3**.

3:17-6.6 Reduction of interest to usury rate

When a licensee knows or has reason to know that the proceeds of loan of [$2,500] **$15,000** or less are to be delivered by the borrower to an individual already indebted to such licensee on a loan of [$2,500] **$15,000** or less, then such loans shall be construed as a single loan to such individual for the purpose of interest computations, and if the aggregate of such loans ever exceeds [$2,500] **$15,000**, interest on such accounts shall be restricted to the rate authorized by Title 31, the Interest and Usury Law, and the rules and regulations promulgated by the commissioner pursuant thereto, on unpaid principal balances from the date such excess occurred.

3:17-6.10 Payment on installment loans

[(a) By reason of the provision of section 14 of the Small Loan Law which requires all loans of $2,500 or less be paid in installments and interest to be computed at the annual rate on unpaid principal balances, the following interpretations shall be given:

1. A month or calendar month shall be from one day in one month to the corresponding day in the succeeding month, if any, and if none, to the last day in the succeeding month;

2. Interest for one month or calendar month shall not exceed 1/12 of 24 per cent per annum on that part of the unpaid principal not exceeding $500.00, 1/12 of 22 per cent per annum on that part of the unpaid principal balance exceeding $500.00 but not exceeding $1,500 and 1/12 of 18 per cent per annum on any remainder of such unpaid principal balance;

3. If a fraction of a month is involved in any interest computation, a day shall be considered 1/30 of a month;

4. All computations of interest shall be made at a monthly rate as defined in paragraph 2 of this subsection if one or more months, as defined herein, are involved in the interest period, and where a fraction of a month is involved, the daily rate shall be 1/30 of the monthly rate. A daily rate shall be used only in computing interest for fractions of a month.]

(a) Notwithstanding the provisions of N.J.S.A. 31:1-1 or any other law to the contrary, a licensee may loan any sum of money not exceeding $15,000, repayable in installments, and may charge, contract for and receive thereon interest at an annual percentage rate or rates agreed to by the licensee and the borrower not exceeding the limits set in N.J.S.A. 2C:21-19.

(b) A licensee may not charge or receive interest in advance. A licensee shall not compound interest and may compute interest only on unpaid principal balances.

(c) For the purpose of computing interest, a licensee shall apply all installment payments no later than the next day, other than a public holiday, after the day of receipt, and shall charge interest for the actual number of days elapsed at the daily rate of 1/365 of the yearly rate.

3:17-7.1 Permissible other business

(a) A [small loan] licensee may engage in certain other types of business as permitted in this subchapter. Such other types of businesses may be conducted by the [small loan] licensee in the same office, room or place of business where the licensee conducts the business of making loans under the [Small Loan Law] **Consumer Loan Act**.

(b) Upon obtaining any necessary license or authorization, a [small loan] licensee may engage in the following other types of businesses:

1.-8. (No change.)

9. First lien loans on real property;

i. Any such business shall be conducted in accordance with the provisions of N.J.S.A. [3:1-1] **31:1-1** et seq., N.J.A.C. 3:1[-1 et seq.], or Section 501, et seq., of the Federal Depository Institutions Deregulation and Monetary Control Act of 1980.

10.-12. (No change.)

(a)

DIVISION OF CONSUMER COMPLAINTS, LEGAL AND ECONOMIC RESEARCH

License Fees

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 3:18-10.1, 3:23-2.1 and 3:38-1.1 and -1.2

Emergency Amendments Adopted: June 26, 1989 by Mary Little Parell, Commissioner, Department of Banking

Authority: N.J.S.A. 17:1-8.1, 17:10-3, 9 and 23; 17:11A-38; 17:11B-5 and 13; 17:15-1; 17:15A-4 and 6; 17:15B-7 and 17; 17:16C-7, 8, 82(a)(b) and (c); 17:16D-4 and 8; and 45:22-4 and 11.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): July 1, 1989.

Emergency Amendments Filed: July 3, 1989 as R.1989 d.409.

Emergency Amendments Effective Date: July 3, 1989.

Emergency Amendments Expiration Date: September 1, 1989.

Concurrent Proposal Number: PRN 1989-382.

Submit comments by August 30, 1989 to:

Robert M. Jaworski
Deputy Commissioner
Department of Banking
CN-40
Trenton, N.J. 08625

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the notice of proposal for these amendments published in the July 17, 1989 New Jersey Register at 21 N.J.R. 1985(a) is, in essence, republished as a concurrent proposal, and the comment period for such proposal is hereby extended to August 30, 1989. The readopted rule becomes effective upon acceptance of the notice of adoption for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.5(d)), prior to expiration of the emergency period.

The agency emergency adoption and concurrent proposal follows:

Summary

The Legislature, in P.L. 1981, c.321, in P.L. 1981, c.18, and in P.L. 1987, c.230, gave the Commissioner of Banking the authority to establish license fees for certain persons conducting business pursuant to statutes administered and supervised by the Department of Banking. This emergency adoption and proposal sets forth a revised schedule of license fees. The revised schedule increases fees to keep pace with increased administrative costs and to raise certain other fees which experience has shown are set at levels which are substantially below those needed to cover associated administrative costs.

Social Impact

This adoption and concurrent proposal will increase the license fees charged for persons conducting business pursuant to various licensing statutes administered and enforced by the Department of Banking. The amendments impact upon new license applicants and all licensees who are currently regulated by the statutes cited in the authorities. There is no direct impact on consumers who deal with these licensees.

Economic Impact

The license fees collected shall offset part of the administrative costs connected with statutorily mandated supervision, examination, and investigation of new applicants and licensees. The license fees which this adoption and proposal changes have not been increased since 1982 in some cases and 1984 in others. The license fee increases reflect an actual increase of about 33⅓ percent or less over the license fees presently charged for all but four license categories. In those four instances the license fees which have been set in the past were unusually low and did not cover the Department's costs. These four fees have therefore been increased substantially to rectify the inequities. In only one instance is a license fee set at the maximum allowed by statute. The amendments therefore allow the Department the ability to increase fees further as economic conditions require. The fee increases, in general, fairly represent the economic changes which have occurred since 1982 and 1984. The economic impact to the public, if any, should be minimal.

Regulatory Flexibility Analysis

Many applicants and licensees to be affected by this adoption and amendments are small businesses. However, in accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this adoption and amendments will impose no new reporting, recording or compliance requirements on them.

The type of businesses subject to licensure was considered by the Legislature in the establishment of the statutory maximum allowable license fee for each category of licensure. The fee increases are consistent with the differentiations originally made by the Legislature. The Department deems these license fee increases to be necessary to reimburse the State for a portion of the costs associated with application review, license issuance, record maintenance, supervision, examination and investigation. The costs associated with these areas are dependent upon the type of applicant or licensee and not the business size of the applicant or licensee. The Department therefore does not differentiate the license fees based upon the size of the business. There should be no significant economic impact on any applicant or licensee.

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

3:18-10.1 Initial license requirements

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

(e) License and application fees are as follows:

1.-3. (No change.)

4. The license fee is $[600.00] **800.00** for each new branch secondary mortgage loan license applicant for the initial license period or any part thereof; provided, however, that if an initial license is issued in the second year of any biennial licensing period, the license fee is $[300.00] **400.00**. There shall also be a $[100.00] **200.00** nonrefundable processing fee due for each new applicant at the time of application.

5. (No change.)

3:23-2.1 Licenses

The following table indicates the license fees established by the Commissioner of Banking for annual and biennial license periods, the maximum biennial license fees permitted by law and the specific statutory sections affected by the establishment of such biennial and annual license fees.

Licensees	Statutory Maximum Biennial Fee	Biennial Fee	Annual Fee
[Small] **Consumer** Loan (N.J.S.A. 17:10-3 & 9)	$1,000.00	$[600.00]**800.00**	$[300.00]**400.00**
Foreign Money Remitter (N.J.S.A. 17:15-1)	$1,000.00	$[300.00]**800.00**	$[150.00]**400.00**
Check Casher (N.J.S.A. 17:15A-4)	$1,000.00	$[600.00]**800.00**	$[300.00]**400.00**
Check Seller (N.J.S.A. 17:15A-7)	$1,200.00	$ 1,200.00	$ 600.00
Retail Installment Sales			
(a) Sales Finance Company (N.J.S.A. 17:16C-7)	$1,000.00	$[600.00]**800.00**	$[300.00]**400.00**
(b) Motor Vehicle Installment Seller (N.J.S.A. 17:16C-8)	$ 300.00	$[80.00]**150.00**	$[40.00]**75.00**
(c) Home Financing Agency (N.J.S.A. 17:16C-82(a))	$ 600.00	$[300.00]**400.00**	$[150.00]**200.00**
(d) Home Repair Contractor (N.J.S.A. 17:16C-82(b))	$ 300.00	$[80.00]**150.00**	$[40.00]**75.00**
(e) Home Repair Salesman (N.J.S.A. 17:16C-82(c))	$ 60.00	$[30.00]**50.00**	$[15.00]**25.00**
Insurance Premium Finance Company (N.J.S.A. 17:16D-4)	$1,000.00	$[600.00]**800.00**	$[300.00]**400.00**
Pawnbroker (N.J.S.A. 45:22-4)	$ 800.00	$[450.00]**600.00**	$[225.00]**300.00**

3:38-1.1 License requirements

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

(c) The license fee is $[700.00] **800.00** for each mortgage banker or mortgage broker for each **biennial** license period, or any part thereof provided, however, that if an initial license is issued [after the 10th month of any license period, the license fee is] **in the second year of any biennial licensing period, the license fee shall be** $400.00.

3:38-1.2 Applications

(a) Each applicant for a mortgage banker or mortgage broker license must submit to the Department of Banking a completed application in a form prescribed by the Commissioner together with the required license fee and a non-refundable application fee of $[125.00] **200.00**.

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

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Correction
Uniform Fire Code; Fire Code Enforcement Registration and Permit Fees
Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 5:18-2.8

Take notice that the Notice of Adopted Emergency Amendments and Concurrent Proposed Amendments concerning N.J.A.C. 5:18-2.8 and 5:18A-2.6, published in the July 17, 1989 New Jersey Register at 21 N.J.R. 2126(a), contained a printing error in the text of N.J.A.C. 5:18-2.8(c) in that the increased emergency adopted and concurrently proposed permit application fees were not included after the deletion of the former fees was noted.

Full text of the corrected emergency adopted and concurrently proposed amendment follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

5:18-2.8 Fees, registration and permit

(a) (No change from emergency adoption and concurrent proposal.)

(b) (No change.)

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

1. Type 1—[$25.00] **$29.00**;
2. Type 2—[$100.00] **$115.00**;
3. Type 3—[$200.00] **$230.00**;
4. Type 4—[$300.00] **$345.00**;
5. Type 5—[$1,000.00] **$1,150.00**.

(d) (No change.)

PUBLIC NOTICES

PERSONNEL

(a)

MERIT SYSTEM BOARD

Notice of Action on Petition for Rulemaking Failure to Appoint from Complete Certification N.J.A.C. 4A:10-2.2

Petitioner: City of Newark, John K. D'Auria, Personnel Director.
Authority: N.J.S.A. 11A:4-5 and 11A:10-3.

Take notice that on June 1, 1989, the City of Newark, through Personnel Director John K. D'Auria, filed a petition with the Department of Personnel requesting an amendment to N.J.A.C. 4A:10-2.2, concerning failure to appoint from a complete certification list.

In particular, the petitioner asserts that the current rule as written, and as applied by the Merit System Board, is inconsistent with the enabling statute, N.J.S.A. 11A:4-5. The statute requires a permanent appointment to be made from a resulting list once the examination process has been initiated due to the appointment of a provisional, and authorizes the assessment of costs against an appointing authority when a permanent appointment has not been made. However, the petitioner contends that costs are assessed notwithstanding the fact that a permanent appointment was made from the eligible list resulting from that examination. Therefore, the petitioner proposes that the rule be amended: (1) to prohibit the assessment of selection process costs where the examination list is used to make a permanent appointment from a previous certification; and (2) to allow for the reimbursement of assessments where the jurisdiction makes a permanent appointment from a subsequent certification from that same eligible list.

The purpose of N.J.S.A. 11A:4-5 is to ensure that the competitive examination process, once initiated by the appointment of a provisional employee, is utilized to fill that position on a permanent basis. In keeping with this purpose, the implementing rule, N.J.A.C. 4A:10-2.2, requires an appointing authority which has initiated the examination process due to the appointment of a provisional to make an appointment from a resulting complete certification. The rule recognizes situations where a permanent appointment would not be appropriate, and provides for notice to an appointing authority and an opportunity to respond prior to the assessment of costs. The two situations described by the petitioner's proposed amendments may be factors in considering whether to waive such assessments, and could be cited by an appointing authority in its response to a notice of possible assessments. However, it is vital for the Merit System Board to retain the ability to examine these situations individually, and determine from the circumstances whether valid reasons existed for failure to appoint from a certification or whether circumvention of the competitive selection process took place. The amendments proposed by the petitioner would unduly restrict the Board's ability to apply and enforce N.J.S.A. 11A:4-5. Therefore, the petition will not be implemented.

ENVIRONMENTAL PROTECTION

(b)

PINELANDS COMMISSION

Withdrawal of Petition for Rulemaking Pinelands Land Capability Map N.J.A.C. 7:50-5.3(a)24

Petitioners: Anatole Kalinuk et al.
Authority: N.J.S.A. 13:18A-65.

Take notice that on June 29, 1989, Anatole Kalinuk et al. withdrew its pending petition for rulemaking.

The petition for rulemaking was originally filed with the Pinelands Commission on December 7, 1988. A notice of the petition was published on February 6, 1989 at 21 N.J.R. 345. The Pinelands Commission was originally scheduled to receive a report on the petition from the Commission's Executive Director and decide whether the petition warranted a formal rulemaking proposal at its meeting on April 7, 1989. Because the petitioners wished to review comments received by the Pinelands Commission from the public and governmental agencies and submit additional information in response to those comments, the Pinelands Commission was requested and previously agreed not to take action until July 7, 1989.

Although the petitioners withdrew the petition before it was considered by the Pinelands Commission, the Executive Director did issue a report on June 28, 1989 within which it was recommended that the Pinelands Commission deny the petition. A copy of the Executive Director's report to the Commission is available for inspection at the offices of the Pinelands Commission, Springfield Road, Pemberton Township, on regular business days between the hours of 9:00 A.M. and 5:00 P.M.

(c)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Action on Petition for Rulemaking N.J.A.C. 7:27-23, Volatile Organic Substances in Consumer Products

Petitioners

Individual Name	Company
Alfred E. Eline	Eline Company, Inc.
	A&M Paint & Wallpaper Supplies
Bruce K. Klein	Mister Paints, Inc.
Frank Mahon	Belmont Paint & Decorating Center
Henry W. Buschman	Buschman Inc.
Joseph J. Rossi	Rossi Paint, Inc.
James Canova, Jr.	Tungol Paint
Andrew R. Korch	Hillsdale Paint/Westwood Paint
John Mathews	P.J. Monahan Paint Co., Inc.
Chuck Patuti	
Robert W. Landzettel	Landzettel & Sons
John J. Grennor	Park Decorating Center
	N. Siperstein, Inc.
David Greenberg	Salem Paint
	Paint N Paper
Cathy Blinn	Marsala Hardware
	Township Hardware
Bruce J. Palmer	Palmer Brothers Co.
Joseph M. Pisari	Eagle Paint and Wallpaper Co.
	National Paint and Glass Supply
	Norton Stores, Inc.
James Patterson	Hackensack Paint & Wallpaper
Elliot Greenberg	Fox Paint
Bernard Rossi	Rossi Decorating Co.
	Sacks Paint
	Field Paints

Take notice that during the comment period for proposed amendments to the Air Pollution Control Code which closed June 9, 1989 (see 21 N.J.R. 1055(a)), the Department of Environmental Protection (the Department) received petitions for rulemaking concerning N.J.A.C. 7:27-23, the Department's rules on volatile organic substances in consumer products. Specifically, the petitioners request that the Department amend N.J.A.C. 7:27-23.3 to provide "grandfathering" of existing stock of architectural coatings by basing compliance with the rule on the date of manufacture of the particular product. Public notice of receipt of this petition was published in the July 17, 1989 New Jersey Register (21 N.J.R. 2132(d)).

In accordance with N.J.A.C. 1:30-3.6 and after thorough review of the petition, the Department will grant this petition and is preparing a proposal to amend N.J.A.C. 7:27-23.3 which will seek further input on this issue. It is anticipated this proposed amendment will appear in the New Jersey Register in September.

A copy of this notice has been mailed to the petitioners, as required by N.J.A.C. 1:30-3.6.

(a)

DIVISION OF WATER RESOURCES

Amendment to the Atlantic County Water Quality Management Plan

Public Notice

Take notice that the Atlantic County Department of Regional Planning and Development has petitioned to amend the Atlantic County Water Quality Management (WQM) Plan. A Wastewater Management Plan (WMP) has been submitted for Egg Harbor Township. The WMP delineates existing and proposed sewer service areas with treatment at the Atlantic County Utilities Authority's (ACUA) City Island Treatment Plant. Three small additional areas located in non-contiguous portions of the township propose service through adjacent communities to the ACUA plant. These are: the western end of Somers Point-Longport Boulevard, to be tied in through Somers Point; the eastern end of the same boulevard, the area known as Seaview Harbor, to be tied into the ACUA system in Longport; and an area on the Northfield-Margate Boulevard known as Mariners' Cove, to be tied in to the ACUA system in Northfield. The remaining areas of the township will be served by individual subsurface sewage disposal systems.

This notice is being given to inform the public that a plan amendment has been proposed for the Atlantic County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Department of Regional Planning and Development, County Office Building, 1333 Atlantic Avenue, Atlantic City, New Jersey 08401, and the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, CN-029, 401 East State Street, 3rd Floor, Trenton, New Jersey 08625. These documents are available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Mr. Richard Dovey, the Director of Planning at the County Office Building address cited above; and Mr. George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days following the public notice publication date. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered. The Atlantic County Planning Advisory Board shall issue a recommendation on the WQM Plan Amendment to the County Executive and the Chairman of the Board of Chosen Freeholders within 45 days from the date of the notice. Adoption of the amendment shall be by ordinance by the Atlantic County Board of Chosen Freeholders. The NJDEP thereafter may approve and adopt this amendment without further notice.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Atlantic County Water Quality Management Plan

Public Notice

Take notice that the Atlantic County Department of Regional Planning and Development has petitioned to amend the Atlantic County Water Quality Management (WQM) Plan. An amendment has been submitted for Somers Point. This amendment makes provision for an area in Egg Harbor Township at the western end of Somers Point—Longport Boulevard to tie-in to the Somers Point City Sewerage Authority lines. Total flows are projected to be 66,600 gallons per day. Treatment will be at the Atlantic County Utilities Authority's City Island Plant.

This notice is being given to inform the public that a plan amendment has been proposed for the Atlantic County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Department of Regional Planning and Development, County Office Building, 1333 Atlantic Avenue, Atlantic City, New Jersey 08401, and the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, CN-029, 401 East State Street, 3rd Floor, Trenton, New Jersey 08625. These documents are available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Mr. Richard Dovey, the Director of Planning at the County Office Building address cited above; and Mr. George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days following the public notice publication date. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered. The Atlantic County Planning Advisory Board shall issue a recommendation on the WQM Plan Amendment to the County Executive and the Chairman of the Board of Chosen Freeholders within 45 days from the date of the notice. Adoption of the amendment shall be by ordinance by the Atlantic County Board of Chosen Freeholders. The NJDEP thereafter may approve and adopt this amendment without further notice.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would approve the Moorestown Township Wastewater Management Plan (WMP). The Moorestown Township WMP calls for the expansion of the existing Sewage Treatment Plant (STP) from 2.5 to 3.0 million gallons per day (MGD). In addition, this WMP proposes the construction of a new 1.1 MGD STP planned to serve a low income housing development of 870 units required by the Council of Affordable Housing, the existing Moorestown Office Complex and the proposed Moorestown Foursome project consisting of 470 new homes and a 1.2 million square-foot office complex.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Mr. George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would expand the Monroe Township, Gloucester County, sewer service area. The new sewer service area would include the Pinelands Regional Growth areas of Monroe Township, the Timber and Victory Lakes Developments and all of the non-Pinelands portion of the Township. Sewer service to sites containing wetlands shall remain prohibited under the existing Tri-County WQM Plan restriction language. In addition, a limit of 3.0 million gallons per day has been set for the interbasin transfer of wastewater from the Atlantic Basin to the Delaware Basin. Any proposed increase in this value is subject to Pinelands approval based on a long term monitoring program of surface and ground water instituted by the Monroe Municipal Utilities Authority.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is

located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Mr. George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

HUMAN SERVICES

(a)

SOCIAL SERVICES BLOCK GRANT PROGRAM

Social Services Block Grant Program

Take notice that in compliance with N.J.S.A. 52:14-34.4 et seq., the Department of Human Services announces the receipt of $244,674,958 in Federal and State funds for the State Fiscal Year 1990 Social Services Block Grant program. Funding is contingent upon legislative appropriation and the availability of funds.

The Social Services Block Grant program supports a wide array of social services which address the needs of 18 target populations. The program is administered by the Department of Human Services. Services are provided directly by Divisions within the Department, by private and public provider agencies under contract with the Department, and through interdepartmental agreements with other State agencies. A pre-expenditure report delineating expenditures for these funds is available for review. Requests for the pre-expenditure report should be directed to Kim Todd, Community Services Planner at the Department of Human Services, Office of Community Relations, CN 700, Trenton, N.J. 08625.

Community based organizations interested in applying for the purchase of service component of the program should contact the county Human Services Advisory Council listed below for available funding, eligibility criteria, and application procedures.

COUNTY HUMAN SERVICES ADVISORY COUNCIL (HSAC)
REVISED: 6/14/89

COUNTY	CHAIRPERSONS
ATLANTIC	Bernard Cohen Federation of Jewish Agencies 505-507 Tilton Road Northfield, NJ 08225 (609) 646-7077
BERGEN	Ruth Boer, Chairperson Bergen County HSAC c/o Home Health Agency of Hackensack Medical Center 30 Prospect Avenue Hackensack, NJ 07601 (201) 342-6311
BURLINGTON	Betty Lou Barnard, Chairperson Burlington County HSAC c/o Family Services of Burlington County P.O. Box 588 Raphael Meadow Health Center Mount Holly, NJ 08060 (609) 267-5928
CAMDEN	Father Edward Walsh, Chairperson Community Planning and Advocacy Council Human Services Coalition of Camden County Northgate I 7th and Linden Streets Camden, NJ 08102 (609) 966-0400
CAPE MAY	George Plewa, Director Jersey Cape Diagnostic, Training & Opportunity Center Crest Haven Complex Crest Haven Road Cape May Court House, NJ 08210 (609) 465-4117
CUMBERLAND	Paula Ring, Chairperson Cumberland County HSAC c/o 5 East Forest Glen Dr. Millville, NJ 08332 (609) 825-4300
ESSEX	Joseph V. Dimino, Chairperson Essex County HSAC c/o ARC 7 Regent Street Livingston, NJ (201) 535-1181
GLOUCESTER	Michael Carlin, Chairperson Budd Boulevard Complex Rt. 45 and Budd Blvd. P.O. Box 337 Woodbury, NJ 08096 (609) 384-6950
HUDSON	Michael A. Leggiero, Chairperson Hudson County HSAC c/o No. Hudson Comm. Action Corp. 507 26th Street Union City, NJ 07087-3798 (201) 866-2255
HUNTERDON	Mr. Leslie Finch, Chairperson Hunterdon County HSAC Box 413, Anderson Road RD Hampton, NJ 08827 (201) 788-1253
MERCER	Tom Walls, Chairperson Mercer County HSAC c/o Mercer County Vocational School 1085 Old Trenton Road Trenton, NJ 08690 (609) 586-2121
MIDDLESEX	Mary Hollis, Chairperson Middlesex County HSAC 100 Bayard Street New Brunswick, NJ 08803 (201) 745-4186
MONMOUTH	James Bourque, Chairperson Monmouth County HSAC c/o United Way of Monmouth Cty. 1415 Wyckoff Road Farmingdale, NJ 07727 (201) 938-5988
MORRIS	Constance Strand, Chairperson Morris County HSAC P.O. Box 226 Millington, NJ 07946 (201) 647-0763
OCEAN	Bahiyyah Abdullah Human Services Advisory Council c/o Human Resource Department CN 2191 Toms River, NJ 08754 (201) 349-4499
PASSAIC	Kenneth Wessel, Chairperson Passaic County HSAC c/o Visiting Homemaker Services of Passaic 2 Market Street Paterson, NJ 07501 (201) 523-1224

SALEM	Shirley Evans, Chairperson Salem Unit-NJARC P.O. Box 5 Salem, NJ 08079 (609) 935-3600
SOMERSET	Cornelia Thum, Chairperson Somerset County HSAC c/o Somerset Bd. of Social Services 73 East High Street Somerville, NJ 08876 (201) 526-8800
SUSSEX	Karen Bevans, Chairperson Public Information Center Transportation P.O. Box 68 Newton, NJ 07860 (201) 383-3590
UNION	Barbara Brande-Desmond, Chairperson Union County HSAC Catholic Community Services 210 St. Georges Street Linden, NJ 07036 (201) 486-6230
WARREN	Joseph Romesser, Chairperson Warren County HSAC c/o Family Guidance Center 21 W. Washington Avenue Washington, NJ 07882 (201) 689-4470

COUNTY	STAFFPERSONS
ATLANTIC	Sarah Griffith, Human Services Coordinator Atlantic County Planning 1333 Atlantic Avenue Atlantic City, NJ 08401 (609) 345-6700 x2571
BERGEN	Tom McKenna, Director Administration Building Room 115W Court Plaza South 21 Main Street Hackensack, NJ 07601 (201) 646-3673
BURLINGTON	Gary Miller, Director Burlington County Mental Health and Human Services Woodlane Road Mount Holly, NJ 08060 (609) 265-5545
CAMDEN	Catherine DeCheser, Director Community Planning and Advocacy Council Human Services Coalition of Camden County Northgate 1 7th and Linden Streets Camden, NJ 08102 (609) 966-0400
CAPE MAY	Patricia Devaney Cape May County HSAC CN 907 Central Mail Room Cape May Court House, NJ 08242 (609) 465-1056
CUMBERLAND	Eva Moffat, Staff Cumberland County HSAC 790 E. Commerce Street Cumberland Drive Bridgeton, NJ 08302 (609) 453-2147 c: Warren Martnelli, Director Office of Health & Human Services County Administration Bldg. 790 E. Commerce Street Bridgeton, NJ 08302
ESSEX	Frank Cuoco, Acting HSAC Coordinator Essex County Department of Citizen Services 15 South Munn Avenue East Orange, NJ 07018 (201) 678-4210 c: Alan Zalkind, Director Essex County Department of Citizen Services 15 South Munn Avenue East Orange, NJ 07018
GLOUCESTER	Celia Albanese, Staff Gloucester County Office of Government Services Budd Boulevard Complex Route 45 & Budd Boulevard P.O. Box 337 Woodbury, NJ 08096 (609) 384-6950
HUDSON	Leon Socha, Staff Hudson County Department of Human Services 595 County Avenue Secaucus, NJ 07094 (201) 863-5100 x261
HUNTERDON	Angelo DiOrio, Staff Hunterdon Department of Human Services Administration Building Main Street Flemington, NJ 08822 (201) 788-1253 or 788-1352
MERCER	Michele Sapiro Mercer Department of Human Services Administration Building CN 850, P.O. Box 8068 Trenton, NJ 08650 (609) 989-6526
MIDDLESEX	George A. Coakley, Acting Director Middlesex Department of Human Services 100 Bayard Street P.O. Box 273 New Brunswick, NJ (201) 745-4186 c: Frayda Topolosky Middlesex Department of Human Services 96 Bayard Street P.O. Box 273 New Brunswick, NJ
MONMOUTH	Gabrielle Lehne, Staff Monmouth County HSAC Department of Human Services Special Services Complex 300 Halls Mill Road P.O. Box 1255 Freehold, NJ 07728 (201) 431-6585
MORRIS	Gary Barrett, Assistant Director Morris County Department of Human Services CN 900 Morristown, NJ 07960 (201) 285-6868 c: Diane Schulman, Director Morris County Department of Human Services CN 900 Morristown, NJ 07960
OCEAN	Marcella DeRosa, Planner Ocean County Department of Human Services Ocean County Administration Bldg. 101 Hooper Avenue Toms River, NJ 08753 (201) 929-2140
PASSAIC	Pamela Goar, Administrator Passaic County Department of Human Services County Administration Bldg.

	317 Pennsylvania Avenue Paterson, NJ 07503 (201) 881-2834
SALEM	Raymond Bolden, Executive Dir. Salem Interagency Council of Human Services 92 Market Street Salem, NJ 08079 (609) 935-7510 x315
SOMERSET	Kathie O'Brien, Planner Somerset County Department of Human Services P.O. Box 3000 Somerville, NJ 08876 (201) 725-4640 c: Patricia Kalmback, Director
SUSSEX	Sandy Erwin, Coordinator Sussex County HSAC Office of Human Services, Admin. Bldg. Plotts Road P.O. Box 709 Newton, NJ 07860 (201) 383-1794
UNION	Deborah Lorenzetti, Director Division of Planning Union County Department of Human Services Administration Building Elizabethtown Plaza Rahway Avenue Elizabeth, NJ 07207 (201) 527-4834
WARREN	Lorraine Scheibener, Coordinator of Monitoring & Evaluation Warren County Department of Human Services P.O. Box 15 Belvidere, NJ 07823 (201) 475-6332 c: Karen Rosanoff, Director Warren County Department of Human Services P.O. Box 15 Belvidere, NJ 07823 (201) 475-6331

TREASURY-GENERAL

(a)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection
Notice of Assignments—Month of June 1989

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, prequalified New Jersey consulting firms. For information on DBC's prequalification and assignment procedures, call (609) 984-6979.

Last list dated June 1, 1989.

The following assignments have been made:

DBC#	PROJECT	A/E	CCE
P617	Electrical Renovations Ringwood Manor House Passaic, NJ	Turek Associates	$150,000
P590 (Re-Assignment)	Sprinkler Work Terminal Building Liberty State Park	Turek Associates	$250,000
P586 (Re-Assignment)	Water System Improvements High Point State Park	Tighe Firtion Carrino Assoc., Inc.	$200,000
M1019	Elevator Repairs Greenbrook Regional Center Somerset County, NJ	Barnickel Engr. Corp.	$190,000
C379	New Septic System Highfields Residential Group Center Hunterdon County, NJ	Maitra Assoc., Inc.	$124,000
P628	Site Renovations Barnegat Lighthouse Ocean County, NJ	John E. Gibson & Associates, Inc.	$150,000
P626	Pickers Cottage Conversion Double Trouble State Park Berkeley Township, NJ	Watson & Henry Associates	$150,000
W047	Facility Consultant-FY89 Division of Fish, Game	John C. Gibson Associates, PA	$50,000 Services
P598	New Bathhouse/Concession Facility & Bathing Area Improvements Swartswood State Park Sussex County, NJ	Kruger Kruger Albenberg	$500,000

COMPETITIVE PROPOSALS

*Gilbert L. Seltzer Assoc.	$59,460 Lump Sum
Kruger Kruger Albenberg	$63,000 Lump Sum
Chapman & Biber, AIA	$69,880 Lump Sum

*Withdrew—Misinterpretation of Request for Proposal Requirements.

P599	Overnight Camping Facilities Wawayanda State Park Sussex County, NJ	Nadaskay Kopelson Architects	$750,000

COMPETITIVE PROPOSALS

Nadaskay Kopelson Arch.	$95,500 Lump Sum
USA Arch/Johnson Eng.	$95,500 Lump Sum
BBM Architects	$96,770 Lump Sum
The Harson & Johns Partnership, Architects	$118,000 Lump Sum

C385	Wastewater System Improvements Wharton Tract Unit Burlington County, NJ	John G. Reutter Associates	$600,000

COMPETITIVE PROPOSALS

John G. Reutter Assoc.	$156,600 Lump Sum
Applied Wastewater Technology, Inc.	$167,350 Lump Sum
Richard A. Alaimo	Declined

T218	Asbestos Removal DOT Garage Newark, NJ	Abernethy Assoc., Inc.	$50,000

COMPETITIVE PROPOSALS

Abernethy Assoc., Inc.	$9,200 Lump Sum
Environmental Concepts & Testing	$9,990 Lump Sum
Testwell Craig Testing Labs	$12,400 Lump Sum
Contamination Control Engr., Inc.	$13,230 Lump Sum

T219	Asbestos Removal DOT Garage Lodi, NJ	Abernethy Assoc., Inc.	$56,000

COMPETITIVE PROPOSALS

Abernethy Assoc., Inc.	$8,850 Lump Sum
Environmental Concepts & Testing	$9,974 Lump Sum
Contamination Control Engineering, Inc.	$11,224 Lump Sum
Testwell Craig Testing Labs, Inc.	$11,900 Lump Sum

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Public Notice
Average Wholesale Price of Cigarettes
Cigarette Surtax Rate

Take notice that, for the purpose of complying with the requirements of P.L. 1982, c.40, sec. 4 (N.J.S.A. 54:40A-8.2), John R. Baldwin, Director of the Division of Taxation, hereby gives notice that, based upon the best available current data, the average wholesale price of cigarettes in this State during the succeeding six months commencing July 1, 1989 is $0.6053 for each 10 cigarettes or fraction thereof.

Therefore, the cigarette surtax due for such six months, pursuant to P.L. 1948, c.65 sec. 302 (N.J.S.A. 54:40A-8), as amended, shall be $0.04 for each 10 cigarettes or fraction thereof.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Petition for Rulemaking
Making and Removal of Craps Wager
N.J.A.C. 19:47-1.3

Petitioner: Trump Taj Mahal Associates
Authority: N.J.S.A. 5:12-69(c) and N.J.S.A. 52:14B-4(f).

Take notice that on May 30, 1989, Trump Taj Mahal Associates L.P. filed a rulemaking petition proposing to amend N.J.A.C. 19:47-1.3.

The petitioner proposes to amend N.J.A.C. 19:47-1.3(d), which states that: "A Don't Come Bet and a Don't Pass Bet may be removed or reduced at any time but may not be replaced or increased after such removal or reduction **until a new come out roll**" (emphasis added). The petitioner contends that the phrase "until a new come out roll" should be deleted since it does not necessarily affect a Don't Come Bet.

Specifically, the petitioner requests that this rule be amended so as to prohibit a player from replacing or increasing a Don't Come Bet once such bet has been removed or reduced. Petitioner asserts that the proposed change would enhance the recreational and gaming experience for the casino patron and also remove a perceived conflict between the current rule and N.J.A.C. 19:47-1.6(d).

After due notice, the petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 52:14B-4.

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter.** If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/4/92
1:5	10/20/91
1:6	5/4/92
1:6A	5/4/92
1:7	5/4/92
1:10	5/4/92
1:10A	5/4/92
1:10B	10/6/91
1:11	5/4/92
1:13	5/4/92
1:13A	4/3/94
1:20	5/4/92
1:21	5/4/92
1:30	2/14/91
1:31	6/17/92

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	1/17/94
2:3	6/18/89
2:5	6/18/89
2:6	9/3/90
2:9	7/7/91
2:16	5/7/90
2:22	7/6/92
2:23	7/18/93
2:24	2/11/90
2:32	6/1/92
2:33	3/6/94
2:48	11/27/90
2:50	5/1/92
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	11/7/93
2:69	11/7/93
2:70	5/7/90
2:71	7/8/93
2:72	7/8/93
2:73	7/8/93
2:74	7/8/93
2:76	8/29/89
2:90	6/24/90

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
3:7	9/16/90
3:11	5/1/94
3:13	11/17/91
3:17	6/18/91
3:18	1/19/93
3:19	3/17/91
3:21	2/2/92
3:22	5/12/94
3:23	7/6/92
3:24	8/20/89
3:25	8/17/92
3:26	12/31/90
3:27	9/16/90
3:28	12/17/89
3:30	10/17/88
3:32	10/1/93
3:38	10/5/92
3:41	10/16/90
3:42	4/4/93

PERSONNEL (CIVIL SERVICE)—TITLE 4/4A

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/5/91
4:6	5/5/91
4A:1	10/5/92
4A:2	10/5/92
4A:3	9/6/93
4A:4	6/6/93
4A:5	10/5/92
4A:6	1/4/93
4A:7	10/5/92
4A:9	10/5/92
4A:10	11/2/92

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:2	4/10/94
5:3	9/1/93
5:4	10/5/92
5:10	11/17/93
5:11	3/10/94
5:12	1/1/90
5:13	12/24/92
5:14	12/1/90
5:15	5/1/94
5:17	6/1/89
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:19	2/1/93
5:22	12/1/90
5:23	3/1/93
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/29/93
5:31	12/1/89
5:37	11/18/90

N.J.A.C.	Expiration Date
5:38	10/27/93
5:51	9/1/93
5:70	7/9/92
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91
5:92	6/16/91
5:100	5/5/94

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

N.J.A.C.	Expiration Date
5A:2	5/20/90

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:2	2/6/94
6:3	7/8/93
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:22A	12/19/93
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	4/10/94
6:29	3/25/90
6:30	7/5/93
6:31	1/24/90
6:39	10/18/89
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	1/11/93
6:68	4/12/90
6:69	6/4/91
6:70	1/25/90
6:78	11/7/93
6:79	11/25/92

ENVIRONMENTAL PROTECTION—TITLE 7

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	11/28/93
7:1E	7/15/90
7:1F	4/20/92
7:1G	10/1/89
7:1H	7/24/90
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:6	6/9/94
7:7	5/12/94
7:7A	6/6/93
7:7E	7/24/90
7:7F	1/19/93
7:8	2/5/93
7:9	1/21/91
7:10	9/4/89
7:11	5/13/93
7:12	4/11/93
7:13	7/14/94
7:14	4/27/94
7:14A	6/2/94
7:14B	12/21/92
7:15	4/2/89
7:17	4/7/91
7:18	8/6/91
7:19	4/15/90
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90
7:20A	12/16/93
7:22	1/5/92
7:23	6/9/94
7:24	5/19/91
7:25	2/18/91
7:25A	5/6/90
7:26	11/4/90
7:26B	12/21/92
7:27	Exempt
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:37	Exempt
7:38	9/18/90
7:45	2/6/94

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	4/12/94
8:9	2/18/91
8:13	9/8/92
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/17/89
8:24	5/2/93
8:25	5/19/93
8:26	8/4/91
8:31	11/5/89
8:31A	3/18/90
8:31B	10/15/90
8:31C	1/20/92
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	7/17/91
8:33E	6/23/92
8:33F	1/14/90
8:33G	7/17/94
8:33H	7/19/90
8:33I	9/15/91
8:33J	4/24/94
8:33K	3/27/94
8:33M	7/17/94
8:33N	5/15/94
8:34	11/15/93
8:39	6/20/93
8:40	4/15/90
8:41	2/17/92
8:42	8/17/92
8:42A	6/19/94
8:42B	7/18/93
8:43	1/21/91
8:43A	9/3/90
8:43B	1/21/91
8:43E	12/11/92
8:43F	3/18/90
8:43G	9/8/91
8:43I	3/21/93
8:44	11/2/93
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90

N.J.A.C.	Expiration Date
8:52	12/15/91
8:53	8/4/91
8:57	6/18/90
8:59	10/1/89
8:60	5/3/90
8:61	10/6/91
8:65	12/2/90
8:70	8/19/93
8:71	2/17/94

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	2/21/94
9:2	6/17/90
9:3	9/27/93
9:4	10/30/91
9:5	1/21/91
9:6	5/20/90
9:6A	1/4/93
9:7	2/28/93
9:8	11/4/90
9:9	10/3/93
9:11	4/17/94
9:12	4/17/94
9:14	5/20/90
9:15	10/25/88

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	1/5/92
10:3	11/21/93
10:4	1/3/88
10:6	2/21/89
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:31	6/5/94
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:39	2/21/94
10:40	5/11/94
10:41	3/20/94
10:42	8/18/91
10:43	9/1/88
10:44	10/3/88
10:44A	11/21/93
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89
10:66	12/15/93
10:67	3/3/91
10:68	7/7/91
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/93
10:70	6/16/91
10:71	1/6/91
10:72	8/27/92
10:80	5/19/94
10:81	10/15/89
10:82	10/29/89
10:83	1/19/94
10:85	1/30/90
10:87	1/27/94
10:89	9/11/90
10:90	10/14/92
10:94	1/6/91
10:95	8/23/89
10:97	5/15/94
10:99	2/19/90
10:109	3/17/91
10:112	2/17/89
10:120	9/26/88
10:121	3/13/89
10:121A	12/7/92
10:122	5/15/94
10:122A	Exempt
10:122B	9/10/89
10:123	7/29/90
10:124	12/7/92
10:125	7/16/89
10:126	11/7/93
10:127	8/26/93
10:129	10/11/89
10:130	9/19/88
10:131	12/7/92
10:132	1/5/92
10:141	2/7/94

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:22	7/5/93
10A:31	2/4/90
10A:32	3/4/90
10A:33	5/2/94
10A:34	4/6/92
10A:70	Exempt
10A:71	4/15/90

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	6/24/90
11:1-22	6/24/90
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	10/28/93
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92
11:15	12/3/89
11:16	2/3/91
11:17	4/18/93

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	12/19/93
12:5	9/19/93
12:6	10/17/93
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:18	3/7/93
12:20	11/5/89
12:35	8/5/90
12:41	1/17/94
12:45	5/2/93
12:46	5/2/93
12:47	5/2/93
12:48	5/2/93
12:49	5/2/93
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:60	3/21/93
12:90	12/17/89
12:100	11/5/89
12:105	1/21/91
12:110	1/19/93
12:112	9/6/93
12:120	5/3/90
12:175	11/28/93
12:190	1/4/93
12:195	6/24/93
12:200	8/5/90
12:210	9/6/93
12:235	5/5/91

COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	8/15/89
12A:11	9/21/92
12A:12	9/21/92
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	2/6/94
12A:81	2/6/94
12A:82	2/6/94
12A:100-1	9/8/91
12A:120	9/6/93
12A:121	12/5/93

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/5/93
13:2	8/5/90
13:3	4/25/93
13:4	1/21/91
13:10	3/27/94
13:13	6/17/90
13:18	4/1/90
13:19	8/23/89
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	5/26/94
13:24	11/5/89
13:25	3/18/90
13:26	9/26/93
13:27	4/1/90
13:28	5/16/93
13:29	6/3/90
13:30	4/15/90
13:31	12/12/91
13:32	10/23/92
13:33	3/18/90
13:34	10/26/93
13:35	11/19/89
13:36	11/19/89
13:37	2/11/90
13:38	10/7/90
13:39	6/19/94
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	10/31/93
13:43	9/1/93
13:44	8/20/89
13:44B	11/2/92
13:44C	7/18/93
13:44D	8/7/94
13:45A	12/16/90
13:45B	4/17/94
13:46	6/3/90
13:47	2/2/92
13:47A	10/5/92
13:47B	2/21/94
13:47C	6/9/94
13:48	1/21/91
13:49	12/16/93
13:51	4/27/92
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:60	1/20/92
13:70	2/25/90
13:71	2/25/90
13:75	6/5/94
13:76	6/27/93
13:77	2/1/93
13:78	3/20/94

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:10	9/8/91
14:11	1/27/92
14:17	4/24/94
14:18	7/29/90

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:11	9/20/89
14A:13	2/2/92
14A:14	1/30/94
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	8/5/90
16:1A	6/16/94
16:5	3/6/94
16:6	8/7/94
16:7	3/6/94
16:13	5/7/89
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25	8/15/93
16:25A	7/18/93
16:26	8/6/89
16:27	9/8/91
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	4/15/90
16:33	9/3/90
16:41	7/28/92
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	5/25/93
16:49	3/18/90
16:51	4/6/92
16:53	7/17/94
16:53A	4/15/90
16:53B	7/3/94
16:53C	6/16/93
16:53D	5/3/94
16:54	4/7/91
16:55	6/14/93
16:56	8/7/94
16:60	6/14/93
16:61	6/14/93
16:62	4/15/90
16:72	3/31/91
16:73	1/30/92
16:75	5/13/93
16:76	2/6/94
16:77	1/21/90
16:78	10/7/90
16:79	10/20/91
16:80	11/7/93
16:81	11/7/93

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	12/17/89
17:3	8/15/93
17:4	7/1/90
17:5	12/2/90
17:6	11/22/93
17:7	12/19/93
17:8	6/27/90
17:9	10/3/93
17:10	5/6/93
17:12	8/15/89
17:16	12/2/90
17:19	3/18/90
17:20	9/26/93
17:25	5/26/94
17:27	10/7/93
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92
17:32	3/21/93
17:33	4/17/94

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:2	9/6/93
18:3	3/14/94
18:5	3/14/94
18:6	3/14/94
18:7	3/14/94
18:8	2/24/94
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	3/14/94
18:19	3/14/94
18:22	2/24/94
18:23	2/24/94
18:23A	8/5/90
18:24	6/7/93
18:25	1/6/91
18:26	6/7/93
18:30	4/2/89
18:35	6/7/93
18:36	2/4/90
18:37	8/5/90
18:38	2/16/93
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	5/26/93
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93
19:8	7/5/93
19:9	10/17/93
19:12	8/7/91
19:16	8/7/91
19:17	6/8/93
19:25	1/9/91
19:30	10/7/90
19:40	9/26/89
19:41	5/12/93
19:42	5/12/93
19:43	4/27/94
19:44	9/29/93
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/93
19:49	3/24/93
19:50	5/12/93
19:51	8/14/91
19:52	9/25/91
19:53	4/28/93
19:54	3/24/93
19:61	7/7/91
19:65	7/7/91
19:75	1/13/94

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 5, 1989 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1989 d.1 means the first rule adopted in 1989.

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 15, 1989

NEXT UPDATE: SUPPLEMENT JUNE 19, 1989

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
20 N.J.R. 1759 and 1976	August 1, 1988	21 N.J.R. 365 and 588	February 21, 1989
20 N.J.R. 1977 and 2122	August 15, 1988	21 N.J.R. 589 and 658	March 6, 1989
20 N.J.R. 2123 and 2350	September 6, 1988	21 N.J.R. 659 and 810	March 20, 1989
20 N.J.R. 2351 and 2416	September 19, 1988	21 N.J.R. 811 and 954	April 3, 1989
20 N.J.R. 2417 and 2498	October 3, 1988	21 N.J.R. 955 and 1036	April 17, 1989
20 N.J.R. 2499 and 2610	October 17, 1988	21 N.J.R. 1037 and 1178	May 1, 1989
20 N.J.R. 2611 and 2842	November 7, 1988	21 N.J.R. 1179 and 1472	May 15, 1989
20 N.J.R. 2843 and 2948	November 21, 1988	21 N.J.R. 1475 and 1598	June 5, 1989
20 N.J.R. 2949 and 3046	December 5, 1988	21 N.J.R. 1599 and 1762	June 19, 1989
20 N.J.R. 3047 and 3182	December 19, 1988	21 N.J.R. 1763 and 1934	July 3, 1989
21 N.J.R. 1 and 88	January 3, 1989	21 N.J.R. 1935 and 2148	July 17, 1989
21 N.J.R. 89 and 224	January 17, 1989	21 N.J.R. 2149 and 2426	August 7, 1989
21 N.J.R. 225 and 364	February 6, 1989		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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1:1-8.2	Transmission of contested cases to OAL	21 N.J.R. 1181(a)	R.1989 d.395	21 N.J.R. 2019(a)
1:1-14.11	Transcripts of OAL proceedings: pre-proposal	21 N.J.R. 1181(b)		
1:10	Public welfare hearing rules: administrative change	———	———	21 N.J.R. 2288(a)
	Most recent update to Title 1: TRANSMITTAL 1989-3 (supplement April 17, 1989)			
AGRICULTURE—TITLE 2				
2:3	Livestock and poultry importations	21 N.J.R. 1477(a)		
2:5	Equine infectious anemia and avian influenza	21 N.J.R. 1479(a)		
2:24-2.1	Over-wintering of bees	20 N.J.R. 2951(a)		
2:69-1.11	Commercial values of primary plant nutrients	21 N.J.R. 813(a)	R.1989 d.326	21 N.J.R. 1668(a)
2:76	State Agricultural Development Committee rules	21 N.J.R. 1601(a)		
2:76-3.12	Farmland preservation programs: deed restrictions	21 N.J.R. 1183(a)		
2:76-4.11	Municipally-approved farmland preservation programs: deed restrictions	21 N.J.R. 1183(b)		
	Most recent update to Title 2: TRANSMITTAL 1989-5 (supplement May 15, 1989)			
BANKING—TITLE 3				
3:1-2.25, 2.26	Filing and application fees for banks, savings banks, and savings and loan associations	21 N.J.R. 1601(b)		
3:1-2.25, 2.26	DOB application fees	Emergency (expires 9-1-89)	R.1989 d.406	21 N.J.R. 2397(a)
3:1-6.1, 6.2, 7.1, 7.2, 7.4, 7.5, 9.6	DOB fees for services	Emergency (expires 9-1-89)	R.1989 d.407	21 N.J.R. 2398(a)
3:1-16.1	Mortgage loan practices	21 N.J.R. 957(a)	R.1989 d.332	21 N.J.R. 1668(b)
3:6-13.3, 13.5, 14.1, 14.2	Filing and application fees for banks, savings banks, and savings and loan associations	21 N.J.R. 1601(b)		
3:6-13.3, 13.5, 14.1, 14.2	DOB application fees	Emergency (expires 9-1-89)	R.1989 d.406	21 N.J.R. 2397(a)
3:11-5.1, 11.9	Filing and application fees for banks, savings banks, and savings and loan associations	21 N.J.R. 1601(b)		
3:11-5.1, 11.9	DOB application fees	Emergency (expires 9-1-89)	R.1989 d.406	21 N.J.R. 2397(a)
3:13-3.2	DOB fees for services	Emergency (expires 9-1-89)	R.1989 d.407	21 N.J.R. 2398(a)
3:17-2.1, 2.2, 3.9, 6.1, 6.2, 6.6, 6.10, 7.1	Consumer Loan Act rules	Emergency (expires 9-1-89)	R.1989 d.408	21 N.J.R. 2399(a)
3:18-10.1	License fees	Emergency (expires 9-1-89)	R.1989 d.409	21 N.J.R. 2401(a)
3:19-1.7	DOB fees for services	Emergency (expires 9-1-89)	R.1989 d.407	21 N.J.R. 2398(a)
3:22-1	Insurance premium finance agreements	21 N.J.R. 661(a)	R.1989 d.307	21 N.J.R. 1516(a)
3:23-2.1	License fees	Emergency (expires 9-1-89)	R.1989 d.409	21 N.J.R. 2401(a)
3:24	Check cashing business standards	21 N.J.R. 1765(a)		
3:33-1	Proposed interstate acquisition: determination of eligibility	21 N.J.R. 814(a)		
3:38-1.1, 1.2	License fees	Emergency (expires 9-1-89)	R.1989 d.409	21 N.J.R. 2401(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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	Most recent update to Title 3: TRANSMITTAL 1989-2 (supplement May 15, 1989)			
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4:1-16.6, 16.15, 25.1	Repeal rules	21 N.J.R. 1766(a)		
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4:2-16.6, 16.8	Repeal rules	21 N.J.R. 1766(a)		
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	Most recent update to Title 4: TRANSMITTAL 1988-3 (supplement September 19, 1988)			
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4A:2-1.2, 1.4, 2.5, 2.7, 3.1, 3.7	Appeals and discipline	21 N.J.R. 1766(a)		
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4A:8	Layoffs	20 N.J.R. 2955(b)		
4A:8	Layoffs: change of public hearing dates	20 N.J.R. 3171(a)		
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5:15-3.1, 3.4	Emergency shelters for homeless	21 N.J.R. 1509(a)	R.1989 d.412	21 N.J.R. 2288(c)
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5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:18-2.8	Uniform Fire Code: life hazard use registration fees and permit fees	Emergency (expires 9-1-89)	R.1989 d.404	21 N.J.R. 2126(a)
5:18-2.8	Uniform Fire Code: correction to fee schedule	———	———	21 N.J.R. 2402(a)
5:18A-2.6	Fire Code Enforcement: fee collection remittance	Emergency (expires 9-1-89)	R.1989 d.404	21 N.J.R. 2126(a)
5:18A-4	Repeal (see 5:18C)	21 N.J.R. 1655(a)		
5:18C	Uniform Fire Code: fire service training and certification	21 N.J.R. 1655(a)		
5:23-2.18A	Utility load management devices: installation programs	21 N.J.R. 233(a)		
5:23-2.18A	Utility load management devices: public hearing concerning installation programs	21 N.J.R. 1185(b)		
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)		
5:23-4.17, 4.18, 4.19, 4.20	Uniform Construction Code: municipal and departmental fees	Emergency (expires 9-1-89)	R.1989 d.405	21 N.J.R. 2127(a)
5:23-4.24A	Uniform Construction Code: alternative plan review program for large projects	21 N.J.R. 1770(a)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)	R.1989 d.342	21 N.J.R. 1844(b)
5:26-1.3, 11.7	Retirement community full disclosure	21 N.J.R. 958(a)	R.1989 d.317	21 N.J.R. 1669(a)
5:26-2.3, 2.4	Planned real estate development full disclosure: registration and exemption fees	Emergency (expires 9-1-89)	R.1989 d.405	21 N.J.R. 2127(a)
5:27-3.3	Rooming and boarding houses: emergency eviction of a resident	21 N.J.R. 93(a)		
5:70-6.3	Congregate Housing Services Program: service subsidies formula	21 N.J.R. 816(a)	R.1989 d.393	21 N.J.R. 2019(c)
5:80-6.1, 6.5, 6.6	Housing and Mortgage Finance Agency: sale of project by nonprofit sponsor to for-profit sponsor; use of DCE/CDE accounts	21 N.J.R. 1509(b)		
5:91-1.2, 4.5, 6.2, 7.1-7.6	Council on Affordable Housing: mediation and post mediation process	21 N.J.R. 1773(a)		
5:92-1.3, 12	Council on Affordable Housing: controls on affordability	21 N.J.R. 592(b)	R.1989 d.370	21 N.J.R. 2020(a)
5:92-8.4	Council on Affordable Housing: developer agreements	21 N.J.R. 1185(c)		
5:92-12 App.	Uniform deed restrictions and lines: controls on affordability	21 N.J.R. 1988(a)		
5:92-18	Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan	21 N.J.R. 1186(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:100	Ombudsman for the institutionalized elderly	21 N.J.R. 368(a)	R.1989 d.295	21 N.J.R. 1516(b)
5:100	Ombudsman for the institutionalized elderly: extension of comment period	21 N.J.R. 958(b)		
5:100	Ombudsman for institutionalized elderly: practice and procedure	21 N.J.R. 1510(a)		
5:100	Ombudsman practice and procedure: extension of comment period	21 N.J.R. 1995(a)		

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MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

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6:3-6	Enforcement of drug free school zones	21 N.J.R. 817(a)	R.1989 d.354	21 N.J.R. 1824(b)
6:11-3	Bilingual/ESL certification; basic communication skills certification	21 N.J.R. 95(a)		
6:21	Public testimony session concerning pupil transportation	21 N.J.R. 1939(a)		
6:22-1.1, 2.5	Public testimony session concerning school facilities	21 N.J.R. 1939(a)		
6:24-5.4	Public testimony session concerning charges against tenured employees of other State departments	21 N.J.R. 1775(a)		
6:24-5.4	Tenure charges against persons within Human Services, Corrections and Education	21 N.J.R. 1939(b)		
6:26, 6:27	Public testimony session concerning elementary and secondary education	21 N.J.R. 1939(a)		
6:28-4.5	Special education home instruction: administrative correction	_____	_____	21 N.J.R. 2288(d)
6:29-9.2, 9.3, 9.5, 9.6	Substance abuse control and education	21 N.J.R. 1603(a)		
6:30	Public testimony session concerning bilingual education	21 N.J.R. 1939(a)		
6:30-1.7, 2.3, 2.6	Adult education programs: monitoring and funding	21 N.J.R. 1039(b)	R.1989 d.355	21 N.J.R. 1826(a)
6:39-1	Statewide assessment of pupil proficiency in core studies	21 N.J.R. 1605(a)		
6:70	Public testimony session concerning library network services	21 N.J.R. 1775(a)		
6:70	Library network services	21 N.J.R. 1940(a)		

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7:0	DEP rulemaking agenda	_____	_____	21 N.J.R. 1911(c)
7:1-1.2	Petition for rulemaking procedure	21 N.J.R. 102(a)	R.1989 d.419	21 N.J.R. 2302(a)
7:1-1.2	Petition for rulemaking procedure: extension of comment period	21 N.J.R. 1289(a)		
7:1C-1.2–1.5, 1.7–1.9, 1.13, 1.14	90-day construction permits	21 N.J.R. 819(a)		
7:1G	Worker and Community Right to Know	21 N.J.R. 1944(a)		
7:1I-3.3	Sanitary Landfill Contingency Fund: appraisal of residential properties	_____	_____	21 N.J.R. 1911(b)
7:2-11.12	Natural Areas System: West Pine Plains	21 N.J.R. 1480(b)		
7:4A	Historic Preservation Grant Program	21 N.J.R. 958(c)		
7:6	Boating rules	21 N.J.R. 1157(a)	R.1989 d.351	21 N.J.R. 1856(a)
7:6-1.44, 4.7, 9	Lanyard cut-off switch; Greenwood Lake boating; personal watercraft	21 N.J.R. 1157(b)	R.1989 d.352	21 N.J.R. 1856(b)
7:7	Coastal Permit Program	21 N.J.R. 369(a)	R.1989 d.309	21 N.J.R. 1526(a)
7:7	Coastal Permit Program: extension of comment period	21 N.J.R. 1041(a)		
7:7	Coastal Permit Program: waiver of Executive Order No. 66(1978) expiration provision	21 N.J.R. 1481(a)		
7:7A-1.4, 2.5, 6, 7, 16.6, 16.7	Freshwater wetlands transition areas	21 N.J.R. 596(a)	R.1989 d.362	21 N.J.R. 1858(a)
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)	R.1989 d.373	21 N.J.R. 2024(a)
7:7E-7.14	High rise structures: administrative correction	_____	_____	21 N.J.R. 1857(a)
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)		
7:9-4	Surface water quality standards: public hearings	20 N.J.R. 1865(a)		
7:9-4	Surface water quality standards: extension of comment period	20 N.J.R. 2427(a)		
7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A–G	Surface water quality standards	20 N.J.R. 1597(a)	R.1989 d.420	21 N.J.R. 2302(b)
7:9A	Individual subsurface sewage disposal systems	20 N.J.R. 1790(a)		
7:9A	Individual subsurface sewage disposal systems: extension of comment period	20 N.J.R. 2427(b)		
7:10	Safe Drinking Water Act	21 N.J.R. 1945(a)		
7:11-2.1–2.5, 2.8–2.14	Sale of water from Delaware and Raritan Canal, Spruce Run/Round Valley system	21 N.J.R. 103(a)	R.1989 d.310	21 N.J.R. 1527(a)
7:12-1.1, 2.1, 3.2, 4.1, 4.2, 5.1, 9.1, 9.7, 9.8, 9.9, 9.12	Shellfish-growing water classification	21 N.J.R. 1041(b)	R.1989 d.390	21 N.J.R. 2032(a)

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7:13	Flood hazard area control	21 N.J.R. 371(a)	R.1989 d.415	21 N.J.R. 2350(a)
7:13	Flood hazard area control: extension of comment period	21 N.J.R. 1046(a)		
7:13	Flood Hazard Area Control: waiver of Executive Order No. 66(1978) expiration provision	21 N.J.R. 1481(a)		
7:13-7.1(d)	Redelineation of Bound Brook within South Plainfield and Edison	20 N.J.R. 3051(b)		
7:13-7.1(d)	Redelineation of West Branch Rahway River, West Orange	21 N.J.R. 605(a)		
7:13-7.1(d)	Redelineation of Ramapo River in Mahwah	21 N.J.R. 1046(b)		
7:13-7.1(d)	Redelineation of Ramapo River: extension of comment period	21 N.J.R. 1482(a)		
7:14	Water pollution control	21 N.J.R. 373(a)	R.1989 d.282	21 N.J.R. 1530(a)
7:14A	New Jersey Pollutant Discharge Elimination System (NJPDES)	21 N.J.R. 707(a)	R.1989 d.339	21 N.J.R. 1883(a)
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)		
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
7:22A-1, 2, 3, 6	Sewage Infrastructure Improvement Act grants	21 N.J.R. 1948(a)		
7:23	Emergency flood control	21 N.J.R. 1051(a)	R.1989 d.348	21 N.J.R. 1903(a)
7:25-1.5, 24	Leasing of Atlantic Coast bottom for aquaculture	21 N.J.R. 1482(b)		
7:25-5	1989-1990 Game Code	21 N.J.R. 1289(b)	R.1989 d.418	21 N.J.R. 2356(a)
7:25-6	1990-1991 Fish Code	21 N.J.R. 1775(b)		
7:25-22.1–22.4	Harvesting Atlantic menhaden	21 N.J.R. 107(a)	R.1989 d.394	21 N.J.R. 2035(a)
7:26-1.4, 7.4, 7.7, 8.2, 8.3, 8.4, 8.13, 9.1, 9.2, 10.6, 10.7, 10.8, 11.3, 11.4, 12.1	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:26-3A	Regulated medical wastes	Emergency (expires 8-25-89)	R.1989 d.396	21 N.J.R. 2109(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Essex County	20 N.J.R. 1048(a)	R.1989 d.308	21 N.J.R. 1558(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Bergen County	21 N.J.R. 1486(b)		
7:26-8.2, 12.3	Radioative mixed wastes	21 N.J.R. 1053(a)		
7:26-9.10, 9.13, App. A	Hazardous waste facility liability coverage: corporate guarantee option	21 N.J.R. 823(a)		
7:26-10.6, 11.3	Interim status hazardous waste facilities: closure and post-closure requirements	21 N.J.R. 1054(a)		
7:26B-1.3, 1.5, 1.6, 1.7, 1.8, 1.9, 3.3, 5.2, 7.5, 9.2, 10.1, 13.1	Environmental Cleanup Responsibility Act rules	21 N.J.R. 402(a)	R.1989 d.403	21 N.J.R. 2367(a)
7:27-16.1, 16.2, 16.5, 16.6	Volatile organic substance emissions and ozone concentrations	20 N.J.R. 3052(a)	R.1989 d.331	21 N.J.R. 1669(b)
7:27-16.3	Vapor control during marine transfer operations	21 N.J.R. 1960(a)		
7:27-23.2, 23.3, 23.4, 23.5	Volatile organic substances in consumer products	21 N.J.R. 1055(a)		
7:27A-3	Air pollution control: civil administrative penalties and adjudicatory hearings	21 N.J.R. 729(a)		
7:28-25	Radiation laboratory fee schedule	21 N.J.R. 826(a)	R.1989 d.349	21 N.J.R. 1904(a)
7:45-1.2, 1.3, 2.6, 2.11, 4.1, 6, 9, 11.1–11.5	Delaware and Raritan Canal State Park review zone rules	21 N.J.R. 828(a)		
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8:18	Catastrophic Illness in Children Relief Fund Program	21 N.J.R. 1781(a)		
8:31B-3.16	Hospital reimbursement: labor cost component	21 N.J.R. 661(b)	R.1989 d.383	21 N.J.R. 2087(a)
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.51–3.55, 3.58, 3.59, 3.73, App. II, IX, 5.1–5.3	Hospital reimbursement: extension of comment period for proposed changes published January 17, 1989	21 N.J.R. 606(a)		
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	Hospital reimbursement: 1989 rate setting	21 N.J.R. 135(a)	R.1989 d.387	21 N.J.R. 2058(a)
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	1989 hospital rate setting: correction to Summary statement	21 N.J.R. 413(a)		
8:31B-3.22, 3.23, 3.24, App. XI	Hospital reimbursement: graduate medical education	21 N.J.R. 1059(a)	R.1989 d.388	21 N.J.R. 2082(a)
8:31B-3.27	Capital facilities: administrative correction	———	———	21 N.J.R. 1827(a)

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8:31B-3.51–3.55, 3.58, 3.59, 3.60	Hospital reimbursement: appeals	21 N.J.R. 131(b)	R.1989 d.385	21 N.J.R. 2073(a)
8:31B-3.66	Hospital reimbursement: adjusted admission fee ceiling	21 N.J.R. 1606(a)		
8:31B-3.73	Hospital reimbursement: rates adjustment and reconciliation	21 N.J.R. 1606(b)		
8:31B-4.15	Hospital reimbursement: uniform uncompensated care add-on	21 N.J.R. 1487(a)		
8:31B-5.1, 5.2, 5.3	Hospital reimbursement: Diagnosis Related Groups	21 N.J.R. 138(a)	R.1989 d.384	21 N.J.R. 2088(a)
8:31B-7.9	Uncompensated Care Trust Fund cap	21 N.J.R. 1487(b)		
8:33-1.5, 2.8	Applications to convert licensed acute care beds to non-acute categories	21 N.J.R. 272(a)	R.1989 d.322	21 N.J.R. 1680(a)
8:33C	Perinatal services: Certificate of Need review process	21 N.J.R. 1187(a)	R.1989 d.417	21 N.J.R. 2289(a)
8:33G	Computerized tomography services: certificate of need process	21 N.J.R. 1061(a)	R.1989 d.416	21 N.J.R. 2289(b)
8:33M	Rehabilitation hospitals and comprehensive rehabilitation services: need review process	21 N.J.R. 1062(a)	R.1989 d.386	21 N.J.R. 2102(a)
8:39-19.7	Hot water temperature in long-term care facilities	21 N.J.R. 417(a)	R.1989 d.389	21 N.J.R. 2107(a)
8:39-29.4	Licensed nursing homes: non-prescription medications	21 N.J.R. 1607(a)		
8:42A	Licensure of alcoholism treatment facilities	20 N.J.R. 3059(a)	R.1989 d.323	21 N.J.R. 1681(a)
8:42A	Licensure of alcoholism treatment facilities: correction to proposal	21 N.J.R. 833(a)		
8:43B-11.1, 11.3, 11.4	Rehabilitation hospitals: standards for licensure	21 N.J.R. 1067(a)		
8:43E-3	Adult closed acute psychiatric beds: certification of need	21 N.J.R. 1785(a)		
8:43G-3	Hospital licensure: compliance with mandatory rules and advisory standards	21 N.J.R. 1608(a)		
8:43G-8	Hospital licensure: central supply	21 N.J.R. 1609(a)		
8:43G-10	Hospital licensure: dietary standard	21 N.J.R. 1611(a)		
8:43G-11	Hospital licensure: discharge planning	21 N.J.R. 1612(a)		
8:43G-12	Hospital licensure: emergency department	21 N.J.R. 1613(a)		
8:43G-13	Hospital licensure: housekeeping and laundry	21 N.J.R. 1616(a)		
8:43G-14	Hospital licensure: infection control and sanitation	21 N.J.R. 1618(a)		
8:43G-16	Hospital licensure: medical staff standard	21 N.J.R. 1621(a)		
8:43G-17	Hospital licensure: nurse staffing	21 N.J.R. 1623(a)		
8:43G-18	Hospital licensure: nursing care	21 N.J.R. 1624(a)		
8:43G-23	Hospital licensure: pharmacy	21 N.J.R. 1626(a)		
8:43G-25	Hospital licensure: post mortem standard	21 N.J.R. 1628(a)		
8:43G-27	Hospital licensure: quality assurance	21 N.J.R. 1630(a)		
8:43G-33	Hospital licensure: social work	21 N.J.R. 1631(a)		
8:43H	Rehabilitation hospitals: standards for licensure	21 N.J.R. 1067(a)		
8:43H-23, 24	Licensure of comprehensive rehabilitation hospitals: physical plant; functional requirements	21 N.J.R. 1188(a)		
8:59	Worker and Community Right to Know Act rules	21 N.J.R. 1253(a)		
8:59-App. A, B	Worker and Community Right to Know: preproposed Hazardous Substance List and Special Health Hazard Substance List	21 N.J.R. 1194(a)		
8:70-1.5	Interchangeable drug products: substitution of unlisted generics	20 N.J.R. 2623(a)		
8:71	Interchangeable drug products (see 20 N.J.R. 2769(a); 21 N.J.R. 63(b), 756(b), 1430(a))	20 N.J.R. 1766(a)	R.1989 d.377	21 N.J.R. 2107(b)
8:71	Interchangeable drug products (see 21 N.J.R. 63(c), 756(a), 1429(c))	20 N.J.R. 2356(a)	R.1989 d.380	21 N.J.R. 2108(b)
8:71	Interchangeable drug products (see 21 N.J.R. 755(b), 1429(b))	20 N.J.R. 3078(a)	R.1989 d.379	21 N.J.R. 2108(a)
8:71	Interchangeable drug products	21 N.J.R. 662(a)	R.1989 d.378	21 N.J.R. 2107(c)
8:71	Interchangeable drug products	21 N.J.R. 1488(a)		
8:71	Interchangeable drug products: administrative correction	———	———	21 N.J.R. 1699(a)
8:71	Interchangeable drug products	21 N.J.R. 1790(a)		

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9:1-5.1, 5.2, 5.4, 5.5, 5.8, 5.10	Proprietary institutions and academic degree standards	21 N.J.R. 1632(a)		
9:2-4.1	Alternate benefit program: eligibility for enrollment	21 N.J.R. 1268(a)		
9:4-1.3, 1.9, 1.10, 2.1–2.15, 7.5	County community colleges: governance and administration	21 N.J.R. 1269(a)		
9:9-11	Stafford Loan Program: institution compliance standards	21 N.J.R. 963(a)	R.1989 d.343	21 N.J.R. 1827(b)
9:9-11.1	Guaranteed Student Loan Program: institution compliance	21 N.J.R. 1962(a)		
9:11-1.5	Educational Opportunity Fund: eligibility for undergraduate grants	21 N.J.R. 1489(a)		
9:11-1.8	Educational Opportunity Fund: duration of student eligibility	21 N.J.R. 1963(a)		

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9:15	Graduate medical education program	21 N.J.R. 1271(a)		
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10:3-1.14	Contract administration: prohibited vendor activity	20 N.J.R. 2849(a)	R.1989 d.315	21 N.J.R. 1699(b)
10:31	Mental illness screening and screening outreach programs	20 N.J.R. 2427(d)	R.1989 d.284	21 N.J.R. 1562(a)
10:37-5.6–5.11, 5.16–5.24	Repeal (see 10:31)	21 N.J.R. 273(a)	R.1989 d.283	21 N.J.R. 1572(a)
10:39	Community residences for mentally ill: licensure standards	21 N.J.R. 1995(b)		
10:40	Organization of Division of Developmental Disabilities	Exempt	R.1989 d.301	21 N.J.R. 1572(b)
10:41-4	Human rights committees for developmentally disabled persons	20 N.J.R. 2552(a)	R.1989 d.302	21 N.J.R. 1573(a)
10:43	Guardians for developmentally disabled persons: determination of need	20 N.J.R. 2850(a)		
10:45	Guardianship services for developmentally disabled persons	21 N.J.R. 607(a)		
10:48-2	Control of viral hepatitis B among developmentally disabled	20 N.J.R. 2437(a)		
10:48-3	Lead toxicity control among developmentally disabled	20 N.J.R. 2555(a)	R.1989 d.347	21 N.J.R. 1905(a)
10:48-3	Lead Toxicity Control Program: comment period	20 N.J.R. 2688(a)		
10:49-1.1	Medicaid program: newborn care	21 N.J.R. 965(a)	R.1989 d.397	21 N.J.R. 2383(a)
10:49-1.1, 1.2	New Jersey Care: presumptive eligibility for prenatal medical care	21 N.J.R. 1791(a)		
10:49-1.1, 1.7–1.10, 1.14, 1.17, 1.19, 1.20, 1.22, 1.24, 1.26	Medicaid Administration Manual	21 N.J.R. 417(b)		
10:52-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:53-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:63-1.13, 1.16	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:63-3.9–3.12	Reimbursement of long-term care facilities: fixed property and movable equipment	20 N.J.R. 2560(a)		
10:63-3.10	Reimbursement of long-term care facilities under CARE Guidelines: correction	20 N.J.R. 2968(a)		
10:63-3.21	Long-term care facilities: Medicaid occupancy level supplemental payment	21 N.J.R. 1456(a)	R.1989 d.368	21 N.J.R. 2038(a)
10:65	Medical Day Care Program	21 N.J.R. 1794(a)		
10:66-1.5	Independent clinic providers: prior authorization for mental health services	21 N.J.R. 1794(b)		
10:70-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:72-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:72-6.1, 6.3	New Jersey Care: presumptive eligibility for prenatal medical care	21 N.J.R. 1791(a)		
10:80-1	Organization of Division of Public Welfare	Exempt	R.1989 d.316	21 N.J.R. 1700(a)
10:81	Public Assistance Manual	21 N.J.R. 1795(a)		
10:81-8.22, 8.23	Public Assistance Manual: Medicaid coverage of newborn children	21 N.J.R. 967(a)		
10:81-11.4	Direct child support payments to AFDC clients	21 N.J.R. 423(a)	R.1989 d.337	21 N.J.R. 1908(a)
10:81-11.6	Child Support Program: incentive payment methodology	21 N.J.R. 663(a)		
10:81-14.5, 14.18	REACH Program: post-AFDC child care	21 N.J.R. 1086(b)	R.1989 d.353	21 N.J.R. 1908(b)
10:82	Assistance Standards Handbook; AFDC Program	21 N.J.R. 1811(a)		
10:85-3.2	General Assistance: residency and municipal responsibility	21 N.J.R. 835(a)	R.1989 d.398	21 N.J.R. 2384(a)
10:85-3.3	General Assistance: income and eligibility	21 N.J.R. 836(b)		
10:87-2.13, 2.30, 2.33, 2.36, 2.37, 4.8, 5.9, 6.2, 9.7	Food Stamp Program revisions	21 N.J.R. 1636(a)		
10:120	Youth and Family Services hearings	20 N.J.R. 2742(a)		
10:120	Youth and Family Services hearings: reopening of comment period	21 N.J.R. 1580(a)		
10:122-3.3, 4.7	Child care centers: administrative correction	———	———	21 N.J.R. 2385(a)
10:123-3.2	Residential health care facilities/boarding homes: personal needs allowance	21 N.J.R. 788(a)	R.1989 d.285	21 N.J.R. 1575(a)
10:125	Youth and Family Services capital funding program	21 N.J.R. 1514(a)		
10:133	Personal Attendant Services Program	21 N.J.R. 273(b)		
10:141-1.4	Charity Racing Days for Developmentally Disabled: distribution of proceeds	21 N.J.R. 610(a)		
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10A:9-1.3, 5.2	Application of time credits to mandatory minimum term	21 N.J.R. 664(a)	R.1989 d.299	21 N.J.R. 1516(c)

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10A:16-2.9	Infirmary care	21 N.J.R. 969(a)		
10A:16-11	Special Medical Units	21 N.J.R. 111(a)		
10A:17-8	Recreation and leisure time activities	21 N.J.R. 665(a)		
10A:18-2.5, 4.4	Correspondence between inmates at different facilities; exchange of publications	21 N.J.R. 837(a)	R.1989 d.318	21 N.J.R. 1701(a)
10A:18-2.6, 2.19, 2.20, 2.22	Inmate correspondence	20 N.J.R. 2854(a)	R.1989 d.338	21 N.J.R. 1910(a)
10A:19	Public information	21 N.J.R. 1490(a)		
10A:33	Juvenile Detention Commitment Programs	21 N.J.R. 667(a)	R.1989 d.286	21 N.J.R. 1517(a)
10A:34-2.16, 2.20	Municipal detention facilities: surveillance of detainees; reporting deaths	21 N.J.R. 969(b)	R.1989 d.401	21 N.J.R. 2385(a)
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11:1-3, 7, 8, 13	Repeal (see 11:17A, 17B, 17C, 17D)	21 N.J.R. 1317(a)		
11:1-5.1	FAIR Plan surcharge	21 N.J.R. 1816(a)		
11:1-10	Foreign and alien property and casualty insurers: admission requirements	21 N.J.R. 426(a)	R.1989 d.329	21 N.J.R. 1702(a)
11:2-3	Credit life and credit accident and health insurance: preproposal	20 N.J.R. 2969(b)		
11:2-11.1, 11.6, 11.15, 11.18, 23.3, 23.5, 23.8	Life and health insurance advertising: third-party endorsements	21 N.J.R. 970(a)	R.1989 d.391	21 N.J.R. 2039(a)
11:2-11.1, 11.6, 11.18, 23.3, 23.5, 23.8	Life and health insurance advertising: administrative corrections	———	———	21 N.J.R. 2289(c)
11:2-23.8	Life and health insurance advertising: administrative correction	———	———	21 N.J.R. 2290(a)
11:2-24	High-risk investments by insurers	21 N.J.R. 838(a)		
11:3-8.2, 8.4	Nonrenewal of automobile policies	21 N.J.R. 1306(a)		
11:3-16	Private passenger automobile rate filings	21 N.J.R. 611(a)		
11:3-17	Rating organizations: private passenger automobile filings	21 N.J.R. 973(a)	R.1989 d.328	21 N.J.R. 1708(a)
11:3-18	Review of rate filings for private passenger automobile coverage	21 N.J.R. 839(a)		
11:3-20A	Private passenger automobile insurers: computation of excess profits	21 N.J.R. 842(a)	R.1989 d.306	21 N.J.R. 1517(c)
11:3-25.3, 25.4	Residual market equalization charges: administrative correction	———	———	21 N.J.R. 1708(b)
11:3-29	Automobile insurance personal injury protection: medical fee schedules	21 N.J.R. 842(b)		
11:4-9	Life and health insurance: unfiled policy forms	21 N.J.R. 1492(a)		
11:4-32	Health service corporations: notice of increased rates	21 N.J.R. 973(b)		
11:4-33	Life insurers: excess interest reserve adjustment	21 N.J.R. 1308(a)		
11:4-34	Long-term care insurance	21 N.J.R. 1964(a)		
11:5-1.10	Real estate broker and salesperson employment agreement	21 N.J.R. 1308(b)		
11:5-1.10	Real estate broker and salesperson employment agreement: correction to proposal summary	21 N.J.R. 1494(a)		
11:5-1.12	Record maintenance by real estate brokers	21 N.J.R. 1310(a)		
11:5-1.14	License lending by real estate licenses	21 N.J.R. 1311(a)		
11:5-1.15	Advertising by licensed real estate brokers	21 N.J.R. 1312(a)		
11:5-1.15	Real estate advertising: administrative correction	———	———	21 N.J.R. 1708(c)
11:5-1.16	Real estate listing agreements	20 N.J.R. 2185(a)		
11:5-1.18	Supervision of primary real estate offices	21 N.J.R. 1312(b)		
11:5-1.19	Supervision of branch real estate offices	21 N.J.R. 1313(a)		
11:5-1.23	Real estate offers and broker's obligations	20 N.J.R. 2186(a)		
11:5-1.28	Approval real estate schools: pre-proposal	21 N.J.R. 1641(a)		
11:5-2.2, 2.3	Real Estate Commission organization and functions	Exempt	R.1989 d.324	21 N.J.R. 1709(a)
11:5-3, 4, 5	Formal proceedings by Real Estate Commission	21 N.J.R. 1314(a)		
11:13-1.2, 1.3	Farm-owners insurance	21 N.J.R. 1641(b)		
11:15	Hospital workers' compensation: group self-insurance	21 N.J.R. 1817(a)		
11:15-2.2, 2.13, 2.21	Joint insurance funds for local government units	21 N.J.R. 1494(b)		
11:17A, 17B, 17C, 17D	Insurance producer conduct: marketing; commissions and fees; funds management; administrative penalties	21 N.J.R. 1317(a)		
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12:17-2.4, 2.5	Requalification for unemployment insurance benefits	20 N.J.R. 1522(a)	Expired	
12:17-7.1, 7.2, 7.3	Unemployment Compensation and Temporary Disability: disclosure of information	21 N.J.R. 975(a)	R.1989 d.327	21 N.J.R. 1709(b)

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12:20-6	Unemployment and disability insurance appeals: telephone hearings	21 N.J.R. 1644(a)		
12:41-1	Job Training Partnership Act/N.J. Jobs Training Act: grievance procedures	21 N.J.R. 1498(a)		
12:45-1	Vocational rehabilitation services	20 N.J.R. 3107(a)		
12:45-2	Transportation for employees of sheltered workshops	21 N.J.R. 690(a)	R.1989 d.305	21 N.J.R. 1576(b)
12:46–12:49	Repeal (see 12:45-1)	20 N.J.R. 3107(a)		
12:56-2.1	Wage and hour compliance: trainees in company programs	21 N.J.R. 692(a)	R.1989 d.304	21 N.J.R. 1578(a)
12:100-4.2	Public employee safety and health: air contaminant exposure limits	21 N.J.R. 1089(a)	R.1989 d.358	21 N.J.R. 1829(a)
12:100-4.2, 5.2	Public employee safety and health: hazardous waste operations and emergency response	21 N.J.R. 1646(a)		
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12:100-4.2, 10, 17	Safety standards for firefighters: public hearing	21 N.J.R. 1500(a)		
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12A:55	Solar energy systems criteria for sales and use tax exemptions: extension of comment period	21 N.J.R. 1969(a)		
12A:61	Energy emergencies (formerly at 14A:2)	21 N.J.R. 1272(a)		
12A:120-2	Urban Enterprise Zone Program: certification for zone business benefits	21 N.J.R. 693(a)	R.1989 d.376	21 N.J.R. 2043(a)

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13:2-20	Transportation of alcoholic beverages by licensees; insignia	21 N.J.R. 1300(a)	R.1989 d.372	21 N.J.R. 2045(a)
13:2-20.2	Transportation by retail licensee: administrative correction	———	———	21 N.J.R. 2385(c)
13:2-21	Transportation of alcoholic beverages into, through or out of State	21 N.J.R. 1304(a)	R.1989 d.371	21 N.J.R. 2047(a)
13:18-11	Organization of the Division of Motor Vehicles	Exempt	R.1989 d.365	21 N.J.R. 2048(a)
13:19	Driver control service	21 N.J.R. 1817(b)		
13:19-13	Supplemental motor vehicle insurance surcharges	21 N.J.R. 1817(b)		
13:20-1	Division of Motor Vehicles: enforcement officer rules	21 N.J.R. 1500(b)		
13:23	Commercial driving schools	21 N.J.R. 976(a)	R.1989 d.333	21 N.J.R. 1710(a)
13:27-4.5, 4.6, 4.7, 4.8, 4.10, 4.12, 4.13	Architectural practice and responsibility	21 N.J.R. 433(b)	R.1989 d.294	21 N.J.R. 1519(a)
13:30-1.5, 1.15, 1.16, 2.11, 2.12, 2.13, 6.9, 6.10	Board of Dentistry: administrative corrections	———	———	21 N.J.R. 2386(a)
13:30-2.19	Inactive dental hygienists: resumption of practice	21 N.J.R. 1500(c)		
13:35-6.2	Pronouncement and certification of death	21 N.J.R. 1969(b)		
13:35-6.10	Advertising and solicitation by physicians	21 N.J.R. 696(a)	R.1989 d.325	21 N.J.R. 1710(b)
13:35-8.18	Hearing aid dispensers: continuing education	21 N.J.R. 1648(a)		
13:36	State Board of mortuary science	21 N.J.R. 1971(a)		
13:36-2.1, 2.5, 4.8, 5.12, 5.13	Mortuary science: administrative corrections	———	———	21 N.J.R. 1830(a)
13:36-3.5, 3.6, 3.7	Mortuary science: examination requirements and review procedure	21 N.J.R. 1820(a)		
13:37-2.3, 3.5, 4.4	Nursing practice: temporary permit holders	21 N.J.R. 1648(b)		
13:39	Board of Pharmacy rules	20 N.J.R. 1648(a)	R.1989 d.314	21 N.J.R. 1712(a)
13:39A-3.2	Unlawful practices and arrangements by physical therapists: preproposal	20 N.J.R. 2242(a)		
13:39A-5.1	Educational requirements for licensure as physical therapist	20 N.J.R. 2243(a)		
13:42-1.2	Board of Psychological Examiners: written examination fee	21 N.J.R. 1649(a)		
13:44	Board of Veterinary Medical Examiners	21 N.J.R. 1501(a)		
13:44D	Public movers and warehousemen	20 N.J.R. 2364(a)	R.1989 d.400	21 N.J.R. 2386(b)
13:44D	Public movers and warehousemen: public hearing and extension of comment period	20 N.J.R. 2681(a)		
13:45A-2.3	Motor vehicle advertising practices: administrative correction	———	———	21 N.J.R. 1520(a)

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13:45A-26.6	Automotive dispute resolution: administrative correction	————	————	21 N.J.R. 1831(a)
13:45B-4	Temporary help service firms	20 N.J.R. 2684(a)		
13:47-2.8	Legalized games of chance: organization ID numbers	21 N.J.R. 698(a)	R.1989 d.399	21 N.J.R. 2396(b)
13:47-7.1	Bingo games	21 N.J.R. 698(b)		
13:47A-2.10	Investment advisory contracts: performance fee compensation	21 N.J.R. 12(a)	R.1989 d.319	21 N.J.R. 1741(a)
13:47C	Weights and measures: general commodities	21 N.J.R. 1096(a)	R.1989 d.350	21 N.J.R. 1832(a)
13:70-3.40	Horse racing: admittance of children to race track	21 N.J.R. 1972(a)		
13:71-5.18	Harness racing: admittance of children to race track	21 N.J.R. 1972(b)		
13:75	Practice and procedure before Violent Crimes Compensation Board	21 N.J.R. 881(b)	R.1989 d.340	21 N.J.R. 1832(b)
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14:3-3.2	Customer's proof of identity	21 N.J.R. 2004(a)		
14:3-3.6	Utility service discontinuance	21 N.J.R. 1650(a)		
14:3-4.5, 4.10	Billing disputes and meter test options	21 N.J.R. 1650(b)		
14:3-4.7	Water meter accuracy and billing adjustments	21 N.J.R. 1651(a)		
14:3-7.5	Return of customer deposits	21 N.J.R. 1652(a)		
14:3-7.13	Late payment charges	21 N.J.R. 1652(b)		
14:3-7.14	Discontinuance of residential service to tenants	20 N.J.R. 1668(a)	Expired	
14:3-10.15	Annual filing of customer lists by solid waste collectors; annual reports	20 N.J.R. 2629(a)		
14:3-11	Earned return analysis of utility rates	21 N.J.R. 2003(a)		
14:9-3.3	Water meter accuracy and billing adjustments	21 N.J.R. 1651(a)		
14:10-6	Telecommunications: Alternative Operator Service (AOS) providers	20 N.J.R. 3115(a)		
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14A:8	Energy Facility Review Board	21 N.J.R. 2009(a)		
14A:11	Reporting by energy industries of energy information	21 N.J.R. 2009(b)		
14A:14-2.1	Definition of electric facility	21 N.J.R. 882(a)	R.1989 d.364	21 N.J.R. 2048(a)
14A:22	Commercial and Apartment Conservation Service Program	21 N.J.R. 2010(a)		
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16:6	Right-of-way acquisitions and relocation assistance	21 N.J.R. 1273(a)	R.1989 d.421	21 N.J.R. 2290(b)
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16:28-1.49	Speed limits on Route 35 in Monmouth County	21 N.J.R. 698(c)	R.1989 d.287	21 N.J.R. 1520(c)
16:28-1.49	Speed limits along Route 35 in Woodbridge	21 N.J.R. 1097(a)	R.1989 d.344	21 N.J.R. 1832(c)
16:28-1.72, 1.77	School and speed limit zones along U.S. 206 in Hamilton and Route 29 in Stockton	21 N.J.R. 1501(b)	R.1989 d.411	21 N.J.R. 2299(a)
16:28-1.76	Speed limit zones along Route 15 in Sussex County	21 N.J.R. 699(a)	R.1989 d.292	21 N.J.R. 1521(a)
16:28A-1.1, 1.21, 1.24, 1.38	Parking and stopping restrictions along U.S. 1 in Plainsboro, U.S. 30 in Somerdale, Route 34 in Old Bridge, and Route 71 in Asbury Park	21 N.J.R. 1283(a)	R.1989 d.374	21 N.J.R. 2050(b)
16:28A-1.6	Handicapped parking space on Route 7 in Belleville	21 N.J.R. 883(a)	R.1989 d.296	21 N.J.R. 1521(b)
16:28A-1.7	Bus stop zone along U.S. 9 in Old Bridge	21 N.J.R. 1284(a)	R.1989 d.375	21 N.J.R. 2051(a)
16:28A-1.13, 1.25, 1.46, 1.110	Restricted parking and standing along U.S. 22 in Lopatcong, Route 35 in Eatontown, U.S. 130 in Westville, and Route 91 in North Brunswick	21 N.J.R. 883(b)	R.1989 d.298	21 N.J.R. 1522(a)

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16:28A-1.18	No parking zones along Route 27 in South Brunswick and Franklin Township	21 N.J.R. 700(a)	R.1989 d.288	21 N.J.R. 1522(b)
16:28A-1.18, 1.71	Parking and standing restrictions along Route 27 in Linden and Route 67 in Fort Lee	21 N.J.R. 978(a)	R.1989 d.321	21 N.J.R. 1742(a)
16:28A-1.19, 1.109	Restricted parking along Route 28 in Elizabeth, and no stopping or standing zones along Route 324 in Logan Township	21 N.J.R. 701(a)	R.1989 d.290	21 N.J.R. 1523(b)
16:28A-1.21	Bus stop zones along U.S. 30 in Lindenwold	21 N.J.R. 1097(b)	R.1989 d.345	21 N.J.R. 1832(d)
16:28A-1.31, 1.46	Bus stop zones along Route 45 in Mannington Township and U.S. 130 in Delran Township	21 N.J.R. 701(b)	R.1989 d.289	21 N.J.R. 1523(a)
16:31-1.26	No left turn from Route 27 in Metuchen	21 N.J.R. 702(a)	R.1989 d.291	21 N.J.R. 1524(a)
16:31-1.27	Prohibited turns along Route 17 in Rutherford	21 N.J.R. 884(a)	R.1989 d.297	21 N.J.R. 1524(b)
16:33	Repeal (see 16:45)	21 N.J.R. 1972(c)		
16:44-1.2, 1.4	Classification of prospective bidders	21 N.J.R. 1023(a)	R.1989 d.346	21 N.J.R. 1833(a)
16:45	Construction control: contractor claims; substantial completion	21 N.J.R. 1972(c)		
16:53	Autobus specifications and inspection fees	21 N.J.R. 1098(a)	R.1989 d.392	21 N.J.R. 2051(b)
16:53B	Jurisdictional assignments for railroad overhead bridges	21 N.J.R. 1103(a)	R.1989 d.356	21 N.J.R. 1833(b)
16:53D	Bus carrier zone of rate freedom	21 N.J.R. 703(a)	R.1989 d.293	21 N.J.R. 1524(c)
16:56	Airport Safety Improvement Aid	21 N.J.R. 1502(a)	R.1989 d.413	21 N.J.R. 2299(b)
16:62-5.1, 9.1	Land uses within airport hazard areas: preproposal	20 N.J.R. 1534(a)	Expired	
16:82	NJ TRANSIT: availability of public records	21 N.J.R. 284(b)		
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17:2-4.3	Public Employees' Retirement System: school year members	21 N.J.R. 979(a)	R.1989 d.423	21 N.J.R. 2300(a)
17:2-5.13	Public Employees' Retirement System: lump-sum service purchases	21 N.J.R. 1820(b)		
17:2-6.4	Public Employees' Retirement System: outstanding loans at retirement	21 N.J.R. 629(a)	R.1989 d.313	21 N.J.R. 1743(b)
17:2-6.27	Public Employees' Retirement System: benefit coverage during work-related travel	21 N.J.R. 1285(a)	R.1989 d.422	21 N.J.R. 2300(b)
17:3-4.3	Teachers' Pension and Annuity Fund: school year members	21 N.J.R. 980(a)	R.1989 d.359	21 N.J.R. 2055(a)
17:3-5.9	Teachers' Pension and Annuity Fund: lump-sum purchases	21 N.J.R. 980(b)	R.1989 d.360	21 N.J.R. 2055(b)
17:4-5.7	Police and Firemen's Retirement System: lump-sum service purchases	21 N.J.R. 1821(a)		
17:4-6.4	Police and Firemen's Retirement System: outstanding loans at retirement	21 N.J.R. 630(a)	R.1989 d.280	21 N.J.R. 1524(d)
17:6-1.4	Consolidated Police and Firemen's Pension Fund: candidates for commission membership	21 N.J.R. 438(a)	R.1989 d.320	21 N.J.R. 1744(a)
17:9-2.4, 5.11	State Health Benefits Program: enrollment of dependents of 10-month employees	21 N.J.R. 886(a)	R.1989 d.335	21 N.J.R. 1836(a)
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17:9-2.18, 3.1	State Health Benefits Program: continuation of coverage for disabled children	21 N.J.R. 885(a)		
17:9-7.2	State Health Benefits Program: reenrollment after termination of covered public employment	21 N.J.R. 886(b)	R.1989 d.336	21 N.J.R. 1836(b)
17:16-17.3	Common Pension Fund A: investment limitations	21 N.J.R. 1821(b)		
17:20-8.1	Lottery vendors' code of ethics	21 N.J.R. 631(a)	R.1989 d.381	21 N.J.R. 2055(c)
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